The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1458

INTRODUCER: Health Regulation Committee and Senator Garcia

SUBJECT: Assisted Living Facilities

DATE: April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

This committee substitute (CS) makes substantial changes to part I of ch. 429, F.S., the Assisted Living Facilities Act. The changes made relate to legislative intent, definitions, standard and specialty licensure, licensure fees, monitoring activities, unlicensed activity, proof of financial ability to operate, administrative penalties, standards of operation, classes of violations and attendant penalties, referrals, solicitations, adverse incidents, administration of medication, assessment of residents, property of residents, resident Bill of Rights, fire safety, inspections to assess quality-of-care standards, corrective action plans, new construction and local zoning requirements, prohibited acts, staff training, Agency for Health Care Administration (AHCA) consultation, residency agreements, and training violations and penalties.

In addition, the CS repeals laws relating to the Department of Elderly Affairs' (DOEA) authority to adopt rules to clarify terms, establish requirements for financial records, accounting procedures, personnel procedures, insurance coverage, and reporting procedures and relating to the collection of information required by the Legislature and local subsidies of assisted living facilities (ALFs).

This CS substantially amends the following sections of the Florida Statutes: 400.141, 408.820, 409.912, 429.01, 429.02, 429.04, 429.07, 429.08, 429.11, 429.12, 429.14, 429.17, 429.178, 429.19, 429.195, 429.20, 429.23, 429.255, 429.256, 429.26, 429.27, 429.28, 429.41, 429.42, 429.445, 429.47, 429.49, 429.52, 429.53, 429.71, 429.81, and 817.505.

This CS creates the following sections of the Florida Statutes: 430.081.

This CS repeals the following subsection and section of the Florida Statutes: 429.275(4) and 429.54.

This CS creates an undesignated section of the Florida Statutes.

II. Present Situation:

Assisted Living Facilities

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[1, 2] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[3] Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

The ALFs are licensed by the AHCA pursuant to part I of ch. 429, F.S., relating to assisted living facilities, and part II of ch. 408, F.S., relating to the general licensing provisions for health care facilities. The ALFs are also subject to regulation under Chapter 58A-5, Florida Administrative Code (F.A.C.). These rules are adopted by the DOEA in consultation with the AHCA, the Department of Children and Family Services (DCF), and the Department of Health (DOH).[4] An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in Chapter 69A-40, F.A.C., and standards enforced by the DOH concerning food hygiene; physical plant sanitation; biomedical waste; and well, pool, or septic systems.[5]

There are currently 2,932 licensed ALFs in Florida.[6] In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide limited nursing services (LNS), limited mental health (LMH) services,[7] and extended congregate care (ECC) services.

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility. Generally, the care and services include at a minimum:

- Supervising the resident in order to monitor the resident's diet; being aware of the general health, safety, and physical and emotional well-being of the resident; and recording

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[1] Section 429.02(5), F.S.

[2] An ALF does not include an adult family-care home or a nontransient public lodging establishment. An adult family-care home is regulated under ss. 429.60 – 429.87, F.S., and is defined as a full-time, family-type living arrangement in a private home where the person who owns or rents the home, lives in the home. An adult family-care home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders, who are not relatives. A nontransient establishment (a.k.a. boarding house) is regulated under part I of ch. 509, F.S., and is defined as any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

[3] Section 429.02(16), F.S.

[4] Section 429.41(1), F.S.

[5] *See* ch. 64E-12, ch. 64E-11, and 64E-16, F.A.C.

[6] Senate professional staff of the Health Regulation Committee received this information via email on March 25, 2011. A copy of the email is on file with the committee.

[7] An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives OSS.

significant changes, illnesses, incidents, and other changes which resulted in the provision of additional services;
- Contacting appropriate persons upon a significant change in the resident or if the resident is discharged or moves out;
- Providing and coordinating social and leisure activities in keeping with each resident's needs, abilities, and interests;
- Arranging for health care by assisting in making appointments, reminding residents about scheduled appointments, and providing or arranging for transportation as needed; and
- Providing to the resident a copy of, and adhering to, the Resident Bill of Rights.

