

**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:** SB 2074  
**INTRODUCER:** Health Regulation Committee  
**SUBJECT:** Assisted Living Facilities  
**DATE:** January 30, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The proposed committee bill increases regulation pertaining to assisted living facilities (ALFs) in order to improve the safety of persons living in ALFs.

This bill revises part I of ch. 429, F.S., relating to ALFs, to:

- Require an ALF to obtain a limited mental health license if any mental health resident resides in the facility.
- Revise the eligibility requirements for licensure of a facility seeking to be a limited mental health licensee.
- Require ALFs to provide notice to residents of the confidential nature of complaints to the Office of State Long-Term Care Ombudsman (Ombudsman Office).
- Require state and local agency employees to report abuse, neglect, and exploitation of residents to the Department of Children and Families (DCF) central abuse hotline.
- Increase certain facility licensure fees for ALFs with a history of certain violations.
- Increase certain administrative and criminal penalties and reduce the Agency for Health Care Administration's (AHCA) discretion to impose certain penalties.
- Require all ALF staff to complete at least 2 hours of pre-service orientation.
- Require an ALF to operate under the management of a licensed administrator.
- Create the Board of Assisted Living Facility Administration (Board) to issue licenses to administrators who meet delineated eligibility requirements, including age, education, training, and examination requirements.
- Authorize the Board to develop training curricula for ALF staff; approve and certify training and testing centers; and certify and discipline core training providers.

- Require the Board, if funding is available, to develop and maintain a database of core training providers and attendees of core training.
- Designate the AHCA as the central agency for receiving and tracking complaints against ALFs.
- Require agencies, if funding is available, to develop or modify electronic systems to ensure the transfer of information between agencies pertaining to ALFs.
- Create a task force to look at streamlining agency regulatory oversight of ALFs.
- Revise the AHCA's inspection authority and requirements, such as requiring the AHCA to monitor a certain number of ALF elopement drills.
- Require the AHCA to have lead surveyors in each field office, who specialize in assessing ALFs, to train other surveyors of ALFs and facilitate consistent inspections.
- Create a task force to review the AHCA inspection forms to ensure ALFs are being assessed appropriately for resident needs and safety.
- Authorize the DOEA to require additional staffing in ALFs, depending on the number of residents receiving special care and the type of special care being provided.
- Require ALFs to semiannually report to the AHCA information relating to occupancy rates and residents' acuity and demographics in order for the AHCA to track the information.
- Require the AHCA to develop a user-friendly rating system of ALFs.

Additional provisions affecting other chapters of law require:

- Community living support plans to be updated more frequently.
- Case managers to record interaction with residents.
- Consistent and adequate monitoring of community living support plans and cooperative agreements by the Department of Elderly Affairs (DOEA).

This bill substantially amends the following sections of the Florida Statutes: 394.4574, 400.0078, 415.1034, 429.02, 429.07, 429.075, 429.14, 429.17, 429.176, 429.178, 429.19, 429.23, 429.256, 429.28, 429.34, 429.41, 429.49, 429.52, and 429.54.

This bill creates the following sections of the Florida Statutes: 429.515, 429.521, 429.522, 429.523, 429.55, and 429.56.

This bill also creates two undesignated sections 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

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

<sup>2</sup> An ALF does not include an adult family-care home or a non-transient 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 provides room, board, and personal care, on a 24-hour basis, for no more

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.<sup>4</sup>

Assisted living facilities are licensed by the AHCA, pursuant to part I of ch. 429, F.S., relating to ALFs, 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, Florida Administrative Code (F.A.C.). These rules are adopted by the DOEA in consultation with the AHCA, the DCF, and the Department of Health (DOH).<sup>5</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>6</sup>

As of December 1, 2011, there were 2,985 licensed ALFs in Florida.<sup>7</sup> In addition to a standard license, an ALF may have specialty licenses that authorize the ALF to provide limited nursing services (LNS),<sup>8</sup> limited mental health (LMH) services,<sup>9</sup> and extended congregate care (ECC) services.<sup>10</sup> Out of the 2,985 licensed ALFs, 1,083 have LNS licenses, 1,108 have LMH licenses, and 267 have ECC licenses.<sup>11</sup>

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:<sup>12</sup>

- 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;

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than five disabled adults or frail elders who are not relatives. A non-transient 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.

<sup>4</sup> Section 429.02(1), F.S.

<sup>5</sup> Section 429.41(1), F.S.

<sup>6</sup> See chs. 64E-12, 64E-11, and 64E-16, F.A.C.

<sup>7</sup> Agency for Health Care Administration, *Assisted Living Directory*, available at:

[http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/Assisted\\_living/pdf/Directory\\_ALF.pdf](http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/pdf/Directory_ALF.pdf) (Last visited on January 16, 2012).

<sup>8</sup> Section 429.07(3)(c), F.S.

<sup>9</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 optional state supplementation (OSS). See ss. 429.075 and 429.02(15), F.S.

<sup>10</sup> Section 429.07(3)(b), F.S.

<sup>11</sup> Agency for Health Care Administration, *Directories*, available at:

[http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/Assisted\\_living/alf.shtml](http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/alf.shtml) (Last visited on January 16, 2012).

<sup>12</sup> Rule 58A-5.0182, F.A.C.

- 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.

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>13</sup> A resident who requires 24-hour nursing supervision<sup>14</sup> may not reside in an ALF, unless the resident is enrolled as a hospice patient.<sup>15</sup>

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>16</sup>

#### ***Limited Nursing Services Specialty License***

An LNS specialty license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license.

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules, may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.<sup>17</sup>

#### ***Extended Congregate Care Specialty License***

An ECC specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services<sup>18</sup> to persons who otherwise would be disqualified from continued residence in an ALF.<sup>19</sup>

<sup>13</sup> Section 429.26, F.S., and Rule 58A-5.030, F.A.C.

<sup>14</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>15</sup> 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. Section 429.26, F.S.

<sup>16</sup> Section 429.28, F.S.

<sup>17</sup> Section 429.26, F.S., and Rule 58A-5.031(3)(c), F.A.C.

<sup>18</sup> Supportive services include social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. See Rule 58A-5.030(8)(a), F.A.C.

<sup>19</sup> An ECC program may provide additional services, such as: total help with bathing, dressing, grooming, and toileting; nursing assessments conducted more frequently than monthly; measuring and recoding basic vital functions and weight;

The primary purpose of ECC services is to allow residents, as they become more impaired with physical or mental limitations, to remain in a familiar setting. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour nursing supervision.<sup>20</sup>

Facilities holding an ECC license must:

- Ensure that the administrator of the facility and the ECC supervisor, if separate from the administrator, has a minimum of 2 years of managerial, nursing, social work, therapeutic recreation, or counseling experience in a residential, long-term care, or acute care setting or agency serving elderly or disabled persons. A baccalaureate degree may be substituted for 1 year of the required experience and a nursing home administrator is considered to be qualified for the position.
- Provide enough qualified staff to meet the needs of ECC residents considering the amount and type of services established in each resident's service plan.
- Immediately provide additional or more qualified staff, when the AHCA determines that service plans are not being followed or that residents' needs are not being met because of the lack of sufficient or adequately trained staff.
- Ensure and document that staff receive required ECC training.

***Limited Mental Health Specialty License***

An ALF that serves three or more mental health residents must obtain an LMH specialty license.<sup>21</sup> 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 optional state supplementation (OSS).<sup>22,23</sup> The DCF is responsible for ensuring that a mental health resident is assessed and determined able to live in the community in an ALF with an LMH license.<sup>24</sup>

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dietary management; assisting with self-administered medications or administering medications and treatments pursuant to a health care provider's order; supervising residents with dementia and cognitive impairments; health education, counseling, and implementing health-promoting programs; rehabilitative services; and escort services related to health-related appointments. Section 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C.

<sup>20</sup> Section 429.07(3)(b), F.S.

<sup>21</sup> Section 429.075, F.S.

<sup>22</sup> Section 429.02(15), F.S.

<sup>23</sup> Optional State Supplementation is a cash assistance program. Its purpose is to supplement a person's income to help pay for costs in an assisted living facility, mental health residential treatment facility, or adult family care home, but it is not a Medicaid program. Department of Elder Affairs, *Florida Affordable Assisted Living: Optional State Supplementation (OSS)*, available at: <http://elderaffairs.state.fl.us/faal/operator/statesupp.html> (Last visited on January 17, 2012).

<sup>24</sup> Section 394.4574, F.S., requires a mental health resident to be assessed by a psychiatrist, clinical psychologist, clinical social worker, psychiatric nurse, or an individual who is supervised by one of these professionals to determine whether it is appropriate for the person to reside in an ALF.

An ALF licensed to provide LMH services must assist the mental health resident in carrying out the activities in the resident's community living support plan. The mental health resident's community living support plan, which is updated annually, includes:<sup>25</sup>

- The specific needs of the resident which must be met for the resident to live in the ALF and community;
- The clinical mental health services to be provided by the mental health care provider to help meet the resident's needs, and the frequency and duration of such services;
- Any other services and activities to be provided by or arranged for by the mental health care provider or mental health case manager to meet the resident's needs, and the frequency and duration of such services and activities;
- Obligations of the ALF to facilitate and assist the resident in attending appointments and arranging transportation to appointments for the services and activities identified in the plan;
- A description of other services to be provided or arranged by the ALF; and
- A list of factors pertinent to the care, safety, and welfare of the mental health resident and a description of the signs and symptoms particular to the resident that indicates the immediate need for professional mental health services.

