

**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 1838

**INTRODUCER:** Health Regulation Committee and Senator Wise

**SUBJECT:** Assisted Living Facilities

**DATE:** April 12, 2011

**REVISED:** \_\_\_\_\_

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

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This committee substitute (CS) for SB 1838 creates the Florida Assisted Living Quality Improvement Initiative Pilot Project (pilot project), which is to be overseen by the Agency for Health Care Administration (AHCA) and which is to be administered by rule by the Department of Elderly Affairs (DOEA).

The purpose of the pilot project is to identify best practices for providing care to residents of licensed assisted living facilities (ALFs), provide caregivers with the competencies and skills necessary to implement best practices, and develop in collaboration with the ALF, a quality improvement plan to reduce the need for institutional care. Participation in the pilot project by eligible ALFs is voluntary.

The CS provides that the pilot project:

- Is limited to specific area office locations under the AHCA;
- Is limited to a specific number of facilities per designated area;
- Is limited to four certified quality improvement teams throughout the pilot project, who evaluate the progress of the ALFs in meeting quality improvement plan goals and investigate complaints against the ALF; and

- Expires in 2016, unless reenacted by the Legislature.

The CS also requires those ALFs enrolling in the pilot project to enter into a memorandum of agreement with the AHCA and a contract with an AHCA-approved quality improvement team to implement an AHCA-approved quality improvement plan. The CS provides for the termination of the contract between the ALF and the quality improvement team under certain circumstances, and such termination subjects the ALF to the survey, inspection, and monitoring requirements under current law.

The CS requires the AHCA to refer complaints about an ALF to the appropriate quality improvement team, investigate a pattern of repeated complaints, and refer the repeated complaints to the appropriate law enforcement agency. The CS authorizes the AHCA to investigate and conduct periodic appraisal visits at any time in order to ensure compliance with Florida law and the approved quality improvement plan and assess the quality improvement team and the ALF.

The CS also provides for recordkeeping by the quality improvement team and certain reporting requirements.

The CS requires the DOEA to adopt a rule to specify provisions to prohibit an ALF from contracting with a quality improvement team in a manner that creates a conflict of interest.

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.<sup>1, 2</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>3</sup> 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

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<sup>1</sup> Section 429.02(5), F.S.

<sup>2</sup> 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.

<sup>3</sup> Section 429.02(16), F.S.

Department of Children and Family Services (DCF), and the Department of Health (DOH).<sup>4</sup> 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.<sup>5</sup>

There are currently 2,944 licensed ALFs in Florida.<sup>6</sup> 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,<sup>7</sup> 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 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,<sup>8</sup> who are licensed under the nurse practice act<sup>9</sup> and uncompensated family members or friends may:<sup>10</sup>

- 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

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<sup>4</sup> Section 429.41(1), F.S.

<sup>5</sup> See ch. 64E-12, ch. 64E-11, and 64E-16, F.A.C.

<sup>6</sup> Agency for Health Care Administration, *2011 Bill Analysis & Economic Impact Statement for SB 1838, HB 1137*, on file with the Senate Health Regulation Committee.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> Part I of ch. 464, F.S.

<sup>10</sup> Section 429.255, F.S.

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 fire safety standards.<sup>11</sup>

A resident who requires 24-hour nursing supervision<sup>12</sup> 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 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.<sup>13</sup>

Currently, the AHCA conducts biennial and follow-up compliance inspections as a component of the licensure process for ALFs.<sup>14</sup> The AHCA also investigates complaints made against an ALF and monitors and enforces the correction of deficient practices associated with surveys and complaints.<sup>15</sup>

Inspections and investigations are conducted by the AHCA's Bureau of Field Operations, which is divided into eight field offices. The biennial surveys and complaint investigations are conducted by the survey teams in each field office composed of AHCA-trained survey staff. The licensure and survey process is a highly coordinated effort between the AHCA's Bureau of Field Operations and Bureau of Long Term Care Services and, when appropriate, the AHCA's Office of General Counsel. During FY 09-10, the AHCA's Bureau of Field Operations completed 5,507 on-site surveys and complaint investigation visits in ALFs.<sup>16</sup>

### **III. Effect of Proposed Changes:**

This CS creates the Florida Assisted Living Quality Improvement Initiative Pilot Project, which is scheduled to expire in 2016, unless reenacted by the Legislature. The purpose of the pilot project is to identify best practices for providing care to residents of licensed ALFs, provide

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<sup>11</sup> Section 429.255, F.S., s. 429.26, F.S., and Rule 58A-5.030, F.A.C.

<sup>12</sup> 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.

<sup>13</sup> Section 429.28, F.S.

<sup>14</sup> Section 408.811, F.S.

<sup>15</sup> *Supra* fn. 6.

<sup>16</sup> *Id.*

caregivers with the competencies and skills necessary to implement best practices, and develop, in collaboration with the ALF, a quality improvement plan to reduce the need for institutional care.