An unlicensed person who has received the appropriate training may assist a resident in an ALF with the self-administration of medication. Persons under contract to the ALF, employees, or volunteers,[8] who are licensed under the nurse practice act[9] and uncompensated family members or friends may:[10]
- Administer medications to residents;
- Take a resident's vital signs;
- Manage individual weekly pill organizers for residents who self-administer medication;
- Give prepackaged enemas ordered by a physician; and
- Observe residents, document observations on the appropriate resident's record, and report observations to the resident's physician.

Additionally, in an emergency situation, persons licensed under the nurse practice act may carry out their professional duties until emergency medical personnel assume responsibility for care. A resident may independently arrange, contract, and pay for additional services provided by a third party of the resident's choice.

The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on an assessment of the strengths, needs, and preferences of the individual; the health assessment; the preliminary service plan; the facility's residency criteria; services offered or arranged for by the facility to meet resident needs; and the ability of the facility to meet the uniform firesafety standards.[11]

A resident who requires 24-hour nursing supervision[12] may not reside in an ALF, unless the resident is enrolled as a hospice patient. Continued residency of a hospice patient is conditioned upon a mutual agreement between the resident and the facility, additional care being rendered

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[8] An association spokesperson stated in an e-mail to Senate Health Regulation Committee professional staff that ALFs do not currently use volunteers for these purposes due to liability issues.
[9] Part I of ch. 464, F.S.
[10] Section 429.255, F.S.
[11] Section 429.255, F.S., s. 429.26, F.S., and Rule 58A-5.030, F.A.C.
[12] Twenty-four-hour nursing supervision means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services must be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or disease state or stage. Definition found at s. 429.02(26), F.S.

through a licensed hospice, and the resident being under the care of a physician who agrees that the physical needs of the resident are being met.

If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.[13]

Limited Nursing Services Specialty License

A limited nursing services (LNS) specialty license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license.

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,[14] may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.[15]

The biennial fee for an LNS license is $304 per license with an additional fee of $10 per resident based on the total licensed resident capacity of the facility.[16] Ostensibly this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

Extended Congregate Care Specialty License

An extended congregate care (ECC) specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services[17] to persons who otherwise would be disqualified from continued residence in an ALF.[18]

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[13] Section 429.28, F.S.

[14] Rule 58A-5.031, F.A.C. The additional nursing services that might be performed pursuant to the LNS license include: conducting passive range of motion exercises; applying ice caps or collars; applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks; cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained; performing ear and eye irrigations; conducting a urine dipstick test; replacing an established self-maintained indwelling urinary catheter, or performing an intermittent urinary catheterization; performing digital stool removal therapies; applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds; caring for stage 2 pressure sores, (care for stage 3 or 4 pressure sores are not permitted); caring for casts, braces and splints, (care for head braces, such as a halo, is not permitted); assisting, applying, caring for, and monitoring the application of anti-embolism stockings or hosiery; administering and regulating portable oxygen; applying, caring for, and monitoring a transcutaneous electric nerve stimulator (TENS); performing catheter, colostomy, and ileostomy care and maintenance; conducting nursing assessments; and, for hospice patients, providing any nursing service permitted within the scope of the nurse's license, including 24-hour nursing supervision.

[15] Section 429.07(3)(c), F.S.

[16] Section 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

The primary purpose of ECC services is to allow residents, as they become more impaired with physical or mental limitations, to remain in a familiar setting. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. Facilities licensed to provide ECC services may adopt their own criteria and requirements for admission and continued residency in addition to the minimum criteria specified in law.

An ECC program may provide additional services, such as:
- Total help with bathing, dressing, grooming, and toileting;
- Nursing assessments conducted more frequently than monthly;
- Measuring and recording basic vital functions and weight;
- Dietary management, including providing special diets, monitoring nutrition, and observing the resident's food and fluid intake and output;
- Administering medications and treatments pursuant to a health care provider's order;
- Supervising residents with dementia and cognitive impairments;
- Health education, counseling, and implementing health-promoting programs;
- Rehabilitative services; and
- Escort services to health-related appointments.

An individual must undergo a medical examination before admission to an ALF with the intention of receiving ECC services or upon transfer within the same facility to that portion of the facility licensed to provide ECC services. The ALF must develop a service plan[19] that sets forth how the facility will meet the resident's needs and must maintain a written progress report on each resident who receives ECC services.