The LMH licensee must execute a cooperative agreement between the ALF and the mental health care services provider. The cooperative agreement specifies, among other things, directions for the ALF accessing emergency and after-hours care for the mental health resident.

Additionally, according to Rule 58A-5.029, F.A.C., facilities holding an LMH license must:

- Provide an opportunity for private face-to-face contact between the mental health resident and the resident's mental health case manager or other treatment personnel of the resident's mental health care provider.
- Observe resident behavior and functioning in the facility, and record and communicate observations to the resident's mental health case manager or mental health care provider regarding any significant behavioral or situational changes which may signify the need for a change in the resident's professional mental health services, supports and services described in the community living support plan, or that the resident is no longer appropriate for residency in the facility.
- Ensure that designated staff have completed the required LMH training.
- Maintain facility, staff, and resident records in accordance with the requirements of the law.

### ***ALF Staffing Requirements***

Every ALF must be under the supervision of an administrator, who is responsible for the operation and maintenance of the facility, including the management of all staff and the provision of adequate care to all residents.

Rule 58A-5.019(4), F.A.C., provides the minimum staffing requirements for ALFs. An ALF may be required by the AHCA to immediately increase staff above the minimum staffing levels if the AHCA determines that adequate supervision and care are not being provided to residents, resident care standards are not being met, or that the facility is failing to meet the terms of residents' contracts. When additional staff is required above the minimum, the AHCA requires

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<sup>25</sup> Rule 58A-5.029(2)(c)3., F.A.C.

the submission of a corrective action plan indicating how the increased staffing is to be achieved and resident service needs will be met.<sup>26</sup>

### ***Resident Elopement***

All facilities must assess residents at risk for elopement or must identify those residents having any history of elopement in order for staff to be alerted to their needs for support and supervision. As part of its resident elopement response policies and procedures, the facility must make, at a minimum, a daily effort to determine that at-risk residents have identification on their persons that includes their name and the facility's name, address, and telephone number.<sup>27</sup>

The facility is required to develop detailed written policies and procedures for responding to a resident elopement. At a minimum, the policies and procedures must include:

- An immediate staff search of the facility and premises;
- The identification of staff responsible for implementing each part of the elopement response policies and procedures, including specific duties and responsibilities;
- The identification of staff responsible for contacting law enforcement, the resident's family, guardian, health care surrogate, and case manager if the resident is not located pursuant to an immediate search of the facility and premises; and
- The continued care of all residents within the facility in the event of an elopement.<sup>28</sup>

### ***Use of Restraints***

Florida law limits the use of restraints on residents of ALFs. The use of physical restraints<sup>29</sup> is limited to half-bed rails as prescribed and documented by the resident's physician with the consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact. The physician is to review the order for physical restraints biannually.<sup>30</sup> The use of chemical restraints<sup>31</sup> is limited to prescribed dosages of medications authorized by the resident's physician and must be consistent with the resident's diagnosis. Residents who are receiving medications that can serve as chemical restraints must be evaluated by their physician at least annually to assess the continued need for the medication, the level of the medication in the resident's blood, and the need for adjustments in the prescription.

### ***ALF Staff Training***

Administrators and other ALF staff<sup>32</sup> must meet minimum training and education requirements established by the DOEA by rule.<sup>33</sup> This training and education is intended to assist facilities

<sup>26</sup> Rule 58A-5.019(4), F.A.C.

<sup>27</sup> Rule 58A-5.0182(8), F.A.C.

<sup>28</sup> *Id.*

<sup>29</sup> "Physical restraint" means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term "physical restraint" shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury. Section 429.02(17), F.S.

<sup>30</sup> Rule 58A-5.0182(6)(h), F.S.

<sup>31</sup> "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, and is used for discipline or convenience and not required for the treatment of medical symptoms. Section 429.02(6), F.S.

<sup>32</sup> An ALF administrator must be at least 21 years of age and have a high school diploma or general equivalency diploma (G.E.D.) An administrator must be in compliance with level 2 background screening standards and complete a core training

appropriately respond to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.<sup>34</sup>

The ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and a competency test. Administrators and managers are required to successfully complete the ALF core training requirements within 3 months from the date of becoming a facility administrator or manager. Successful completion of the core training requirements includes passing the competency test.<sup>35</sup> The minimum passing score for the competency test is 75 percent.<sup>36</sup>

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every 2 years. A newly hired administrator or manager, who has successfully completed the ALF core training and continuing education requirements, is not required to retake the core training. An administrator or manager, who has successfully completed the core training but has not maintained the continuing education requirements, is considered a new administrator or manager for the purposes of the core training requirements. He or she must retake the ALF core training and retake and pass the competency test.<sup>37</sup>

Facility administrators or managers are required to provide or arrange for the following in-service training to facility staff:

- Staff who provide direct care to residents, other than nurses, certified nursing assistants, or home health aides must receive a minimum of 1-hour in-service training in infection control, including universal precautions, and facility sanitation procedures before providing personal care to residents.<sup>38</sup>
- Staff who provide direct care to residents must receive a minimum of 1-hour in-service training within 30 days of employment that covers the reporting of major incidents, reporting of adverse incidents, and facility emergency procedures including chain-of-command and staff roles relating to emergency evacuation.
- Staff who provide direct care to residents, who have not taken the core training program, must receive a minimum of 1-hour in-service training within 30 days of employment that covers resident rights in an ALF and recognizing and reporting resident abuse, neglect, and exploitation.
- Staff who provide direct care to residents, other than nurses, CNAs, or home health aides must receive 3 hours of in-service training within 30 days of employment that covers resident behavior and needs and providing assistance with the activities of daily living.

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requirement. Section 429.174, F.S., and Rule 58A-5.019, F.A.C. In addition, all staff, who are employed by or contracted with the ALF to provide personal services to residents, must receive a level 2 background screening. Section 408.809(1)(e), F.S. and s. 429.174, F.S.

<sup>33</sup> Rule 58A-5.0191, F.A.C.

<sup>34</sup> Section 429.52(1), F.S.

<sup>35</sup> Rule 58A-5.0191, F.A.C.

<sup>36</sup> Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

<sup>37</sup> Rule 58A-5.0191, F.A.C.

<sup>38</sup> Documentation of compliance with the staff training requirements of 29 CFR 1910.1030, relating to blood borne pathogens, may be used to meet this requirement. Rule 58A-5.0191(2)(a), F.A.C.



- Staff who prepare or serve food and who have not taken the ALF core training, must receive a minimum of 1-hour in-service training within 30 days of employment in safe food handling practices.
- All facility staff are required to receive in-service training regarding the facility's resident elopement response policies and procedures within 30 days of employment, must be provided with a copy of the facility's resident elopement response policies and procedures, and must demonstrate an understanding and competency in the implementation of the elopement response policies and procedures.<sup>39</sup>

Facilities are required to conduct a minimum of two resident elopement prevention and response drills per year. All administrators and direct care staff must participate in the drills, which must include a review of procedures to address resident elopement. Facilities must document the implementation of the drills and ensure that the drills are conducted in a manner consistent with the facility's resident elopement policies and procedures.<sup>40</sup>

#### *Assistance with Self-Administered Medications*

Unlicensed persons who are to provide assistance with self-administered medications must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff and receive a training certificate.<sup>41</sup> Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in ALFs; procedures and techniques for assisting the resident with self-administration of medication, including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training must include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises.<sup>42</sup>

Those unlicensed persons, who provide assistance with self-administered medications and have successfully completed the initial 4-hour training, must obtain, annually, a minimum of 2 hours of continuing education training on providing assistance with self-administered medications and safe medication practices in an ALF.<sup>43</sup>

#### *ECC Specific*

The administrator and ECC supervisor, if different from the administrator, must complete core training and 4 hours of initial training in extended congregate care prior to the facility's receiving its ECC license or within 3 months of beginning employment in the facility as an administrator or ECC supervisor.<sup>44</sup> The administrator and the ECC supervisor, if different from the administrator, must complete a minimum of 4 hours of continuing education every 2 years in

<sup>39</sup> Rule 58A-5.0191, F.A.C.

<sup>40</sup> Section 429.41(1)(a)3., F.S.

<sup>41</sup> Section 429.52(5), F.S.

<sup>42</sup> Rule 58A-5.0191(5)(a), F.A.C.

<sup>43</sup> Rule 58A-5.0191(5)(c), F.A.C.

<sup>44</sup> ECC supervisors who attended the ALF core training prior to April 20, 1998, are not required to take the ALF core training competency test. Rule 58A-5.0191(7), F.A.C.

topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons with Alzheimer's disease or related disorders.<sup>45</sup>

All direct care staff providing care to residents in an ECC program must complete at least 2 hours of in-service training, provided by the facility administrator or ECC supervisor, within 6 months of beginning employment in the facility. The training must address ECC concepts and requirements, including statutory and rule requirements, and delivery of personal care and supportive services in an ECC facility.<sup>46</sup>

#### *LMH Specific*

The administrator, managers, and staff, who have direct contact with mental health residents in a licensed LMH facility, must receive the following training:<sup>47</sup>

- A minimum of 6 hours of specialized training in working with individuals with mental health diagnoses.
- A minimum of 3 hours of continuing education, which may be provided by the ALF administrator or through distance learning, biennially thereafter in subjects dealing with mental health diagnoses or mental health treatment.