The pilot project is limited to the area office locations of the AHCA which are identified as areas 4,<sup>17</sup> 5, 6,<sup>18</sup> 8,<sup>19</sup> and 11.<sup>20</sup> Only 20 facilities in each area may participate in the pilot project.

#### *Quality Improvement Teams*

The pilot project may include up to four AHCA-approved quality improvement teams. A quality improvement team evaluates the progress of the ALF in meeting quality improvement plan goals and must consist of a quality improvement specialist who has professional expertise or a background in working with behavioral health needs or aging-related needs, a licensed registered nurse, a licensed dietician, and a staff development representative.

The AHCA may revoke the approval of the quality improvement team if the quality improvement team does not meet the requirements or standards established by department rule. If such approval is revoked, the team may no longer provide contract services to the ALF it is contracted with and the ALF must enter into a contract with a different team within 30 days.

Each quality improvement team must:

- Conduct an annual assessment and follow-up visits as needed to monitor the progress of the ALF in meeting the goals of the quality improvement plan.
- Consult with the owner and administrator of the ALF in meeting plan requirements, create systems to monitor compliance with the AHCA's rules, ensure that training standards established under s. 429.52, F.S., are met, and provide access to community-based services that would improve the care of the residents and the conditions in the ALF.
- Maintain records of the assessments and ongoing efforts to help the ALF meet quality improvement goals.
- Issue a certification to each ALF that meets agency standards and is in compliance with the goals of its quality improvement plan.

#### *Rulemaking*

The DOEA may adopt rules as needed to administer the pilot project, with input from providers, advocates, the agency, or others. The DOEA is required to:

- Establish a method to measure facility improvement and collect data.
- Create criteria for quality improvement plans.

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<sup>17</sup> Region 4 (Jacksonville Field Office) includes Baker, Clay, Duval, Flagler, Nassau, St. Johns and Volusia Counties. Agency for Health Care Administration, Health Quality Assurance, available at: <http://ahca.myflorida.com/MCHQ/area4.shtml> (Last visited on April 6, 2011).

<sup>18</sup> Regions 5 and 6 (St. Petersburg Field Office) include Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Polk Counties. Agency for Health Care Administration, Health Quality Assurance, available at: <http://ahca.myflorida.com/MCHQ/area4.shtml> (Last visited on April 6, 2011).

<sup>19</sup> Region 8 (Fort Myers Field Office) includes Charlotte, Collier, DeSoto, Glades, Hendry, Lee, Monroe, and Sarasota Counties. Agency for Health Care Administration, Health Quality Assurance, available at: <http://ahca.myflorida.com/MCHQ/area4.shtml> (Last visited on April 6, 2011).

<sup>20</sup> Region 11 (Miami Field Office) includes Miami-Dade County. Agency for Health Care Administration, Health Quality Assurance, available at: <http://ahca.myflorida.com/MCHQ/area4.shtml> (Last visited on April 6, 2011).

- Establish standards and requirements for quality improvement teams.
- Establish the procedures for the AHCA to use in approving or revoking approval of quality improvement teams.
- Specify provisions to prohibit a quality improvement team from contracting with an ALF in a manner that creates a conflict of interest.
- Create an enrollment process and implementation timeline for the pilot project.
- Establish a process to notify residents and the local long-term care ombudsman council of each ALF that is enrolled in the pilot project.
- Establish the components and provisions that must be contained in a contract between the ALF and the approved quality improvement team.
- Establish the procedures for resolving complaints that are filed against an ALF that is enrolled in the pilot project.

#### *Eligibility and Enrollment*

Eligibility for participation in the pilot project is limited to ALFs that have a good survey track record, have not been cited for any Class I or Class II violations,<sup>21</sup> and have no more than five uncorrected Class III violations<sup>22</sup> on the prior two annual surveys and on any survey that resulted from a complaint.

The CS provides that enrollment in the pilot project is voluntary and open enrollment in the pilot project is to begin on January 1 and end on March 1 of each year.

The CS requires the administrator of a licensed ALF that is eligible to participate in the pilot project to notify the AHCA when the ALF agrees to enroll in the pilot project and before enrollment, each ALF must execute a memorandum of agreement with the AHCA that includes a provision authorizing the AHCA to terminate the ALF's participation in the pilot project at will. The CS provides that the AHCA's termination of an ALF from the pilot project may not be challenged or appealed under ch. 120, F.S.

An ALF's enrollment in the pilot project does not prohibit the ALF from seeking alternative accreditation from a recognized health care accreditation organization, such as the Commission on Accreditation of Rehabilitative Facilities or The Joint Commission.

The owner or administrator of each ALF enrolled in the pilot project must enter into a contract with an AHCA-approved quality improvement team to implement an AHCA-approved quality improvement plan for that facility. The quality improvement plan must be approved by the AHCA prior to the implementation of the plan. The ALF must pay the quality improvement team reasonable compensation for the services provided under the contract. The owner or

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<sup>21</sup> "Class I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the AHCA determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would result therefrom. "Class II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the AHCA determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. *See* s. 408.813(2), F.S.