A supervisor, who may also be the administrator, must be designated to be responsible for the day-to-day management of the ECC program and ECC resident service planning. A nurse, provided as staff or by contract, must be available to provide nursing services as needed by ECC residents, participate in the development of resident service plans, and perform the monthly nursing assessment for each resident receiving ECC services. The ECC licensed ALF must provide awake staff to meet resident scheduled and unscheduled night needs.[20]

Persons under contract to the ECC, employees, or volunteers, who are licensed under the nurse practice act,[21] including certified nursing assistants, may perform all duties within the scope of their license or certification, as approved by the facility administrator.[22] These nursing services must be authorized by a health care provider's order and pursuant to a plan of care; medically necessary and appropriate treatment for the condition; in accordance with the prevailing standard

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[17] Supportive services include social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. *See* Rule 58A-5.030(8), F.A.C.

[18] Section 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C. *See also* AHCA, *2011 Bill Analysis & Economic Impact Statement for SB 1458*, on file with the committee.

[19] Section 429.02(21), F.S.

[20] Rule 58A-5.030, F.A.C.

[21] Part I of ch. 464, F.S.

[22] Section 429.255(2), F.S.

of practice in the nursing community and the resident's service plan; a service that can be safely, effectively, and efficiently provided in the facility; and recorded in nursing progress notes.[23]

An ECC licensee is subject to quarterly monitoring inspections by the AHCA or its agents. At least one registered nurse must be included in the inspection team. The AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately, and there are no serious violations or substantiated complaints about the quality of service or care.

Limited Mental Health Specialty License

An ALF that serves three or more mental health residents must obtain a limited mental health (LMH) specialty license.[24]

A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives optional state supplementation (OSS).[25] The DCF is responsible for ensuring that a mental health resident is assessed and determined able to live in the community in an ALF with an LMH license.[26]

An ALF licensed to provide LMH services must assist the mental health resident in carrying out the activities in the resident's community living support plan. The mental health resident's community living support plan, which is updated annually, includes:[27]

- The specific needs of the resident which must be met for the resident to live in the ALF and community;
- The clinical mental health services to be provided by the mental health care provider to help meet the resident's needs;
- Any other services and activities to be provided by or arranged for by the mental health care provider or mental health case manager to meet the resident's needs;
- Obligations of the ALF to facilitate and assist the resident in attending appointments and arranging transportation to appointments for the services and activities identified in the plan;
- A description of other services to be provided or arranged by the ALF; and
- A list of factors pertinent to the care, safety, and welfare of the mental health resident and a description of the signs and symptoms particular to the resident that indicates the immediate need for professional mental health services.

The LMH licensee must execute a cooperative agreement between the ALF and the mental health care services provider. The cooperative agreement specifies, among other things, directions for the ALF accessing emergency and after-hours care for the mental health resident.

[23] Rule 58A-5.030(8)(c), F.A.C.
[24] Section 429.075, F.S.
[25] Section 429.02(15), F.S.
[26] Section 394.4574, F.S., requires a mental health resident to be assessed by a psychiatrist, clinical psychologist, clinical social worker, psychiatric nurse, or an individual who is supervised by one of these professionals to determine whether it is appropriate for the person to reside in an ALF.
[27] Rule 58A-5.029, F.A.C.

The administrator, manager, and staff in direct contact with mental health residents in an LMH licensed facility must complete LMH training provided or approved by the DCF.[28]

Licensure Fees
The biennial licensure fees for the ALF standard license and specialty licenses are found in s. 429.07(4), F.S. This section refers to the general health care licensure provisions in part II of ch. 408, F.S. Section 408.805, F.S., provides for licensure fees to be adjusted annually by not more than the change in the Consumer Price Index (CPI) based on the 12 months immediately preceding the increase. The following chart reflects the licensure fees contained in s. 429.07(4), F.S., and the adjusted licensure fees based on the CPI that are currently in effect.[29]

Fee Description	Per s. 429.07(4), F.S.	CPI adjusted (current fee)
Standard ALF Application Fee	$300	$366
Standard ALF Per-Bed Fee (non-OSS)	$ 50	$ 61
Total Licensure fee for Standard ALF	$10,000	$13,443
ECC Application Fee	$400	$515
ECC Per-Bed Fee (licensed capacity)	$ 10	$ 10
LNS Application Fee	$250	$304
LNS Per-Bed Fee (licensed capacity)	$ 10	$ 10

Senate Interim Project Report 2010-118

During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the licensure structure for ALFs. The recommendations in the resulting report are to repeal the LNS specialty license and authorize a standard-licensed ALF to provide the nursing services currently authorized under the LNS license; require an additional inspection fee, adjusted for inflation, for a facility that indicates that it intends to provide LNS; require each ALF to periodically report electronically information, as determined by rule, related to resident population, characteristics, and attributes; authorize the AHCA to determine the number of additional monitoring inspections required for an ALF that provides LNS based on the type of nursing services provided and the number of residents who received LNS as reported by the ALF; and repeal the requirement for the AHCA to inspect *all* the ECC licensees quarterly, instead targeting monitoring inspections for those facilities with residents receiving ECC services.

III. Effect of Proposed Changes:

Under this bill, the responsibilities currently assigned to the facility or owner of an ALF are reassigned to the administrator. Also, several reporting requirements are repealed and the LNS license is repealed, thereby authorizing limited nursing services to be performed in an ALF with a standard license under certain conditions.

[28] Rule 58A-5.0191(8), F.A.C.
[29] Found on the AHCA website at: http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf, (Last visited on March 25, 2011).

Section 1 amends s. 400.141, F.S., to remove the requirement that a registered pharmacist licensed in Florida, who is under contract with a facility licensed under ch. 429, F.S., (ALFs, adult family-care homes, and adult day care centers) repackage a resident's bulk prescription medication into a unit dose system compatible with the system used by the assisted living facility, adult family-care home, or adult day care center, if requested. However, section 19 of the CS allows a facility to require standard medication dispensing systems for residents' prescriptions.

Section 2 amends s. 408.820, F.S., to exempt ALFs from classifications of violations, which is provided for in section 14 of the CS.

Section 3 amends s. 409.912, F.S., to expand the demonstration project in Miami-Dade County to include a licensed psychiatric facility to improve access to health care for a predominantly minority, medically underserved, and medically complex population and to evaluate alternatives to nursing home care and general acute care for this population. The project is to be located in a health care condominium and collocated with licensed facilities providing a continuum of care. The project is not subject to a certificate of need review process.

Section 4 amends s. 429.01, F.S., to provide that the Legislature recognizes that ALFs are an important part of the continuum of long-term care in Florida as community-based social models with a health component and not as medical or nursing facilities and therefore, ALFs should not be subject to the same regulations as medical or nursing facilities but instead be regulated in a less restrictive manner that is appropriate for a residential, nonmedical setting.

Section 5 amends s. 429.02, F.S., to amend the definitions for the following terms: "administrator," "aging in place," "assisted living facility," and "supervision." This section also creates new definitions for the following terms: "arbitration," "licensed facility," and "person."

Section 6 amends s. 429.04, F.S., to clarify the exemption from licensure for a facility certified under ch. 651, F.S. (continuing care facility), or a retirement community to provide ALF services to its residents who live in certain homes located on campus under certain circumstances.

Section 7 amends s. 429.07, F.S., to remove the LNS license from the list of licenses that may be issued by the AHCA to an ALF. This section also removes the authority for ALFs to employ or contract with a licensed nurse to administer medications and perform other tasks and removes certain requirements an existing ALF must meet to qualify for an ECC services license. In addition, this section removes the requirement that a registered nurse monitor residents receiving extended congregate care services and the potential waiver of one of the required monitoring visits if the residence meets certain requirements. This section removes the penalty associated with failing to provide extended congregate care services.

This section also removes the procedures and qualifications for the AHCA to issue a LNS license and the recording and reporting requirement by residences that have obtained a LNS license. The admission requirements of a person receiving LNS are also deleted. The fee requirement for residences providing limited nursing services is deleted.

This section provides that the per bed fee for an ALF is $71 per resident and the total fee for standard licensure may not exceed $13,443. The current per resident fee is increased $10 in order to offset the repeal of the LNS license.

This section requires the AHCA's standard license survey to include private informal conversations with a sample of residents and consultation with the ombudsman council in the planning and service area in which the facility is located, to discuss the residents' experiences within the facility, in order to determine whether the facility is adequately protecting residents' rights under the Resident Bill of Rights. This language is moved from s. 429.28(3)(b), F.S.

This section also provides that an ALF that has been cited for certain violations within the previous 24 month period is subject to periodic unannounced monitoring, which may occur though a desk review or an onsite assessment. If the violation relates to providing or failing to provide nursing care, a registered nurse is required to participate in the monitoring visits within a 12-month period following the violation.

Section 8 amends s. 429.08, F.S., to require not only a health care practitioner, but also an emergency medical technician or paramedic, who is aware of the operation of an unlicensed ALF to report that facility to the AHCA.

Section 9 amends s. 429.11, F.S., to require the AHCA to develop an abbreviated form for the submission of proof of financial ability to operate that is specific to applicants for an ALF license. The form must request information that demonstrates the applicant has adequate resources to sustain operation and sufficient assets, credit, and projected revenues to cover liabilities and expenses of the facility based on the number of beds and services the applicant will provide.

Section 10 amends s. 429.12, F.S., to remove the requirement that when there is a change of ownership a plan of correction must be submitted by the transferee and approved by the AHCA at least 7 days before the change of ownership and a failure to correct a condition, which resulted in a moratorium or denial of licensure, is grounds for denial of the transferee's license.

Section 11 amends s. 429.14, F.S., to remove administrative penalties for the failure to follow the criteria and procedures required by law relating to the transportation, voluntary admission, and involuntary examination of a facility resident.

This section removes the requirement that the AHCA must deny or revoke the license of a residence if it has two or more class I violations that are similar or identical to violations identified by the AHCA during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.

This section also removes the requirement that the AHCA provide to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, on a monthly basis, a list of those residences that have had their licenses denied, suspended, or revoked or that are involved in an appellate proceeding related to the denial, suspension, or revocation of a license.

Section 12 amends s. 429.17, F.S., to delete the requirement that an LNS license must expire at the same time as the residence's license to conform to the repeal of the LNS license. This section also deletes the requirement that a conditional license be accompanied by an AHCA-approved plan of correction.

Section 13 amends s. 429.178, F.S., to remove the provision that a residence having 17 or more residents must have an awake staff member on duty at all hours of the day and night if that residence advertises that it provides special care for persons with Alzheimer's disease or a related disorder. This section also deletes the requirement that a facility must have an awake staff member on duty at all hours of the day and night or have mechanisms in place to monitor and ensure the safety of the residents if the residence has fewer than 17 residents. However, this section requires instead that a residence of any size have an awake staff member on duty at all hours of the day and night for each secured unit of the residence that houses any residents with Alzheimer's disease or other related disorders.

This section also provides that for the safety and protection of residents with Alzheimer's disease, related disorders, or dementia, a secured locked unit may be designated. The unit may consist of the entire building or a distinct part of the building. Exit doors must be equipped with an operating alarm system that releases upon activation of the fire alarm. These units are exempt from specific life safety requirements to which ALFs are normally subject. A staff member must be awake and present in the secured unit at all times.

This section requires the DOEA to maintain and post on its website a current list of providers who are approved to provide initial and continuing education for staff and direct care members of ALFs that provide special care for persons with Alzheimer's disease or other related disorders.

This section requires the DOEA to maintain and post on its website a current list of providers who are approved to provide initial and continuing education for staff and direct care staff members of residences.

This section removes the provisions that a facility having more than 90 percent of residents who receive monthly optional supplementation payments is not required to pay for the required training and education programs and a facility that has one or more such residents is required to pay a reduced fee that is proportional to the percentage of such residents in the facility. This section also removes the requirement that a facility that does not have any residents who receive monthly optional supplementation payments must pay a reasonable fee, as established by the DOEA for such training and education programs.

Section 14 amends s. 429.19, F.S., to remove the requirement that the AHCA impose an administrative fine for any violation committed by a facility employee. This section also defines a "class I," "class II," "class III," and "class IV" violation, which mirrors the current definitions for these terms in s. 408.813, F.S. The section deletes the AHCA's authority to assess a survey fee to cover the cost of monitoring visits to verify a correction of a violation.

This section also deletes the requirement that the AHCA develop and disseminate an annual list of all facilities sanctioned or fined for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases to specified entities at

no charge. Also deleted is the requirement that the DCF disseminate the list to service providers under contract to the DOEA who are responsible for referring persons to a facility for residency.

Section 15 amends s. 429.195, F.S., to exempt from the prohibition against referrals for compensation, any individual with whom the facility employs or contracts with to market the facility; a referral service that provides information, consultation, or referrals to consumers to assist them in finding appropriate care or housing options if such consumers are not Medicaid recipients; or residents of an ALF who refer friends, family members, or other individuals with whom they have a personal relationship. This allows the licensee of the ALF to provide a monetary reward to the resident for making a referral to the residence.

Section 16 amends s. 429.20, F.S., to remove the specific administrative penalties providing for the denial, suspension, or revocation of a license for the unlawful solicitation or receipt of contributions by an ALF. The general administrative penalties in s. 429.19, F.S., will apply to these activities.

Section 17 amends s. 429.23, F.S., to clarify within one of the events that constitutes an adverse incident that a proceeding (Baker Act) under part I of ch. 394, F.S., the Florida Mental Health Act, which is undertaken without the resident's consent, is not an adverse incident that must be reported.

This section deletes the 1-day reporting requirement of an event and the follow-up, if the event is not determined to be an adverse incident. Instead, this section requires reporting within 15 business days after the occurrence of an adverse incident. The section also deletes the reporting requirement by the ALFs to the AHCA when a liability claim has been filed against the residence.

Section 18 amends s. 429.255, F.S., to remove the ability of volunteers, who are licensed nurses, to administer medications to residents, take residents' vital signs, manage individual weekly pill organizers for residents, give prepackaged enemas, observe residents, document observations, or report observations to the resident's physician. This section provides that persons under contract to the residence or residence staff who are licensed nurses may provide limited nursing services.

This section requires staff in residences to report observations of a resident to the administrator or the administrator's designee instead of to the resident's physician.

This section removes the authority of licensed nurses to carry out their professional duties when an emergency situation arises until emergency medical personnel assume responsibility for care.

Section 19 amends s. 429.256, F.S., to authorize a residence to require standard medication dispensing systems for residents' prescriptions to minimize the potential risk for improper dosage administration of prescription drugs. This section also includes in the list of self-administered medications, continuous positive airway pressure machines.

This section adds to the list of activities that may be considered assistance with self-administration of medication to include assisting a resident in holding a nebulizer, using a

glucometer to perform blood glucose checks, assisting with the putting on and taking off anti-embolism stockings (ted hose), and assisting with applying and removing an oxygen cannula.

Section 20 amends s. 429.26, F.S., to remove the requirement that a residence notify within 30 days a licensed physician when a resident exhibits signs of dementia or cognitive impairment or has a change of condition in order to rule out the presence of an underlying physiological condition that may be contributing to the dementia or impairment. Also deleted is the requirement that if an underlying condition is determined to exist, the facility must arrange, with the appropriate health care provider, the necessary care and services to treat the condition.

Section 21 amends s. 429.27, F.S., to authorize the residence's licensee, owner, administrator, or staff, or other representative to execute a surety bond. The bond must be conditioned upon the faithful compliance of such persons and must run to the AHCA for the benefit of a resident who suffers a financial loss as a result of the misuse or misappropriation of funds by such persons.

This section provides that a residence administrator may only provide for the safekeeping in the residence personal effects, including funds, not in excess of $500. The amount that may be held is increased from $200.

This section removes the authority of a governmental agency or private charitable agency contributing funds or other property to the account of a resident to obtain a financial statement of the account.

Section 22 repeals s. 429.275(4), F.S., relating to the rulemaking authority for the DOEA to clarify terms, establish requirements for financial records, accounting procedures, personnel procedures, insurance coverage, and reporting procedures, and specify documentation as necessary.

Section 23 amends s. 429.28, F.S., relating to the Resident Bill of Rights, to reduce the number of days from 45 days to 30 days that notice of relocation or termination of residence from the ALF must be provided to a resident or legal guardian. This section also deletes the requirement that the residence must show good cause in a court in order for the residence to terminate the residency of an individual without notice.

This section deletes the requirement that the AHCA conduct a survey to determine general compliance with facility standards and compliance with residents' rights, or when no survey is conducted, a monitoring visit. This section also removes the authority of the AHCA to conduct periodic follow-up inspections or complaint investigations. However, section 7 of the bill provides for the surveying of a sample of residents and unannounced monitoring visits under certain circumstances.

This section removes the prohibition that a staff member or employee of a residence may not serve notice upon a resident to leave the residence or take other retaliatory action against a person who notifies a state attorney or the Attorney General of a possible violation of the Assisted Living Facilities Act.

