

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4047 Assisted Living Facilities

**SPONSOR(S):** Hudson

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N	Poche	Calamas
2) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 4047 repeals s. 429.41(3), F.S., requiring the Department of Elder Affairs (DOEA) to submit its proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees, prior to promulgation, for review and comment. The bill also repeals a provision that the rules of DOEA encourage the development of homelike facilities that promote the individuality of residents.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Chapter 408, F.S., and part I of Chapter 429, F.S., govern the licensure and operation of ALFs in Florida.

Section 429.41, F.S., requires DOEA, with input from the Agency for Health Care Administration (AHCA), the Department of Children and Family Services (DCF), and the Department of Health (DOH), to adopt rules, policies and procedures relating to the operation and administration of ALFs, establishing fair and reasonable minimum standards to ensure safe and sanitary facilities and the highest quality of resident care, while accommodating the needs and preferences of residents.<sup>1</sup> The minimum standards must be related to:

- Requirements for and maintenance of facilities to ensure the health, safety and comfort of residents
- Fire alarm, fire protection and fire safety standards
- Resident elopement prevention and response procedures
- Preparing and annual updating of a comprehensive emergency management plan
- Training and qualifications of personnel responsible for caring for residents
- Maintaining sanitary conditions within the facility and throughout the grounds of the facility
- Licensure and ownership requirements
- Inspections, investigations, impositions of fines and penalties, and distribution of funds received from fines and penalties
- Enforcing the resident bill of rights found in s. 429.28, F.S.
- Care and maintenance of residents<sup>2</sup>

The statute requires that the rules developed by DOEA distinguish between facilities with 16 and fewer beds and facilities with 17 or more beds.<sup>3</sup> DOEA is required to submit all proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees for review and comment prior to promulgation.<sup>4</sup> The statute also states that DOEA is to draft rules that encourage the development of homelike facilities that promote dignity, individuality, strengths, and decision-making of the residents.<sup>5</sup>

The requirement that DOEA submit all proposed rules to the Speaker, the President and appropriate committees differs from the rulemaking procedure contained in HB 1565 (2010).<sup>6</sup> The statutory section

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

<sup>2</sup> S. 429.41(1) through (3), F.S.

<sup>3</sup> S. 429.41(2), F.S.

<sup>4</sup> S. 429.41(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> HB 1565 was passed by the Legislature, notwithstanding the veto of Governor Crist, during the 2011 Special Session "A". It can be found in Chapter 2010-279, Laws of Florida. The law requires state agencies to determine the impact of proposed agency rules on small businesses. If the rules will have an adverse impact on small businesses or increase regulatory costs in the aggregate in the amount of \$200,000.00 in the first year of enactment, an agency must prepare a statement of estimated regulatory cost (SERC). The SERC must determine whether the rules will financially impact small businesses by \$1,000,000.00 or more over the first five years of enactment. If the economic analysis concludes that the rules meet or exceed the threshold, the rules must be presented to the Speaker of the House of Representatives and the President of the Senate and cannot be enacted until ratified by the Legislature.

requires that all rules proposed by DOEA with regard to establishing criteria and standards for assisted care communities be submitted to the specified parties and entities. However, the rulemaking process outlined in HB 1565 limits extensive legislative review and ratification to those rules that have an impact of \$200,000.00 on small businesses within the first year of enactment and an impact of \$1,000,000.00 within the first five years of enactment. DOEA would be required to comply with the rulemaking procedure outlined in HB 1565 whether or not the rule submission requirement in s. 429.54(3), F.S., existed.

AHCA may waive certain rules to explore and evaluate innovative or cost-effective alternatives in congregate care that allow residents to age in place.<sup>7</sup> The statute provides the procedure for applying for a waiver of the rules by a facility, for reporting of findings within 12 months of receiving the waiver, and for the renewal or revoking of the waiver by AHCA after the 12 month period has expired.<sup>8</sup> Lastly, the statute permits an abbreviated licensing inspection schedule for ALFs that have a good inspection record and requires full inspections for facilities with certain past violations.<sup>9</sup>

### **Effect of Proposed Changes**

The bill repeals the section of the statute that requires DOEA to submit its proposed rules to the Speaker, the President and appropriate committees prior to promulgation for review and comment. The bill also repeals the requirement that DOEA rules encourage the development of homelike facilities that promote the individuality, decision-making and other aspects of residents.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 429.41, F.S., relating to rules establishing standards.

**Section 2:** Provides an effective date of July 1, 2011.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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<sup>7</sup> S. 429.41(3), F.S.

<sup>8</sup> S. 429.41(4), F.S.

<sup>9</sup> S. 429.41(5), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**