#### *Special Care for Persons with Alzheimer's Disease*

Facilities which advertise that they provide special care for persons with Alzheimer's disease and related disorders must ensure that facility staff, who have regular contact with or provide direct care to residents with Alzheimer's disease and related disorders, obtain 4 hours of initial training, entitled "Alzheimer's Disease and Related Disorders Level I Training," within 3 months of employment.<sup>48</sup>

Facility staff, who provide direct care to residents with Alzheimer's disease and related disorders, must obtain an additional 4 hours of training, entitled "Alzheimer's Disease and Related Disorders Level II Training," within 9 months of employment.

Direct care staff is required to participate in 4 hours of continuing education annually.<sup>49</sup> Facility staff who, have only incidental contact<sup>50</sup> with residents with Alzheimer's disease and related disorders, must receive general written information provided by the facility on interacting with such residents within 3 months of employment.<sup>51</sup>

#### *Do Not Resuscitate Orders*

<sup>45</sup> Rule 58A-5.0191(7)(b), F.A.C.

<sup>46</sup> Rule 58A-5.0191(7)(c), F.A.C.

<sup>47</sup> Section 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.

<sup>48</sup> Those that have completed the core training program between April 20, 1998, and July 1, 2003, are deemed to have satisfied this requirement. Those qualified to provide such training are not required to complete this requirement or the requirement for Alzheimer's Disease and Related Disorders Level II Training. See Rule 58A-5.0191, F.A.C.

<sup>49</sup> Section 429.178, F.S.

<sup>50</sup> "Incidental contact" means all staff who neither provide direct care nor are in regular contact with such residents. Rule 58A-5.0191(9)(f), F.A.C.

<sup>51</sup> Section 429.178, F.S.

Facility administrators, managers, direct care staff and staff involved in resident admissions must receive at least 1 hour of training in the facility's policies and procedures regarding Do Not Resuscitate Orders within 30 days after employment.<sup>52</sup>

### ***Trainers***

Training for administrators must be performed by trainers registered with the DOEA. The trainer must provide the DOEA with proof that he or she has completed the minimum core training education requirements, successfully passed the competency test, and complied with continuing education requirements (12 contact hours of continuing education in topics related to assisted living every 2 years), and meet one of the following requirements:

- Provide proof of completion of a 4-year degree from an accredited college or university and have worked in a management position in an ALF for 3 years after being core certified;
- Have worked in a management position in an ALF for 5 years after being core certified and have 1 year of teaching experience as an educator or staff trainer for persons who work in ALFs or other long-term care settings;
- Have been previously employed as a core trainer for the DOEA;
- Have a minimum of 5 years of employment with the AHCA, or formerly the Department of Health and Rehabilitative Services, as a surveyor of ALFs;
- Have a minimum of 5 years of employment in a professional position in the AHCA Assisted Living Unit;
- Have a minimum of 5 years employment as an educator or staff trainer for persons working in an ALF or other long-term care settings;
- Have a minimum of 5 years of employment as an ALF core trainer, which was not directly associated with the DOEA; or
- Have a minimum of a 4-year degree from an accredited college or university in the areas of healthcare, gerontology, social work, education or human services, and a minimum of 4 years experience as an educator or staff trainer for persons working in an ALF or other long-term care settings after core certification.<sup>53</sup>

### ***Inspections and Surveys***

The AHCA is required to conduct a survey, investigation, or appraisal of an ALF:

- Prior to the issuance of a license.
- Prior to biennial renewal of a license.
- When there is a change of ownership.
- To monitor facilities licensed to provide LNS or ECC services, or facilities cited in the previous year for a class I or class II, or four or more uncorrected class III, violations.<sup>54</sup>
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents.
- If the AHCA has reason to believe a facility is violating a provision of part III of ch. 429, F.S., relating to adult day care centers, or an administrative rule.
- To determine if cited deficiencies have been corrected.
- To determine if a facility is operating without a license.<sup>55</sup>

<sup>52</sup> Rule 58A-5.0191(11), F.A.C.

<sup>53</sup> Section 429.52(9)-(10), F.S. and Rule 58T-1.203, F.A.C.

<sup>54</sup> See below information under subheading "Violations and Penalties" for a description of each class of violation.

<sup>55</sup> See s. 429.34, F.S., and Rule 58A-5.033, F.A.C.

An applicant for licensure renewal is eligible for an abbreviated biennial survey by the AHCA if the applicant does not have any:

- Class I or class II violations or uncorrected class III violations.
- Confirmed long-term care ombudsman council complaints reported to the AHCA by the council.
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.<sup>56</sup>

The AHCA must expand an abbreviated survey or conduct a full survey if violations, which threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.<sup>57</sup>

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.<sup>58</sup>

An ECC licensee is subject to quarterly monitoring inspections by the AHCA or its agents. At least one registered nurse must be included in the inspection team. The AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately, and there are no serious violations or substantiated complaints about the quality of service or care.<sup>59</sup>

There is no additional monitoring requirement of LMH licensees.

### ***Violations and Penalties***

Part II of ch. 408, F.S., provides the general licensure standards for all facilities regulated by the AHCA. Under s. 408.813, F.S., ALFs may be subject to administrative fines imposed by the AHCA for certain types of violations. Violations are categorized into four classes according to the nature of the violation and the gravity of its probable effect on facility residents.<sup>60</sup>

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<sup>56</sup> Rule 58A-5.033(2), F.A.C.

<sup>57</sup> *Id.*

<sup>58</sup> Section 429.07(3)(c), F.S.

<sup>59</sup> Section 429.07(3)(b), F.S.

<sup>60</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. 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. Class “IV” violations are those conditions or occurrences related to the operation and maintenance of a provider or to required reports, forms, or documents that do not have the potential of negatively affecting clients.

The AHCA must provide written notice of a violation and must impose an administrative fine<sup>61</sup> for a cited class I violation in an amount not less than \$5,000 and not exceeding \$10,000 for each violation; impose an administrative fine for a cited class II violation in an amount not less than \$1,000 and not exceeding \$5,000 for each violation; impose an administrative fine for a cited class III violation in an amount not less than \$500 and not exceeding \$1,000 for each violation; and impose an administrative fine for a cited class IV violation in an amount not less than \$100 and not exceeding \$200 for each violation.<sup>62</sup>

The AHCA may deny, revoke, and suspend any license and impose an administrative fine against a licensee for a violation of any provision of part I of ch. 429, F.S., part II of ch. 408, F.S., or applicable rules; for the actions of any person subject to level 2 background screening under s. 408.809, F.S.; for the actions of any facility employee; or for any of the following actions by a licensee:

- An intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.
- A determination by the AHCA that the owner lacks the financial ability to provide continuing adequate care to residents.
- Misappropriation or conversion of the property of a resident of the facility.
- Failure to follow the criteria and procedures provided under part I of ch. 394, F.S., relating to the transportation, voluntary admission, and involuntary examination of a facility resident.
- A citation for one or more cited class I deficiencies, three or more cited class II deficiencies, or five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified.
- Failure to comply with background screening standards.
- Violation of a moratorium.
- Failure of the license applicant, the licensee during re-licensure, or a licensee that holds a provisional license to meet the minimum license requirements at the time of license application or renewal.
- An intentional or negligent life-threatening act in violation of the uniform fire-safety standards for ALFs or other fire-safety standards that threatens the health, safety, or welfare of a resident of a facility, as communicated to the AHCA by the local authority having jurisdiction or the State Fire Marshal.
- Knowingly operating any unlicensed facility or providing without a license any service that must be licensed.
- Any act constituting a ground upon which application for a license may be denied.<sup>63</sup>

The AHCA is required to deny or revoke the license of an ALF that has two or more class I violations that are similar or identical to violations identified by the AHCA during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.<sup>64</sup>

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<sup>61</sup> When determining if a penalty is to be imposed and in fixing the amount of the fine, the AHCA must consider the following factors: the gravity of the violation and the extent to which any laws or rules were violated, actions taken to correct the violations, any previous violations, the financial benefit of committing or continuing the violation, and the licensed capacity of the facility. Section 429.19(3), F.S.

<sup>62</sup> Section 429.19(2), F.S.

<sup>63</sup> Section 429.14, F.S.

<sup>64</sup> Section 429.14(4), F.S.

The AHCA may also impose an immediate moratorium<sup>65</sup> or emergency suspension on any provider if the AHCA determines that any condition related to the provider or licensee presents a threat to the health, safety, or welfare of a client.<sup>66</sup> The AHCA is required to publicly post notification of a license suspension or revocation, or denial of a license renewal, at the facility.<sup>67</sup>

Florida's Criminal Code, under ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons<sup>68</sup> and disabled adults.<sup>69</sup>

### *Licensure Fees*

The biennial licensure fees for the ALF standard license and specialty licenses are found in s. 429.07(4), F.S. This section refers to the general health care licensure provisions in part II of ch. 408, F.S. Section 408.805, F.S., provides for licensure fees to be adjusted annually by not more than the change in the Consumer Price Index (CPI) based on the 12 months immediately preceding the increase.<sup>70</sup>

Income from fees and fines collected by the AHCA must be used by the AHCA for the following purposes:

- Up to 50 percent of the trust funds accrued each fiscal year may be used to offset the expenses of receivership,<sup>71</sup> if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.
- An amount of \$5,000 of the trust funds accrued each year must be allocated to pay for inspection-related physical and mental health examinations requested by the AHCA for residents who are either recipients of SSI or have monthly incomes not in excess of the maximum combined federal and state cash subsidies available to SSI recipients, but such funds are only to be used where the resident is ineligible for Medicaid.
- Any trust funds accrued each year and not used for the purposes of receivership or inspection-related physical and mental health examinations must be used to offset the costs of the licensure program, verifying information submitted, defraying the costs of processing the names of ALF applicants, and conducting inspections and monitoring visits.<sup>72</sup>

<sup>65</sup> "Moratorium" means a prohibition on the acceptance of new clients. Section 408.803(10), F.S.

<sup>66</sup> Section 408.814, F.S.

<sup>67</sup> Section 429.14(7), F.S.

<sup>68</sup> "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. Section 825.101(5), F.S. It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim. Section 825.104, F.S.

<sup>69</sup> "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. Section 825.101(4), F.S.

<sup>70</sup> The current CPI adjusted fees are: \$371 for a standard license, \$62 for a standard license per-bed fee, \$523 for an ECC license, \$10 for an ECC per-bed fee, \$250 for an LNS license, and \$10 for an LNS per-bed fee. Agency for Health Care Administration, Bureau of Long Term Care, Form Letter to ALF Providers, available at: [http://ahca.myflorida.com/MCHQ/LONG\\_TERM\\_CARE/Assisted\\_living/alf/ALF\\_fee\\_increase.pdf](http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf) (Last visited on January 16, 2012).

<sup>71</sup> See s. 429.22, F.S., for instances as to when a court may appoint a receiver for an ALF.

<sup>72</sup> Section 429.18, F.S.

## Adult Protective Services

The DCF is required under s. 415.103, F.S., to establish and maintain a central abuse hotline to receive reports, in writing or through a single statewide toll-free telephone number, of known or suspected abuse, neglect, or exploitation of a vulnerable adult<sup>73</sup> at any hour of the day or night, any day of the week.<sup>74</sup>

The following persons, who know, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited are required to immediately report such knowledge or suspicion to the central abuse hotline:

- A physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;
- A health professional or mental health professional;
- A practitioner who relies solely on spiritual means for healing;
- Nursing home staff; ALF staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;
- A state, county, or municipal criminal justice employee or law enforcement officer;
- An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments;
- A Florida advocacy council member or long-term care ombudsman council member; or
- An officer, trustee, or employee of a bank, savings and loan, or credit union.<sup>75</sup>

If at any time during a protective investigation the DCF has reasonable cause to believe that an employee of a facility that provides day or residential care or treatment for vulnerable adults is the alleged perpetrator of abuse, neglect, or exploitation of a vulnerable adult, the DCF must notify the AHCA, Division of Health Quality Assurance, in writing. If at any time during a protective investigation the DCF has reasonable cause to believe that professional licensure violations have occurred, the DCF must notify the Division of Medical Quality Assurance within the DOH in writing. The DCF must provide a copy of its investigation to the AHCA when the DCF has reason to believe that a vulnerable adult resident of a facility licensed by the AHCA or to the DOH when the investigation determines that a health professional licensed or certified under the DOH may have abused, neglected, or exploited a vulnerable adult.<sup>76</sup>

The DCF must also provide written notification to the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred if evidence indicates that further

<sup>73</sup> “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(27), F.S.

<sup>74</sup> The central abuse hotline must be operated in such a manner as to enable the DCF to: accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited; determine whether the allegations require an immediate, 24-hour, or next-working-day response priority; when appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter’s concerns; immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline; Section 415.103(1), F.S.

<sup>75</sup> Section 415.1034, F.S.

<sup>76</sup> Section 415.1055, F.S.

criminal investigation is warranted. At the conclusion of a protective investigation at a facility, the DCF must notify, in writing, either the Florida local advocacy council or long-term care ombudsman council of the results of the investigation.<sup>77</sup>

To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the DCF is required to develop and maintain inter-program agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Council, the Florida Statewide Advocacy Council, and other agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the DCF in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities. In addition, the DCF must cooperate with and seek cooperation from all appropriate public and private agencies, including health agencies, educational agencies, social service agencies, courts, organizations, or programs providing or concerned with human services related to the prevention, identification, or treatment of abuse, neglect, or exploitation of vulnerable adults.<sup>78</sup>

### **Florida's Long-Term Care Ombudsman Program**

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program to be eligible to receive funding associated with programs under the OAA.<sup>79</sup> In Florida, the program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, ALFs, and adult family-care homes. The Ombudsman Office is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by and serves at the pleasure of the Secretary of Elderly Affairs.<sup>80</sup> The program is supported with both federal and state funding.<sup>81</sup>

Florida's Long-Term Care Ombudsman Program (State Program) is made up of nearly 400 volunteers, who are organized into councils in 17 districts<sup>82</sup> around the state. During fiscal year 2009-2010 (October 1, 2009 to September 30, 2010), ombudsmen:

- Completed 4,015 administrative assessments statewide, visiting 100 percent of the licensed long-term care facilities in Florida;
- Completed 9,098 complaint investigations;<sup>83</sup>

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<sup>77</sup> *Id.*

<sup>78</sup> Section 415.106(2), F.S.

<sup>79</sup> 42 U.S.C. 3058. *See also* s. 400.0061(1), F.S.

<sup>80</sup> Section 400.0063, F.S.

<sup>81</sup> According to *Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report*, in fiscal year 2009-2010, the program received a total of \$3,242,586 in funding; the state contribution totaled \$1,452,977. *Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report*, available at: <http://ombudsman.myflorida.com/publications/ar/2009-2010%20Annual%20Report.pdf> (Last visited on January 17, 2012).

<sup>82</sup> A list of the district offices is available at: <http://ombudsman.myflorida.com/DistrictsList.php> (Last visited on January 17, 2012).

<sup>83</sup> Section 400.0073, F.S., requires a local council to investigate any complaint of a resident, a representative of a resident, or any other credible source based on the action or inaction of an administrator, employee, or representative of a long-term care facility, which might be contrary to law; unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unaccompanied by an adequate



- Donated 20,221 hours of volunteer service to the residents; and
- Provided 5,829 free in-service trainings in nursing homes, ALFs, and adult family care homes throughout the state to encourage facility staff members to adopt best practices to improve the residents' quality of life.<sup>84</sup>

The Ombudsman Office is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of nursing homes, ALFs and adult family care homes. Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the purpose of the State Program, the statewide toll-free telephone number for receiving complaints, and other relevant information regarding how to contact the State Program. Residents or their representatives must be furnished additional copies of this information upon request.<sup>85</sup>

The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, are confidential and exempt from Florida's public records laws, unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing; the complainant or resident consents orally and the consent is documented contemporaneously in writing by the ombudsman council requesting such consent; or the disclosure is required by court order.<sup>86</sup>

### **The Miami Herald Investigative Series on Assisted Living Facilities**

Beginning on April 30, 2011, the Miami Herald published a three-part series, titled "Neglected to Death," which exposed several examples of abuses occurring in ALFs and the state regulatory responses to such cases. According to the publication, the Miami Herald spent a year examining thousands of state inspections, police reports, court cases, autopsy files, e-mails, and death certificates and conducting dozens of interviews with operators and residents throughout Florida.

The three-part investigative series gives several examples of abuses or neglect that took place at facilities in Florida, including:<sup>87</sup>

- The administrator of an ALF in Caryville punished his disabled residents by refusing to give them food and drugs, threatened the residents with a stick, doped the residents with powerful tranquilizers, beat residents who broke the facilities rules, forced residents to live without air conditioning even when temperatures reached 100 degrees Fahrenheit, and fell asleep on the job while a 71-year-old woman with mental illness wandered outside the facility and drowned in a nearby pond.

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statement of reasons; performed in an inefficient manner; or otherwise adversely affecting the health, safety, welfare, or rights of a resident.

<sup>84</sup> *Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report*, available at:

<http://ombudsman.myflorida.com/publications/ar/2009-2010%20Annual%20Report.pdf> (Last visited on January 17, 2012).

<sup>85</sup> Section 400.0078, F.S.

<sup>86</sup> Section 400.0077(1)(b), F.S.

<sup>87</sup> The Miami Herald, *Neglected to Death, Parts 1-3*, available at: <http://www.miamiherald.com/2011/04/30/2194842/once-pride-of-florida-now-scenes.html> and <http://www.miamiherald.com/2011/05/03/2199747/key-medical-logs-doctored-missing.html> (Last visited on January 17, 2012) (see left side of article to access weblinks to the three-part series).

- In an ALF in Kendall, a 74-year-old woman was bound for more than 6 hours, the restraints pulled so tightly that they ripped into her skin and killed her.
- In an ALF in Hialeah, a 71-year-old man with mental illness died from burns after he was left in a bathtub filled with scalding water.
- In an ALF in Clearwater, a 75-year-old Alzheimer's patient was torn apart by an alligator after he wandered from his ALF for the fourth time.
- In an ALF in Haines City, a 74-year-old suffering from diabetes and depression died after going 13 days without crucial antibiotics and several days without food or water.
- An ALF in Miami-Dade County had a door alarm and video cameras in disrepair, an unlocked back gate on the premises, and an attendant who had fallen asleep, which enabled an 85-year-old to wander from the facility and drown in a pond.
- The administrator of an ALF in Dunedin drove a male resident with a criminal history to a pharmacy to fill a prescription for powerful narcotics but failed to collect the drugs from the resident. The resident fed the drugs to a 20-year-old female resident with mental illness, raped her, and caused her to die of an overdose.
- In an ALF in Tampa, a 55-year-old man died after his caretakers failed to give him food, water, or medicine.
- An ALF in Orlando failed to give an 82-year-old woman critical heart medication for 4 days, failed to read her medical chart, and gave her the wrong drugs on the day she died.
- An ALF in West Melbourne shut off the facility's exit alarm when it was triggered without doing a head count or calling 911 as a 74-year-old man slipped out the door and drowned in a nearby pond.
- An ALF in Deerfield Beach did not provide protections to a 98-year-old woman who fell 11 times and died of resulting injuries, including a fractured neck.
- A caretaker in an ALF in Miami-Dade County strapped down a 74-year-old woman for at least 6 hours so tightly that she lost circulation in her legs and as a result a blood clot formed which killed her.

The investigative series decried the state's regulatory and law enforcement agencies responses to the alleged egregious acts claiming:<sup>88</sup>

- Nearly once a month residents die from abuse and neglect, with some caretakers altering and forging records to conceal evidence, but law enforcement agencies almost never make arrests.
- Facilities are routinely caught using illegal restraints, including powerful tranquilizers, locked closets, and ropes, but the state rarely punishes them.
- State regulators could have shut down 70 facilities in the past 2 years for a host of severe violations, but only seven facilities were closed.
- Although the number of ALFs has increased substantially over the last 5 years, the state has dropped critical inspections by 33 percent.
- Although the state has the authority to fine ALFs that break the law, the penalties are routinely decreased, delayed, or dropped altogether.
- The state's lack of enforcement has prompted other government agencies to cut off funding and in some cases the agencies refuse to send clients to live in certain ALFs.

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<sup>88</sup> *Id.*

- In at least one case, an investigation was never performed by the AHCA, although a woman drowned after wandering off the premises.
- It took the AHCA inspectors an average of 37 days to complete a complaint investigation in 2009, which was 10 days longer than 5 years earlier.
- At least five times, other state agencies were forced to take the lead in shutting down homes when the AHCA did not act.

### **Governor Rick Scott's ALF Task Force**

In response to the Miami Herald Investigative Series on ALFs, Governor Rick Scott announced in his veto message of HB 4045 (2011),<sup>89</sup> which pertains to ALFs, that he was going to form an ALF task force for the purpose of examining current assisted living regulations and oversight.<sup>90</sup> Governor Scott directed the task force to develop recommendations to improve the state's ability to monitor quality and safety in ALFs and ensure the well-being of their residents.<sup>91</sup>

The task force, which is now referred to as the Assisted Living Workgroup, held meetings on August 8, 2011, in Tallahassee; September 23, 2011, in Tampa; and November 7 and 8, 2011 in Miami. In addition to public testimony and presentations, the Assisted Living Workgroup discussion focused on assisted living regulation, consumer information and choice, and long term care services and access.<sup>92</sup>

The Assisted Living Workgroup made several recommendations in a final report released in December 2011, stating that it believed the recommendations would strengthen oversight and reassure the public that ALFs are safe places for their residents. The general recommendations of the workgroup are to:

- Increase administrator qualifications.
- Expand and improve training for administrators and other staff.
- Increase survey and inspection activity with a focus on facilities with poor track records.
- Create a systematic appeal process for residents who want to contest a notice of eviction.
- Increase reporting of resident data by facilities.
- Enhance enforcement capacity by state agencies.

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<sup>89</sup> HB 4045 (2011) repealed a requirement for the annual dissemination of a list of ALFs that had been sanctioned or fined, a requirement for an ALF to report monthly any liability claims filed against it, a requirement to disseminate the results of the inspection of each ALF, provisions concerning rule promulgation for ALFs by the DOEA, provisions concerning the collection of information regarding the cost of care in ALFs, and the authority for local governments or organizations to contribute to the cost of care of local facility residents.

<sup>90</sup> The task force, which is now referred to as the "Assisted Living Workgroup," consists of 14 members. These members represent the following entities: Florida Association of Homes and Services for the Aging; Eastside Care, Inc.; Palm Breeze Assisted Living Facility; Long Term Care Ombudsman; Florida House of Representatives; Lenderman and Associates; The Florida Bar, Elder Law Section; Florida State University, the Pepper Center; the Villa at Carpenters; Florida Council for Community Mental Health; Florida Assisted Living Association; Villa Serena I-V, Florida Senate; and Florida Health Care Association. Agency for Health Care Administration, *Assisted Living Workgroup Members*, available at: <http://ahca.myflorida.com/SCHS/ALWG2011/wgmembers.shtml> (Last visited on January 16, 2012).

<sup>91</sup> Governor Rick Scott's veto message for HB 4045 (2011) is available at: <http://www.flgov.com/wp-content/uploads/2011/06/hb4045.pdf> (Last visited on January 17, 2012).

<sup>92</sup> Agency For Health Care Administration, Assisted Living Workgroup, *Final Report And Recommendations*, available at: <http://ahca.myflorida.com/SCHS/ALWG2011/alwg2011.shtml> (Last visited on January 16, 2012).

- Create of a permanent policy review and oversight council with members representing all stakeholder groups.
- Require all facilities with at least one resident receiving mental health care to be licensed as an LMH facility.
- Provide greater integration of information from all agencies involved in ALF regulation in order to identify potential problems sooner.<sup>93</sup>

The Assisted Living Workgroup also decided that there are additional matters that should be reviewed more in-depth prior to making recommendations and therefore, recommended that a phase II workgroup be appointed by the Governor to review these additional matters at a later date.<sup>94</sup>

### **Interim Report 2012-128**

Professional staff of the Senate Health Regulation Committee recommended in interim report 2012-128, Review Regulatory Oversight of Assisted Living Facilities in Florida,<sup>95</sup> a myriad of options for the Legislature to consider to improve the regulatory oversight of ALFs. To better protect residents from abuse, neglect, or otherwise harmful conditions in ALFs in Florida, the report recommends that the Legislature enact legislation to:

- Require ALFs to report occupancy rates and demographic and resident acuity information.
- Require the AHCA to conduct abbreviated inspections and develop targeted and efficient inspection plans.
- Require the AHCA to use lead surveyors to ensure consistent inspections.
- Create a workgroup to assess the AHCA's inspection forms.
- Better fund the AHCA to conduct inspections, whether through fee or fine increases.
- Require additional monitoring of LMH facilities, akin to the additional monitoring currently conducted on LNS and ECC facilities.
- Require better oversight of core training providers.
- Expand Florida's core training curriculum and require additional administrator qualifications.
- Require staff to demonstrate, by a short examination, receipt and comprehension of staff training.
- Increase staffing ratios for facilities with specialty licenses.
- Increasing elopement training requirements and require AHCA attendance of elopement drills.
- Require additional administrator qualifications and additional training for all staff of LMH facilities.
- Require a facility with any mental health resident, instead of three mental health residents, to obtain an LMH license.
- Reduce the AHCA's discretion to assess administrative penalties and increase administrative penalties.
- Establish a workgroup to review agency regulatory oversight of ALFs and make recommendations, if any, to streamline the regulatory oversight of ALFs.

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Florida Senate, Interim Report 2012-128, is available at:

<http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-128hr.pdf> (Last visited on January 17, 2012).

- Designate the AHCA as the lead agency to coordinate all complaints related to ALFs.
- Require each agency to establish a direct line of communication to the AHCA to communicate complaints and require the AHCA to maintain a database to track such complaints.
- Require staff of regulatory state or local agencies to immediately report abuse, neglect, or exploitation of a vulnerable adult to the DCF's central abuse hotline.
- Require the AHCA to develop and implement a user-friendly rating system of ALFs for consumers to use.

Require ALFs to notify residents that any complaint made to an ombudsman, and the identification of the person making the complaint, is confidential.

### III. Effect of Proposed Changes:

**Section 1** amends s. 394.4574, F.S., to require community living support plans to be updated as needed, not only annually. Case managers are required to maintain a record of the date and time of face-to-face interaction with mental health residents, in order for the DCF to inspect such records for compliance with contractual or other requirements. The records must be retained for 2 years after the date of the last interaction.

This section also requires the DCF to ensure adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements.

**Section 2** amends s. 400.0078, F.S., to require a long-term care facility to provide notice to each resident or representative of a resident, upon admission, that the subject matter of a complaint made to the State Long-Term Care Ombudsman Program and the complainant's name and identity are confidential.

**Section 3** amends s. 415.1034, F.S., to require an employee or agent of a state or local agency who has regulatory responsibilities over, or who provides services to, persons residing in a state-licensed facility to report abuse, neglect, or exploitation of vulnerable adults to the DCF central abuse hotline.

**Section 4** amends s. 429.02, F.S., to define the term "board" to mean the Board of Assisted Living Facility Administration and the term "mental health professional" to mean a person licensed under chapters 458, 459, 464, 490, or 491, related to the practice of medicine, allopathic medicine, nursing, psychological services, and clinical counseling and psychotherapy services, respectively, who provides mental health services, or an individual who has at least 5 years of experience providing services that improve an individual's mental health or that treat mental illness.

**Section 5** amends s. 429.07, F.S., to conform a cross-reference and increase the standard licensure fee from \$300 to \$500, increase the per resident fee from \$50 to \$55, and increase the total fee cap from \$10,000 to \$15,000, for an ALF that has one or more class I or class II violations within the 2 years before licensure renewal.

**Section 6** amends s. 429.075, F.S., to require an ALF with any mental health residents, rather than three mental health residents, to obtain an LMH license. The eligibility requirements for

obtaining an LMH specialty license are strengthened. A successful applicant may not have been administratively sanctioned during the previous 2 years, or since initial licensure, for:

- Two or more class I or class II violations;
- Three or more repeat or recurring class III violations of identical or similar resident care standards from which a pattern of noncompliance is found by the AHCA;
- Three or more class III violations that were not corrected in accordance with an AHCA-approved corrective action plan;
- A violation of resident care standards, which required the ALF to employ certain consultant services;
- Denial, suspension, or revocation of a license for another licensed facility under which the license applicant has at least a 25 percent ownership interest; or
- Imposition of a moratorium or initiation of injunctive proceedings.

This section clarifies that for an ALF to obtain an LMH license, it must ensure that employees meet the LMH training requirements, in addition to any other training or education requirements.

This section also provides that after July 1, 2012, an administrator of a facility that has an LMH license must, in addition to any other educational requirements, have completed at least 6 semester credit hours of college-level coursework relating to mental health.

This section requires a mental health professional to serve as part of the AHCA inspection team that inspects LMH licensees. An LMH licensee must be monitored by a mental health professional quarterly. However, one of the monitoring visits may be in conjunction with a regular survey. If an ALF has been licensed for at least 2 years and has had a good performance record, one of the quarterly monitors may be waived by the AHCA, but not before the AHCA has first consulted with the ombudsman council to determine if any complaint has been made and substantiated against the facility.

**Section 7** amends s. 429.14, F.S., to require the AHCA to deny or revoke the license of an ALF that has 2 or more class I or class II violations that are similar or identical to violations identified by the AHCA within the previous 2 years or if the ALF committed a class I violation or any intentional or negligent act that caused the death of a resident.

**Section 8** amends s. 429.17, F.S., to prohibit an ALF that has been cited for 2 or more class I violations within the previous 2 years from obtaining a conditional license.

**Section 9** amends s. 429.176, F.S., to provide the eligibility requirements for an applicant for licensure as an ALF administrator and to require, as of July 1, 2013, all ALFs to operate under the management of a licensed ALF administrator.

To be eligible for licensure as an ALF administrator an applicant must:

- Be at least 21 years old;
- Provide proof to the Board that the applicant has a 4-year baccalaureate degree that includes some coursework in health care, gerontology, or geriatrics; a 4-year baccalaureate degree with at least 2 years of experience in direct patient care in an ALF or nursing home; or a

2-year associate degree that includes coursework in health care, gerontology, or geriatrics and at least 2 years of experience in direct patient care in an ALF or nursing home;

- Complete core and supplemental training developed by the Board;
- Pass a licensure examination with a minimum score of 80;
- Complete background screening; and
- Meet any other requirements under part I of ch. 429, F.S.

In addition, the applicant is responsible for paying a \$250 initial licensure fee and a \$250 fee for each biennial renewal of the license thereafter.

This section also exempts existing ALF administrators, who have been continuously employed as an ALF administrator for at least the 2 years before July 1, 2012, from the education requirements for licensure and the licensure examination. However, an applicant must provide the Board with proof of compliance with continuing education requirements, the administrator must not have been an administrator of a facility that was cited for a class I or class II violation within the prior 2 years, and the administrator is still required to complete core training.

This section also exempts licensed nursing home administrators from the core training requirements, but they must complete the supplemental training required for applicants for administrator licensure and must pass the licensure test. Other licensed professionals may be exempted from the training requirements as determined by the Board by rule.

This section provides that an applicant for administrator licensure, who fails the licensure examination, must wait 10 days to retake the licensure examination and may take the examination up to three times. If the applicant fails the examination three times, then he or she must retake the initial core and supplemental training before retaking the examination.

This section requires an administrator of an LMH licensee to have completed at least 6 semester credit hours of college-level coursework relating to mental health, in addition to any other education requirements.

A licensed administrator must take at least 18 hours of continuing education and pass a competency test with a minimum score of 80 every 2 years.

This section provides that an administrator may apply for inactive licensure status or a license may become inactive if an administrator does not complete continuing education courses on time or the administrator does not pay licensure renewal fees on time. A license may only be reactivated by the Board if renewal fees or delinquent fees and a reactivation fee are paid. The Board is given rulemaking authority relating to the inactive status and the reactivation of licenses and any related fees.

This section also authorizes the Board to develop rules relating to, and to issue, provisional licenses. Provisional licenses may be issued only to fill a position of an ALF administrator which unexpectedly becomes vacant and may only be issued for a single period not to exceed 6 months. The provisional license is to be issued to the person who is designated as the responsible person next in command in the event of the administrator's departure. The Board is prohibited from issuing a provisional license if the applicant is under investigation for, or has committed certain

acts. The Board is authorized to set an application fee for a provisional license not to exceed \$500.

**Section 10** amends s. 429.178, F.S., to clarify that all staff members, including administrators, employed by an ALF providing special care to residents with Alzheimer's disease or other related disorders and who provide regular or direct care to such residents, must complete up to 4 hours of initial dementia-specific training within 3 months after beginning employment. This section also reduces the amount of time, from 9 months to 6 months, that a direct caregiver working at such a facility and providing direct care to such residents must complete an additional 4 hours of training.

This section also removes the provision that any of the training related to Alzheimer's disease or related disorders required under this section satisfies the core training requirements for administrators, which relate to Alzheimer's disease or related disorders.

**Section 11** amends s. 429.19, F.S., to provide a cross-reference and establish certain penalties for violations. For a violation that results in the death of a resident, the AHCA must impose the maximum penalty for the class of violation committed. If a second or subsequent violation that is in the same class as a prior violation cited as a result of or since the last inspection is cited, the AHCA must double the fine that was previously assessed against the ALF when assessing a fine for the second or subsequent violation. The AHCA is also required to impose a fine for class III or class IV violations, regardless of whether the violations are corrected.

**Section 12** amends s. 429.23, F.S., to require, instead of authorize, a licensed ALF to establish a risk management and quality assurance program.

**Section 13** amends s. 429.256, F.S., to conform a cross-reference to other changes made in the bill.

**Section 14** amends s. 429.28, F.S., relating to resident bill of rights, to require an ALF to post notice in a prominent place in each facility that the subject matter of a complaint made to the Ombudsman Office or a local long-term care ombudsman council and the names and identities of the residents involved in the complaint and complainants are confidential.

This section also requires, instead of permits, the AHCA to conduct periodic followup inspections to monitor the compliance of facilities having a history of class I violations that threaten the health, safety, or security of residents.

This section requires the AHCA to impose a fine of \$2,500, in addition to any other penalty, if the ALF cannot show in a court of law good cause for the termination of a resident when that act is challenged as retaliatory.

**Section 15** amends s. 429.34, F.S., to designate the AHCA as the central agency for receiving and tracking complaints to ensure that allegations regarding facilities are timely responded to and that licensure enforcement action is initiated if warranted. State agencies regulating, or providing services to residents of ALFs, must report any substantiated allegations complaints, or



allegations or complaints that are likely to have occurred, to the AHCA as soon as reasonably possible.

This section requires the AHCA to have lead surveyors in each field office who specialize in assessing ALFs and requires such surveyors to provide initial and ongoing training to surveyors inspecting and monitoring ALFs to ensure consistent monitoring and inspections of ALFs. In addition, the AHCA must have one statewide lead surveyor who specializes in ALF inspections to coordinate communication between lead surveyors and ensure statewide consistency in applying facility inspection laws and rules.

**Section 16** amends s. 429.41, F.S., to require ALFs to notify the AHCA at least 15 calendar days before conducting its two elopement drills. The AHCA is required to randomly select 10 percent of the ALFs to have an AHCA employee attend and observe a resident elopement drill at each of the selected facilities. The AHCA's attendance must be unannounced. If the AHCA employee observes an elopement drill that does not meet standards established by rule, the AHCA must notify the ALF of the deficiencies within 15 calendar days after the drill and the ALF must submit a corrective action plan to the AHCA within 30 calendar days after receiving such notice.

This section authorizes the DOEA to require additional staffing for facilities that have specialty licenses, but the additional staffing must correlate with the number of residents receiving special care and the type of special care required.

This section requires, rather than authorizes, the AHCA to conduct an abbreviated biennial standard licensure inspection in a facility that has a good record of past performance in order to allocate AHCA resources efficiently.

**Section 17** amends s. 429.49, F.S., to increase the criminal penalty from a misdemeanor of the second degree to a misdemeanor of the first degree for any person who fraudulently alters, defaces, or falsifies any medical or other record of an ALF, or causes or procures any such offense to be committed.

**Section 18** creates s. 429.515, F.S., to require all employees hired by an ALF after July 1, 2012, to attend a pre-service orientation, which must be at least 2 hours in duration and cover the following topics:

- Care of persons who have Alzheimer's disease or other related disorders.
- De-escalation techniques.
- Aggression control.
- Elopement prevention.
- Behavior management.

Upon completion of the pre-service orientation, the employee must sign an affidavit, under penalty of perjury, stating that the employee completed the orientation. The affidavit must be maintained in the employee's work file.

**Section 19** amends s. 429.52, F.S., to require ALF staff members who provide regular or direct care to residents to complete a board-approved training curriculum within 30 days after employment, in addition to pre-service orientation. This requirement does not pertain to

administrators. The individual participating in the training is required to pay any cost or fee associated with the training. After completing such training, the staff member must complete an interactive online tutorial to demonstrate an understanding of the training received. Upon completing the tutorial, the staff member will receive a certificate of completion, which must be maintained in the employee's work file.

The staff members who provide regular or direct care to residents must participate in a minimum of 8 hours of continuing education every 2 years. The continuing education may be offered through online courses and the person taking the courses is responsible for paying any fee associated with the courses.

**Section 20** creates s. 429.521, F.S., to require administrators and staff members who provide regular or direct care to residents of an ECC licensee to complete a minimum of 6 hours of board-approved ECC training within 30 days after beginning employment.

This section also requires administrators employed by a LNS licensee to complete a minimum of 4 hours of board-approved courses that train and educate administrators on the special needs and care of those requiring LNS services. The training must be completed within 30 days after employment.

Staff, including administrators, who prepare or serve food must receive a minimum of 1 hour of in-service training in safe food handling practices within 30 days after beginning employment, which is consistent with current law.

This section clarifies that administrators, as well as staff members, must receive at least 1 hour of in-service training on the ALF's resident elopement response policies and procedures within 30 days after beginning employment. A copy of the ALF's resident elopement policies and procedures must be provided to staff *and* the administrator. Staff *and* administrator, must demonstrate an understanding and competency in the implementation of the elopement response policies and procedures.

This section requires administrators of an LMH licensee and staff members who provide regular or direct care to mental health residents to complete a minimum of 8 hours of board-approved mental health training within 30 days after beginning employment. Within 30 days after completing the LMH training, a staff member must complete an online interactive tutorial to demonstrate an understanding of the training received and pay for any fee associated with the tutorial. An administrator must pass an examination related to the training with a minimum score of 80 and must pay for any fee associated with the examination. A staff member who does not complete the tutorial, or an administrator who fails the examination may not provide regular or direct care to residents until the staff member completes the tutorial or the administrator passes the examination. If the administrator does not pass the examination within 6 months after completing the mental health training, the administrator may not be an administrator of an LMH licensee until the administrator passes the examination.

This section requires administrators, as well as staff members, involved with the management of medications and the assistance with self-administration of medications to complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or DOEA

staff member, which is consistent with current law. The Board must establish, by rule, the minimum requirements of this training, including continuing education requirements.

This section authorizes the Board to, by rule, require other facility staff members to participate in training relevant to their job duties.

**Section 21** creates s. 429.522, F.S., to require any individual seeking to provide core training in Florida on or after January 1, 2013, to be certified by the Board. The applicant for certification as a core training provider must provide the Board with proof of completion of core training, passage of the ALF administrator licensure examination, and compliance with continuing education requirements. In addition, an applicant for certification must:

- Provide proof of completion of a 4-year baccalaureate degree from an accredited college or university and have worked in a management position in an ALF for 3 years after obtaining certification in core training courses;
- Have worked in a management position in an ALF for 5 years after obtaining certification in the core training courses and have 1 year of teaching experience as an educator or staff trainer for persons who work in an ALF or another long-term care setting;
- Have been previously employed as a trainer of core training courses for the DOEA;
- Have at least 5 years of employment with the AHCA as a surveyor of ALFs;
- Have at least 5 years of employment in a professional position in the AHCA's assisted living unit;
- Have at least 5 years of employment as an educator or staff trainer for persons working in an ALF or another long-term care setting;
- Have at least 5 years of employment as a trainer of core of ALF courses not directly associated with the DOEA;
- Have a 4-year baccalaureate degree from an accredited college or university in the areas of health care, gerontology, social work, education, or human services and at least 4 years of experience as an educator or staff trainer for persons working in an ALF or another long-term care setting after receiving certification in core courses; or
- Meet other qualification criteria as defined by rule of the Board.

The Board is required to oversee core training providers and establish, by rule, requirements for trainer certification and de-certification or other disciplinary actions.

This section requires the Board, if funding is available, to develop by January 1, 2013, an electronic database, which must list all persons holding a certificate as a core training provider and any history of violations. The Board must maintain the database and make the database accessible to the public. Core trainers must also submit to the Board a list of individuals who have completed training within 24 hours after the training has been completed in order for such information to be included in the database.

**Section 22** creates s. 429.523, F.S., to authorize training and testing required under part I, ch. 429, F.S., to be provided by board-approved training and testing centers. The Board, when reviewing an applicant, must consider whether the center will provide sufficient space for training, the location of the center and whether another center already provides training or testing services in the approximate area, the fee to be charged by the center for providing such services,

whether the center has sufficient and qualified staff to provide such services, and any other consideration the Board deems necessary to approve a center.

The Board is required to provide a certificate of approval to an approved center and the center must keep the certificate on file as long as it provides training and examination services.

The Board is authorized to inspect training and testing centers to determine whether the centers meet law and rule requirements. The Board may de-certify a center that does not continue to meet such requirements.

**Section 23** amends s. 429.54, F.S., to require the AHCA, the DOEA, the DCF, and the APD, if funds are available, to develop or modify electronic systems of communication among state-supported automated systems to ensure that relevant information pertaining to the regulation of ALFs and ALF staff is timely and effectively communicated among agencies in order to facilitate the protection of residents.

This section also requires ALFs to submit semiannually, electronic reports to the AHCA, which must include:

- The number of beds in the facility;
- The number of beds being occupied;
- The number of residents who are younger than 65 years of age, are 65 to 74 years of age, are 75 to 84 years of age, and are 85 years of age or older;
- The number of residents who are mental health residents, who are receiving extended congregate care, who are receiving limited nursing services, and who are receiving hospice care;
- If there is a facility waiting list, the number of individuals on the waiting list and the type of services or care that they require, if known;
- The number of residents receiving OSS; and
- The number of residents who are Medicaid recipients and the type of waiver used to fund each such resident's care.

The report must be submitted in accordance with a reporting cycle established by AHCA rule and the AHCA may allow an ALF to submit the report in writing, instead of electronically, if the ALF provides written notice at least 30 days before the report is due that it cannot provide an electronic report and the reason the report is being provided in writing.

The AHCA is required to maintain the reported information in electronic format and must use the reported information to track trends in ALF resident populations and needs.

The ALF reporting requirement is scheduled to expire on July 1, 2017, which will allow the Legislature to review whether the reporting requirement is overly burdensome to ALFs and whether the reported information is beneficial to the AHCA and the Legislature to track trends relating to ALF residents.

**Section 24** creates s. 429.55, F.S., to create the Board within AHCA, which is to be headquartered in Tallahassee and must consist of 9 members, who are to be appointed by the

Governor and confirmed by the Senate. The members will serve for a term of 4 years or for the remainder of an unexpired term following a vacancy. The membership of the Board must include a licensed ALF administrator and 2 residents of an ALF or 2 family members of an ALF resident and a representative from each of the following:

- The AHCA.
- The DOEA.
- The DCF.
- The APD.
- The DOH.
- The Ombudsman Office.

This section prohibits a person from being appointed as a member of the Board if a conflict of interest exists, except the ALF administrator who has been appointed may retain a financial interest in the facility he or she administers at the time of appointment.

The duties of the Board include:

- Adopting rules to carry out the duties of the Board.
- Overseeing ALF administrator licensure, which requires the Board to:
  - Develop, impose, and enforce specific standards that are designed to ensure that administrators are individuals of good character and otherwise suitable and qualified to serve as administrators by virtue of training or experience in the field of health care facility administration.
  - Develop by appropriate techniques a method for determining whether an applicant meets such standards.
  - Issue licenses, including provisional licenses, to qualified applicants meeting Board standards and revoke or suspend licenses previously issued by the Board if the licensee fails to substantially conform to the requirements of such standards.
  - Establish and carry out procedures, adopted by rule, which are designed to ensure that administrators comply with and maintain standards adopted by the Board.
  - Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the AHCA alleging that an administrator failed to comply with the requirements or standards adopted by the Board.
  - Continually seek to improve the standards imposed for the licensure of administrators and the procedures and methods for enforcing such standards.
  - Develop a core training curriculum, in consultation with the AHCA, the DOEA, and the DCF, to be completed by an applicant for administrator licensure. The curriculum must include at least 40 hours of training, be offered in English and Spanish, be reviewed at least annually by the Board, and be updated as needed to reflect changes in the law, rules, and best practices. The curriculum must, at a minimum, cover state law and rules relating to ALFs; resident rights and the identification and reporting of abuse, neglect, and exploitation; special needs of elderly persons, persons who have mental illness, and persons who have developmental disabilities and how to meet those needs; nutrition and food service; medication management, recordkeeping, and proper techniques for assisting residents who self-administer medication; firesafety requirements; care of persons who have Alzheimer's disease and related disorders; elopement prevention; aggression and behavior management, de-escalation techniques, and proper protocols and procedures

