

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4051 Assisted Living Facilities

SPONSOR(S): Hudson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 694

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| 1) Health & Human Services Quality Subcommittee | 15 Y, 0 N | Prater | Calamas |
| 2) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

This bill repeals s. 429.23(5), F.S., removing the requirement for Assisted Living Facilities (ALFs) to submit a monthly report to the Agency for Health care Administration (AHCA) listing any liability claims that have been made against the facility.

ALFs are required to maintain liability insurance coverage at all times. A liability claim is a claim made by a resident, or a representative of the resident against the facility and the facility's insurer for damages resulting from an alleged adverse incident occurring at the facility.

This bill appears to have no fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

ALFs are residential establishments for adults that provide housing, meals, and one or more personal services relating to the activities of daily living.¹ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks². They are licensed by AHCA and are subject to certain regulations and reporting requirements.³ Currently, there are 2,947 ALFs licensed in Florida⁴.

Present Situation:

Currently, ALFs are required to submit a monthly report to AHCA including any liability claim filed against it. The report must include the name of the resident, the dates of the incident leading to the claim, and the type of injury or violation of rights alleged. The report is not discoverable in any civil or administrative action except in actions brought against the facility by AHCA⁵. In FY 01-02, there were 80 liability claims reported to AHCA, and for FY 09-10, there were 16 reported.

ALFs are required to maintain liability insurance coverage at all times⁶. A liability claim is a claim made by a resident, or a representative of the resident against the facility and the facility's insurer for damages resulting from an alleged adverse incident occurring at the facility.

An adverse incident is an event over which facility personnel could exercise control (rather than as a result of the resident's condition) and results in:

- death,
- brain or spinal damage,
- permanent disfigurement,
- fracture or dislocation of bones or joints,
- any condition requiring the transfer of the resident to another facility to provide more acute care,
- an event that is reported to law enforcement for investigation,
- or resident elopement which places the resident at risk for harm or injury⁷

Liability claims can also be made for alleged violation of rights. There are 11 specific rights granted for residents of ALFs and they are outlined in statute. Examples include the right to unrestricted private communication including letters and telephone calls, sharing a room with his or her spouse if both are residents of the facility, and the right to present grievances and recommend changes.⁸

Information from the liability claims report is not used in any regulatory manner by AHCA⁹.

ALFs are required to report adverse incidents that occur in their facilities, to perform an internal investigation, and transmit an investigation report to AHCA. The agency reviews these reports and may investigate and prescribe measures to be taken in response to the incident¹⁰. AHCA surveys ALFs once every two years and is authorized to make inspections as it deems necessary¹¹.

¹ Section 429.02 (5), Florida Statutes.

² Section 429.02 (1), Florida Statutes.

³ Chapter 429, Part I, Florida Statutes.

⁴ Agency for Health Care Administration 2011 Bill Analysis & Economic Impact Statement, HB 4051.

⁵ Section 429.23 (5), Florida Statutes.

⁶ Section 429.275, Florida Statutes.

⁷ Section 429.23 (2) (a), Florida Statutes.

⁸ Section 429.28, Florida Statutes.

⁹ Agency for Health Care Administration 2011 Bill Analysis & Economic Impact Statement, HB 4051.

¹⁰ Section 429.23 (3), (4), & (7), Florida Statutes.

¹¹ Section 408.811, Florida Statutes.

Proposed Changes:

This bill removes the requirement for ALFs to submit a monthly report to AHCA, listing any liability claims made against it.

B. SECTION DIRECTORY:

Section 1: Amends s. 429.23(5), F.S., relating to internal risk management and quality assurance program; adverse incidents and reporting requirements.

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.

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:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES