

**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 Rules Committee

BILL: CS/SB 692

INTRODUCER: Rules Committee and Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 28, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	<b>Favorable</b>
2.	O'Callaghan	Stovall	HR	<b>Favorable</b>
3.	Daniell	Phelps	RC	<b>Fav/CS</b>
4.				
5.				
6.				

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill makes several statutory changes to provisions of law relating to assisted living facilities (ALFs). First, the bill removes the statutory requirement that the Agency for Health Care Administration (AHCA) develop and disseminate an annual list of ALFs sanctioned or fined for violations of state standards, and it also removes the statutory requirement that all ALFs report monthly to AHCA any liability claim filed against it.

The bill removes the statutory requirement that AHCA distribute all biennial and interim visit reports of ALFs to the local ombudsman council, at least one public library, and to the district Adult Services and Mental Health Program Offices.

Additionally, the bill removes 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.

Finally, the bill repeals the provision of law authorizing DOEA to conduct field visits and audits of ALFs in order to collection information regarding the actual cost of providing room, board,

and personal care to residents. The law providing that local governments or organizations may contribute to the cost of care of residents in local ALFs is also repealed.

This bill substantially amends the following sections of the Florida Statutes: 429.19, 429.23, 429.35, and 429.41.

This bill repeals section 429.54, Florida Statutes.

## II. Present Situation:

### Assisted Living Facilities

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

Assisted living facilities are currently 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. 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) in consultation with the AHCA, the Department of Children and Family Services, and the Department of Health.<sup>3</sup> As of February 2011, there were 2,926 ALFs licensed in Florida.<sup>4</sup>

### *Sanctions and Fines*

Florida law provides for three classifications of violations of part I of ch. 429, F.S., as well as the adopted rules. The agency shall impose administrative fines for all violations and, in addition, the agency may assess a survey fee to cover the cost of conducting initial complaint investigations that results in the finding of a violation.<sup>5</sup>

Section 429.19(9), F.S., requires AHCA to develop and disseminate a list annually of all facilities sanctioned or fined for violations of state standards. The list must include the number and class of violations involved, the penalties imposed, and the current status of the case. Once the list is developed, it must be sent to DOEA, DOH, DCF, the Agency for Persons with Disabilities, area agencies on aging, the Florida Statewide Advocacy Council, and the state and

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

<sup>2</sup> Section 429.02(16), F.S.

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

<sup>4</sup> Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 692* (Feb. 28, 2011) (on file with the Senate Health Regulation Committee).

<sup>5</sup> Sections 429.19(1) and (7), F.S.

local ombudsman councils. The agency may charge a fee for the cost of printing and postage or the list may also be provided electronically or through AHCA's Internet site.

Based on the requirements of s. 429.19(9), F.S., AHCA currently publishes two annual reports on its website: Assisted Living Facility – Administrative Fines (Administrative Fines) and Assisted Living Facility – Sanctions (Sanctions).

The Administrative Fines report shows all ALFs with fines imposed by final order between July 2009 and June 2010.<sup>6</sup> The report specifies the following:

- Provider name
- City
- County
- License number
- License status (closed or active)
- Legal case number
- Type of deficiency
- Fine amount
- Outcome of the case
- Specific survey violation and class of violation

The Sanctions report shows all facilities with sanctions imposed in final order status between July 2009 and June 2010.<sup>7</sup> The report specifies the following:

- Provider name
- Owner
- License number
- License status
- City
- County
- Legal case number
- Type of case
- Outcome of the case
- Final order date
- Emergency suspension
- Moratorium status and moratorium start date

Any action taken to correct a violation must be documented in writing and verified through follow-up visits by AHCA.<sup>8</sup>

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<sup>6</sup> Agency for Health Care Admin., *Assisted Living Facility – Administrative Fines* (Mar. 1, 2011), available at [http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/FDAU/docs/ALF\\_Fines.pdf](http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/ALF_Fines.pdf) (last visited Mar. 30, 2011).

<sup>7</sup> Agency for Health Care Admin., *Assisted Living Facility – Sanctions* (Mar. 1, 2011), available at [http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/FDAU/docs/ALF\\_Sanctions.pdf](http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/ALF_Sanctions.pdf) (last visited Mar. 31, 2011).

<sup>8</sup> Section 429.19(5), F.S.

### *Liability Claims*

The licensure process requires that each ALF maintain liability insurance coverage at all times.<sup>9</sup> Assisted living facilities are required to submit a monthly report to AHCA that includes any liability claim filed against it.<sup>10</sup> 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 to have occurred.<sup>11</sup> The report is not discoverable in any civil or administrative proceeding, except in cases brought by AHCA to enforce ch. 429, F.S.<sup>12</sup>

In addition to the monthly report to AHCA, all ALFs are required to maintain adverse incident reports. An adverse incident is defined in statute to mean “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 that required medical attention to which the resident has not given his or her consent;
- Any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident’s condition before the incident; or
- An event that is reported to law enforcement or its personnel for investigation.<sup>13</sup>

Liability claims can also be made for alleged violation of rights. There are 11 specific rights guaranteed to residents of ALFs, such as the right to unrestricted private communication, sharing a room with a spouse if both are residents of the facility; and the right to present grievances and recommend changes.<sup>14</sup>

The agency publishes a report on its website providing monthly, quarterly, and annual aggregate data of the number of liability claims intended to be filed against ALFs licensed in the state.<sup>15</sup> The agency produces two reports: one that shows the number of intended liability claim reports by fiscal year, broken down by quarter from 2001 through 2011, and one that shows the number of intended claims filed from March 2010 to February 2011. See charts on next page.<sup>16</sup>

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<sup>9</sup> Section 429.275, F.S.

<sup>10</sup> Section 429.23(5), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Section 429.23(2), F.S. Resident elopement, if the elopement places the resident at risk of harm or injury is also included in the definition of “adverse incident.”

<sup>14</sup> See s. 429.28, F.S.

<sup>15</sup> Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 694* (received Mar. 8, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>16</sup> Agency for Health Care Admin.,

[http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/FDAU/docs/LiabilityClaims/ALF\\_Chart.pdf](http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf) (last visited Mar. 29, 2011).

**Assisted Living Facility Notices of Intent  
Number Received by Fiscal Year and Quarter**

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Qtr 1	11	8	12	4	6	3	1	3	8	5
Qtr 2	32	9	9	4	6	5	5	4	3	2
Qtr 3	22	19	3	7	9	4	8	3	1	n/a
Qtr 4	15	10	5	7	9	12	8	2	4	n/a

**Assisted Living Facility Notices of Intent  
March 2010 – February 2011**

	3/10	4/10	5/10	6/10	7/10	8/10	9/10	10/10	11/10	12/10	1/11	2/11
NOIs Rec'd by month	0	3	0	1	0	3	2	0	2	0	2	2

The information reported to AHCA is not used in any regulatory manner.<sup>17</sup>

***Biennial and Interim Visits***

All licensed ALFs must have a biennial inspection<sup>18</sup> and between January 2010 and February 2011, 2,366 biennial inspection visits were conducted.<sup>19</sup>

Section 429.35(2), F.S., requires the AHCA, within 60 days after a biennial inspection and 30 days after any interim visit, to forward the results to:

- The local ombudsman council in the appropriate planning and service area;
- At least one public library, or if none, then to the county seat; and
- The district Adult Services and Mental Health Program Offices.

Section 408.806(8), F.S., allows the AHCA to provide electronic access to information or documents, such as inspection results. The AHCA provides written reports of all inspections to the provider. Compliance and noncompliance with regulations are cited in the report. Upon review by the AHCA, the reports are posted on the inspections report website<sup>20</sup> and a monthly email is sent to the Office of State Long-Term Care Ombudsman (office) of all inspections completed. The office distributes this information to the local ombudsman councils.<sup>21</sup>

***Proposed Rules***

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

<sup>17</sup> Agency for Health Care Admin., *supra* note 15.

<sup>18</sup> Section 408.811(1)(b), F.S.

<sup>19</sup> Agency for Health Care Admin., *supra* note 4.

<sup>20</sup> See [http://apps.ahca.myflorida.com/dm\\_web/\(S\(n3dnev45xakyh155qllelimg\)\)/Default.aspx](http://apps.ahca.myflorida.com/dm_web/(S(n3dnev45xakyh155qllelimg))/Default.aspx) (last visited April 7, 2011).

<sup>21</sup> Agency for Health Care Admin., *supra* note 4.

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.<sup>22</sup>

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.<sup>23</sup> 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.

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

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<sup>22</sup> Section 429.41(1), F.S.

<sup>23</sup> Chapter 2010-279, Laws of Fla.

Speaker of the House of Representatives, the President of the Senate, and appropriate committees.

### *Care and 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 and monitoring the resident;
- Contacting appropriate persons upon a significant change in the resident or if the resident is discharged or moves out;
- Providing and coordinating activities;
- Arranging for health care; and
- Providing and adhering to the Resident Bill of Rights.

Local governments or organizations may help subsidize the cost of providing care to residents in ALFs. Implementation of a local subsidy requires authorization of DOEA and may not result in a reduction of the state supplement.<sup>24</sup> In order to help ascertain the actual cost of providing room, board, and personal care to residents in ALFs, s. 429.54(1), F.S., authorizes DOEA to conduct field visits audits of facilities as necessary. If randomly selected, the owner of the facility must submit a report, audit, and other accountings of cost as requested by DOEA.

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

This bill makes several statutory changes to provisions of law relating to assisted living facilities (ALFs).

First, the bill amends s. 429.19, F.S., to remove the requirement that the Agency for Health Care Administration (AHCA or agency) develop and disseminate an annual list of ALFs sanctioned or fined for violations of state standards. The bill also eliminates language providing that AHCA may provide the information electronically or on its website.

While the bill eliminates the requirement that AHCA publish this annual list, the agency would still have the discretion to do so if it wished. According to AHCA, the information would still be available through a public-record request.<sup>25</sup>

The bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

This bill also amends s. 429.35, F.S., to remove the requirement that the AHCA distribute, within 60 days after the date of the biennial inspection visit or within 30 days after the date of any interim visit, all biennial and interim visit reports of ALFs to the local ombudsman council, at

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<sup>24</sup> Section 429.54(2), F.S.

<sup>25</sup> Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 696* (Feb. 22, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

least one public library or to the county seat in which the inspected ALF is located if there is no library, and to the district Adult Services and Mental Health Program Offices.<sup>26</sup>

Section 429.41, F.S., is amended 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.

Section 429.54, F.S., relating to the collection of information and local subsidies for ALFs, provides that DOEA may conduct field visits and audits of ALFs in order to collection information regarding the actual cost of providing room, board, and personal care to residents. Additionally, the law provides that local governments or organizations may contribute to the cost of care of residents in local ALFs by subsidizing the rate of state-authorized payment to such facilities. This bill repeals s. 429.54, F.S.

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:**

According to the Agency for Health Care Administration (AHCA), the information currently found on its website will still be available through a public-record request.<sup>27</sup>

<sup>26</sup> According AHCA, the reports will continue to be available on the agency's website for retrieval and review. Agency for Health Care Admin., *supra* note 4.

<sup>27</sup> Agency for Health Care Admin., *supra* note 25.



Accordingly, if this bill passes, a person will have to pay a fee associated with the public-record request in order to receive information relating to which assisted living facilities (ALFs) have been fined or sanctioned.

This bill amends s. 429.23, F.S., to remove the requirement that all ALFs report monthly to AHCA any liability claim filed against it. This bill may reduce reporting costs to ALFs associated with submitting the data.<sup>28</sup>

The bill repeals s. 429.54, F.S., which authorizes local governments or organizations to contribute to the cost of care of assisted living facility residents upon approval of the Department of Elder Affairs (DOEA). By repealing this section of law, assisted living facilities may no longer receive subsidies from local government or organizations. However, according to DOEA, they are unaware of any local governments or organizations currently subsidizing the cost of care for residents.<sup>29</sup>

### C. Government Sector Impact:

To the extent the Agency for Health Care Administration (AHCA) incurred costs associated with developing and disseminating the list annually, those expenses should be eliminated with the passage of this bill.

According to AHCA, duties associated with collecting and posting the information relating to liability claims are minimal and eliminating the requirement that assisted living facilities report monthly to AHCA would have a neutral effect on the agency.<sup>30</sup>

Additionally, by eliminating the requirement that the AHCA forward the results of all biennial and interim visit reports to the local ombudsman council, the public library, and the district Adult Services and Mental Health Program Offices, the bill may have a positive fiscal impact on the AHCA.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

<sup>28</sup> Agency for Health Care Admin., *supra* note 15.

<sup>29</sup> E-mail from Kevin Reilly, Director of Legislative Affairs, Dep't of Elder Affairs, to professional staff of the Senate Committee on Children, Families, and Elder Affairs (Feb. 23, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>30</sup> Agency for Health Care Admin., *supra* note 15.

**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 Rules on April 26, 2011:**

The committee substitute:

- Removes the statutory requirement that the Agency for Health Care Administration develop and disseminate an annual list of assisted living facilities sanctioned or fined for violations of state standards;
- Removes the statutory requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it;
- 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; and
- Repeals the provision of law authorizing the Department of Elder Affairs to conduct field visits and audits of assisted living facilities in order to collection information regarding the actual cost of providing room, board, and personal care to residents. The law providing that local governments or organizations may contribute to the cost of care of residents in local assisted living facilities is also repealed.

- B. **Amendments:**

None.