Section 24 amends s. 429.41, F.S., to provide that in order to ensure that inspections are not duplicative, the rules adopted regarding inspections must clearly delineate the responsibilities of the AHCA regarding the AHCA's licensure and survey inspections, the county health departments regarding food safety and sanitary inspections, and the local fire marshal regarding fire safety inspections. This section also deletes the requirement that the AHCA collect fees for food service inspections conducted by the county health departments and transfer such fees to the DOH. The CS removes the authority for the DOEA and the DOH to cooperate in the establishment and enforcement of fire safety standards.

This section removes the requirement that rules adopted to provide for the care of residents must include internal risk management and quality assurance.

This section removes the rulemaking requirement to establish specific policies and procedures on resident elopement, including the requirement that a residence conduct a minimum of two elopement drills each year.

This section requires the AHCA, beginning January 1, 2012, to use an abbreviated biennial standard licensure inspection in a facility that has a good record of past performance. The AHCA is required to develop, in consultation with the DOEA, the key quality-of-care standards with input from the State Long-Term Care Ombudsman Council and representatives of associations and organizations representing ALFs.

Section 25 amends s. 429.42, F.S., to delete the requirement that an ALF develop and implement a corrective action plan for deficiencies related to assistance with the self-administration of medication or the administration of medication within 48 hours after notification of such deficiency, or sooner if the deficiency is determined by the AHCA to be life-threatening. This section also deletes the requirement that the AHCA must employ at least two licensed pharmacists among its personnel who biennially inspect ALFs, to participate in biennial inspections or consult with the AHCA regarding deficiencies relating to medicinal drugs or over-the-counter preparations.

Section 26 amends s. 429.445, F.S., to delete the requirement that a licensed ALF must submit to the AHCA proof that construction to expand the residence is in compliance with applicable local zoning requirements prior to commencing the construction.

Section 27 amends s. 429.47, F.S., to delete the requirement that a freestanding facility may not advertise or imply that any part of it is a nursing home, the definition of "freestanding facility, and the penalty for violating the advertisement requirement. This section also authorizes the use of the abbreviation "ALF" before the license number in an advertisement in lieu of the full term "assisted living facility."

Section 28 amends s. 429.49, F.S., to make a technical change.

Section 29 amends s. 429.52, F.S., to remove the rulemaking authority for the DOEA to exempt certain licensed professionals from certain training and education requirements.

This section requires unlicensed staff, who are involved with the management of medications and assisting with the self-administration of medications, to complete 2 hours of continuing education training annually.

This section requires the DOEA to consult with associations and organizations representing ALFs when developing a training curriculum for residence staff.

This section also requires a trainer certified by the DOEA to continue to meet continuing education requirements and other standards as set forth in rules adopted by the DOEA. Noncompliance with the standards set forth in the rules may result in sanctions that may be progressive in nature and may consist of corrective action measures; suspension or termination from participation as an approved training provider or trainee, including sitting for any required examination; and administrative fines not to exceed $1,000 per incident. One or more sanctions may be levied per incident.

Section 30 amends s. 429.53, F.S., to redefine the term "consultation" to no longer include the provision of a checklist of general local and state approvals required prior to constructing or developing a facility and a listing of the types of agencies responsible for such approvals, an explanation of benefits and financial assistance available to a recipient of supplemental security income residing in a facility, and a preconstruction review of a facility to ensure compliance with the AHCA's rules and the Assisted Living Facilities Act, because these areas are beyond the AHCA's jurisdiction and expertise.

Section 31 repeals s. 429.54, F.S., which enables the DOEA to collect the information requested by the Legislature regarding the actual cost of providing room, board, and personal care in facilities, by conducting field visits and audits of facilities as necessary. Section 429.54, F.S., also requires owners of randomly sampled facilities to submit such reports, audits, and accountings of cost as the department may require by rule and any facility selected to participate in the study must cooperate with the department by providing cost of operation information to interviewers. Section 429.54, F.S., also authorizes local governments or organizations to contribute to the cost of care of local facility residents by further subsidizing the rate of state-authorized payment to such facilities, but implementation of local subsidy requires departmental approval and must not result in reductions in the state supplement.