- relating to the Baker Act; do-not-resuscitate orders; infection control; admission and continued residency; phases of care and interacting with residents; and best practices in the industry.
- Develop a supplemental course consisting of at least 10 hours of training related to extended congregate care, limited mental health, best practices, and business operations, including, but not limited to, human resources, financial management, and supervision of staff, to be completed by an applicant for ALF administrator licensure.
  - Develop an ALF administrator licensure examination in consultation with the AHCA, the DOEA, and the DCF which tests the applicant's knowledge and training of the required subject matter. The examination must be offered in English and Spanish, reviewed at least annually by the Board, and updated as needed to reflect changes in the law, rules, and best practices. A minimum score of 80 is required to show successful completion of the training requirements.
  - Developing an LMH curriculum and examination, in consultation with a panel of at least three mental health professionals, which must be completed by an administrator within 30 days after being employed by an LMH licensee. The Board must ensure that the examination is available online, offer the examination in English and Spanish, and update the examination as needed, but at least annually. The Board may establish an examination fee or a fee may be charged by a testing service. The examination fee may not exceed the cost of administering the examination.
  - Developing a continuing education curriculum, in consultation with the AHCA, the DOEA, and the DCF, for administrators and for staff members who provide regular and direct care to residents. The Board must require additional credit hours for administrators who are employed by ECC, LNS, or LMH licensees. The Board must also develop a short test for administrators to take upon completing the continuing education curriculum. The Board must review the continuing education curriculum and test at least annually, and update the curriculum and examination as needed to reflect changes in the law, rules, and best practices. Continuing education must include topics similar to those of the core training and in-service training and may include additional subject matter that enhances the knowledge, skills, and abilities of administrators and staff members, as adopted by rule.
  - Developing, in consultation with stakeholders, a standardized staff training curriculum for staff members of an ALF, other than an administrator, who provide regular or direct care to residents. Only staff members hired on or after July 1, 2012, are subject to this training requirement. The Board may exempt from this training requirement nurses, certified nursing assistants, and home health aides who can demonstrate that they have already completed such training or substantially similar training. The curriculum must include at least 20 hours of in-service training, with at least 1 hour of training per topic, covering, at a minimum, reporting major incidents; reporting adverse incidents; facility emergency procedures; resident rights in an ALF; recognizing and reporting resident abuse, neglect, and exploitation; resident behavior and needs; providing assistance with the activities of daily living; infection control; and aggression and behavior management and de-escalation techniques.
  - Developing an interactive online tutorial, in consultation with the AHCA, the DOEA, the DCF, and stakeholders, which must be completed by facility staff members who provide regular or direct care to ALF residents. The tutorial must be based on LMH training. The Board must offer the tutorial in English and Spanish and update the tutorial as needed, but at least annually. The Board shall provide a certificate to each staff member who completes the tutorial.

- Requiring and providing, or causing to be provided, the training or education of staff members of a facility beyond that which is required under part I of ch. 429, F.S., if the Board or the AHCA determines that there are problems in a facility which could be reduced through specific staff training or education.
- Approving testing and training centers.
- Certifying core training providers who meet the required qualifications for certification.

This section also provides the Board with disciplinary authority over administrators, authorizing the Board to deny licensure or license renewal or suspend or revoke the license of an administrator who is under investigation for, or who has committed any of the following:

- Practicing ALF administration with a revoked, suspended, inactive, or delinquent license.
- Using the name or title “assisted living facility administrator” if the person has not been licensed as such.
- Presenting as his or her own the license of another.
- Giving false or forged evidence to the Board or a member thereof for the purpose of obtaining a license.
- Using or attempting to use an administrator’s license that has been suspended or revoked.
- Knowingly employing unlicensed persons in the practice of ALF administration.
- Knowingly concealing information relative to violations of part I, ch. 429, F.S.
- Attempting to procure a license to practice ALF administration by bribery, fraudulent misrepresentation, or through an error of the AHCA or the Board.
- Having a license to practice ALF administration revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state, territory, or country.
- Being convicted or found guilty of, or entered a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which relates to the practice of ALF administration.
- Making or filing a report or record that the licensee knows to be false, intentionally failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those which are signed in the capacity of a licensed ALF administrator.
- Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
- Committing fraud or deceit or exhibiting negligence, incompetence, or misconduct in the practice of ALF administration.
- Violating a lawful order of the Board or AHCA previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the Board or AHCA.
- Repeatedly acting in a manner that is inconsistent with the health, safety, or welfare of the residents of the facility in which he or she is the administrator.
- Being unable to practice ALF administration with reasonable skill and safety to residents by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition.
- Paying, giving, causing to be paid or given, or offering to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, directly or indirectly, of ALF usage.

- Willfully permitting unauthorized disclosure of information relating to a resident or his or her records.
- Discriminating with respect to residents, employees, or staff members on account of race, religion, sex, or national origin.
- Violating any provision of part I of ch. 429, F.S., part II of chapter 408, F.S., or rules adopted pursuant to part I of ch. 429, F.S.

The Board is required to revoke the license of an administrator who knowingly participates in intentional misconduct, or engages in conduct that constitutes gross negligence, and contributes to the death of a resident.

This section also provides the Board with rulemaking authority related to education, training, testing, procedures, forms, and fees, and authorizes the Board to consult with or contract with a service provider to develop training and provide online training, testing, or tutorial services.

**Section 25** creates s. 429.56, F.S., to require the AHCA, in consultation with the DOEA, the DCF, and the Ombudsman Office, to develop and adopt by rule a user-friendly ALF rating system. The rating system must be publicly available on the Internet and must be based on resident satisfaction, the number and class of deficiencies for which the facility has been cited, AHCA inspection reports, inspection reports of any other regulatory agency, assessments conducted by the ombudsman program, and other criteria as determined by the AHCA. The Internet home page for the rating system must include a link that allows consumers to complete a voluntary survey that provides feedback on whether the rating system is helpful and suggestions for improvement.

This section also gives the AHCA rulemaking authority to implement the rating system.

**Section 26** creates an undesignated section of law to require the AHCA to create a task force consisting of at least one representative from the AHCA, the DOEA, the DCF, the DOH, and the Ombudsman Office, for the purpose of determining whether agencies have overlapping regulatory responsibilities over ALFs. The task force is required to meet at least 3 times and must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by January 1, 2013. The report must include the task force's findings and recommendations pertaining to streamlining agency oversight of ALFs and improving the effectiveness of regulatory functions.

The task force is scheduled to be terminated as of March 1, 2013.

**Section 27** creates an undesignated section of law to require the AHCA, by January 1, 2013, to submit copies of all of its inspection forms used to inspect ALFs to the Ombudsman Office. The Ombudsman Office is required to create and act as the chair of a task force of up to 11 members, consisting of an ombudsman, one representative of a nonprofit ALF, one representative of a for-profit ALF, at least one ALF resident or family member of a resident, other stakeholders, and one representative from each of the following:

- The AHCA.
- The DOEA.
- The DCF.



- The DOH.

The task force is required to provide recommendations, if any, to modify the inspection forms to ensure the inspections adequately assess whether the ALFs are in compliance with the law, meet the needs of residents, and ensure resident safety. The task force must provide its recommendations, and explanations of any recommendations, to the AHCA within 90 days after receiving the inspection forms.

The task force is scheduled to terminate on July 1, 2013.

**Section 28** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill 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 bill 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 bill 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:**

The bill increases the standard ALF license fee from \$300 to \$500, when an ALF is cited for one or more class I or class II violations within the two years prior to licensure renewal. Additionally, the per-bed fee is increased from \$50 to \$55, and the total licensure fee is capped at \$15,000, instead of the current \$10,000 fee cap.

The bill establishes ALF administrator licensure fees of \$250 for initial licensure and \$250 for each licensure renewal period. The bill also requires participants to pay for any training fees or fees required to take a tutorial or examination.

The bill provides that an administrator must pay a fee when applying for inactive status of his or her license and that an administrator with a license in inactive status must pay a reactivation fee in addition to any licensure renewal or delinquency fee.

The bill authorizes the Board to establish an application fee not to exceed to \$500 for a provisional license for an ALF administrator.

**B. Private Sector Impact:**

ALFs that are cited for certain types of violations would be subject to increased fines and fees. An ALF that commits a retaliatory act against a resident without showing good cause in court would be subject to a fine of \$2,500.

Those who are required to complete certain training requirements under the bill are responsible for the cost of such training.

**C. Government Sector Impact:**

The AHCA and DOEA would incur an indeterminate amount of costs associated with the additional rulemaking and oversight responsibilities provided for in the bill. The AHCA's costs should be somewhat offset by the increased fine and fee amounts provided for in the bill.

A fiscal analysis has been requested, but was not available for this analysis.

**VI. Technical Deficiencies:**

Line 496 of the bill contains an improper cross-reference. Section 429.176, F.S., should be cross-referenced instead of s. 429.56, F.S.

In line 1033 of the bill, the word "education" should be deleted.

In line 1228 of the bill, the word "examination" should be deleted.

In line 1281 of the bill, the word "a" should be replaced with "an."

**VII. Related Issues:**

The bill does not authorize a fee for the certification of core training providers or for a certificate of approval for a training and testing center.

**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.