

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 Children, Families, and Elder Affairs Committee

BILL: SB 690

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill removes the requirement that the Department of Elderly Affairs submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to enactment.

This bill substantially amends section 429.41, Florida Statutes.

II. Present Situation:¹

An Assisted Living Facility (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.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. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

¹ A majority of the information contained the Present Situation of this bill analysis is from an interim report by the Committee on Health Regulation of the Florida Senate. See Comm. on Health Reg., The Florida Senate, *Assisted Living Facility Licensure Review* (Interim Report 2010-118) (Oct. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-118hr.pdf (last visited Feb. 24, 2011).

² Section 429.02(5), F.S.

³ Section 429.02(16), F.S.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities. Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA or department) in consultation with AHCA, the Department of Children and Family Services, and the Department of Health, and must include minimum standards in relation to:

- The requirements for maintenance of facilities which will ensure the health, safety, and comfort of residents and protection from fire hazard;
- The preparation and annual update of a comprehensive emergency management plan;
- The number, training, and qualifications of all personnel having responsibility for the care of residents;
- All sanitary conditions within the facility and the surroundings which will ensure the health and comfort of residents;
- License application and license renewal, transfer of ownership, proper management of resident funds and personal property, surety bonds, resident contracts, refund policies, financial ability to operate, and facility and staff records;
- Inspections, complain investigations, moratoriums, classification of deficiencies, levying and enforcement of penalties, and use of income from fees and fines;
- The enforcement of the resident bill of rights;
- Facilities holding a limited nursing, extended congregate care, or limited mental health license;
- The use of physical or chemical restraints; and
- The establishment of specific policies and procedures on resident elopement.⁴

Section 429.41(3), F.S., requires that DOEA submit all proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committee for review and comment prior to promulgation. Additionally, DOEA is urged to draft rules that encourage the development of homelike facilities that promote dignity, individuality, strengths, and decision-making of the residents.

During the 2010 Regular Session, HB 1565 passed the Legislature, but was vetoed by Governor Crist. During the 2011 Special Session “A,” the veto was overridden and the bill became law.⁵ This law requires state agencies to determine the impact of proposed agency rules and if the rules have an adverse impact on small businesses or increase regulatory costs in the aggregate in the amount of \$200,000 in the first year of enactment, the agency must prepare a statement of estimated regulatory cost (SERC). The SERC must provide whether the rules will financially impact small businesses by \$1 million or more over the first five years of enactment. If the economic analysis concludes that the rules meet or exceed this 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.

⁴ Section 429.41(1), F.S.

⁵ Chapter 2010-279, Laws of Fla.

The department will be required to follow the rulemaking procedure outlined in HB 1565 irrespective of the fact that s. 429.41, F.S., requires DOEA to submit proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees.

III. Effect of Proposed Changes:

This bill amends s. 429.41, F.S., to remove the requirement that the Department of Elderly Affairs (DOEA) submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to enactment.

The bill also removes the requirement that rules promulgated by DOEA encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decision-making ability of residents.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.)

None.

B. Amendments:

None.

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