Section 32 amends s. 429.71, F.S., to delete the authority of the AHCA to request a plan of corrective action from a licensee of an adult family-care home that demonstrates a good faith effort to remedy each violation by a specific date as an alternative to, or in conjunction with, an administrative action against the licensee, since this authority is included in the general licensing provisions in part II of ch. 408, F.S.

Section 33 amends s. 429.81, F.S., to require each residency agreement to specify that the resident must give the provider a 30 days' written notice of intent to terminate his or her residency from the adult family-care home.

Section 34 amends s. 430.081, F.S., to authorize the DOEA to sanction training providers and trainees for infractions involving any required training that the DOEA has the authority to

regulate in order to ensure that such training providers and trainees satisfy specific qualification requirements and adhere to training curricula that is approved by the DOEA.

This section specifies that training infractions include, but are not limited to, falsification of training records, falsification of training certificates, falsification of a trainer's qualifications, failure to adhere to the required number of training hours, failure to use the required curriculum, failure to maintain the continuing education for the trainer's recertification, failure to obtain reapproval of a curriculum when required, providing false or inaccurate information, misrepresentation of the required materials, and use of a false identification as a training provider or trainee. Sanctions may be progressive in nature and may consist of corrective action measures; suspension or termination from participation as an approved training provider or trainee, including sitting for any required examination; and administrative fines not to exceed $1,000 per incident. One or more sanctions may be levied per incident.

Section 35 amends s. 817.505, F.S., to conform to other changes made by the CS that allow ALFs to receive and pay for certain referrals.

Section 36 creates an undesignated section of the Florida Statutes to provide that licensure fees adjusted by consumer price index increases prior to this act are not intended to be reset by this act and may continue to accrue as authorized in law.

Section 37 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The CS continues the fees for standard licensure and for extended congregate care licensure at the amount currently assessed by the AHCA. However, the per bed fee for standard licensure is increased $10 to offset the elimination of the LNS license.

B. Private Sector Impact:

Residents would be eligible under the provisions of the CS to refer friends and family members to the ALF for a monetary award. Additionally, individuals hired by an ALF to market the ALF or referral service businesses are authorized under the CS to make referrals for compensation.

C. Government Sector Impact:

Fees for ALFs will be reduced due to the elimination of the LNS license fees. Based on the number of LNS specialty licenses in January 2011 (1,038), the LNS specialty license generates approximately $586,762 biennially based upon $309 per license (1,038 x $309 = $320,742) and $10 per bed ($10 x 26,602 beds = $266,020). If the per bed fee for ALFs is not adjusted to offset losses from elimination of the LNS license fees, there would be a fiscal impact on state fee collections and reduction of $226,020 per year in the Health Care Trust Fund.[30]

VI. Technical Deficiencies:

On line 2078 of the CS, the catch line should replace the term “deficiencies” with the term “violations” to conform to other changes in the CS.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on April 4, 2011:

- Keeps the general licensing requirements for ALFs in part II of ch. 408, F.S.
- Reinstates the current definition of the term “controlling interest” at 5 percent or greater ownership interest.
- Expands the demonstration project in Miami-Dade County to include a psychiatric facility to improve access to health care for a predominantly minority, medically underserved, and medically complex population.
- Reinstates the current standard license and ECC license fees, increases the standard license per resident fee $10 to offset the elimination of the LNS license, and caps the total standard licensure fee at $13,443.
- Requires the AHCA to develop an abbreviated form based on the number of beds and services the applicant will provide for applicants for licensure as an ALF to prove their financial ability to operate.

[30] AHCA, *2011 Bill Analysis & Economic Impact Statement for SB 1458*, on file with the committee.

- Allows an ALF to employ or contract with an individual to market the ALF or contract with a referral service, but the referral service cannot be used for Medicaid recipients.
- Revises the types of medication that an unlicensed person may assist a resident with under the assistance with the self-administration of medication provision.
- Removes the requirement that a freestanding facility may not advertise or imply that any part of it is a nursing home, while keeping in place some advertising protections.
- Requires ALF staff to complete certain training and continuing education requirements and provides sanctions for violating such requirements.
- Allows ALFs to advertise using the abbreviation “ALF” with the license number of the ALF in lieu of using the full term “assisted living facility.”
- Clarifies that the purpose of surveying a sample of residents during the AHCA’s standard licensure survey is to determine whether the ALF is adequately protecting resident’s rights.
- Removes several tort reform measures.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.