<sup>22</sup> "Class III" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients, other than class I or class II violations. *See* s. 408.813(2)(c), F.S.

administrator must consult with the quality improvement team for the purpose of meeting the goals outlined in the quality improvement plan.

#### *Termination of Contracts under the Pilot Project*

An ALF that has entered into a contract with an approved quality improvement team may, without penalty, terminate that contract and enter into a contract with another approved team. If such termination is sought, the ALF administrator must notify the agency area office in writing and specify the reasons the ALF seeks to terminate the contract. The AHCA must approve or reject the request under the terms and conditions of the memorandum of agreement completed by the ALF before enrolling the ALF in the pilot project.

A quality improvement team may elect to terminate, without penalty, the contract with an ALF that has failed to meet the goals of the plan after reasonable efforts are made to seek cooperation and assistance from the owner and the administrator of the ALF. An ALF is automatically terminated from the pilot project if its contract with the quality improvement team is terminated under these conditions. If an ALF's enrollment in the pilot project is terminated, the quality improvement team is required to notify the AHCA. Thereafter, the ALF is subject to the survey, inspection, and monitoring visits conducted under s. 408.811, F.S., and the ALF is not eligible to reenroll in the pilot project until the AHCA has certified that the ALF is in substantial compliance with the AHCA's rules.

#### *Complaints and Investigations*

The AHCA must refer any complaint concerning the ALF to the quality improvement team if the complaint does not allege immediate jeopardy to a resident of the ALF, serious substandard care, or actual harm to a resident of the ALF. The team must investigate the complaint and work with the owner or administrator to address the complaint. If there is a pattern of repeated complaints, the AHCA may investigate those complaints and refer the complaints to the appropriate law enforcement agency in the local jurisdiction for investigation to ensure the health, safety, and well-being of the ALF's residents.

The AHCA may investigate and conduct periodic appraisal visits at any time in order to ensure compliance with the approved quality improvement plan and state law and assess the quality improvement team and the ALF. If the AHCA finds that the ALF is in substantial noncompliance with the quality improvement plan or state law, the AHCA may terminate its pilot project agreement with the ALF and must require the ALF to be subject to the survey, inspection, and monitoring visits conducted under s. 408.811, F.S.

#### *Reporting Requirements*

Each quality improvement team must make available to the AHCA reports generated following a visit to an enrolled ALF and may use electronic means of capturing data and generating reports relating to compliance with the quality improvement plan.

Reports and documents generated by the quality improvement teams may not be used in any tort action sought against the licenseholder of an enrolled ALF.

*Conflicts of Interest*

In addition to the rulemaking provision pertaining to contracts that create a conflict of interest, a facility owner, administrator, or employee may not have an ownership interest in, or provide services to, any business owned by a member of a quality improvement team. Further, an owner, administrator, or employee may not participate as a member of a quality improvement team.

The CS provides that this act shall take effect on 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:**

None.

**B. Private Sector Impact:**

To the extent that an ALF elects to participate in the pilot project, it may be subject to any costs associated with meeting the requirements of the quality improvement plan and will be required to pay a quality improvement team reasonable compensation for its services.

**C. Government Sector Impact:**

The AHCA has indicated that the CS would not have a fiscal impact on the AHCA.<sup>23</sup> The DOEA may incur costs associated with the rulemaking responsibilities required in the bill.

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<sup>23</sup> E-mail from an AHCA representative dated April 11, 2011, to Senate Health Regulation Committee professional staff. A copy of the e-mail is on file with the committee.



**VI. Technical Deficiencies:**

None.

**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 12, 2011:**

The committee substitute

- Requires the Department of Elderly Affairs to adopt rules to establish the procedures for the Agency for Health Care Administration (AHCA) to approve or revoke approval of quality improvement teams and establish components and provision that must be contained in a contract between the assisted living facility and the approved quality improvement team.
- Requires the Department of Elderly Affairs to develop criteria in rule to prevent conflicts of interest between a quality improvement team and an assisted living facility instead of requiring the agency to “ensure” no conflict exists.
- Clarifies that the AHCA must enroll the first 20 eligible facilities in each area under the pilot project.
- Clarifies the open enrollment period is for a 60 day period each year.
- Clarifies that the AHCA’s termination of a facility from the pilot project may not be challenged or appealed under ch. 120, F.S.
- Requires the owner or administrator of a facility to enter into a contract with a quality improvement team and to develop and implement a quality improvement plan, which must be approved by the AHCA.
- Requires each quality improvement team to be approved by the AHCA prior to entering into any contract with a facility and provides that such approval may be terminated by the AHCA if the team does not meet standards established by department rule.
- Requires a facility to enter into a contract with another quality improvement team to remain enrolled in the pilot project if the AHCA has revoked a quality improvement team’s approval.
- Provides that a quality improvement team may terminate a contract with a facility without penalty under certain circumstances and a facility may terminate a contract with a quality improvement team without penalty, but the facility’s termination of the contract with the quality improvement team must be approved by the AHCA.

B. Amendments:

None.

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

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