HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1319 Assisted Living Facilities
SPONSOR(S): Health Care Appropriations Subcommittee; Health Innovation Subcommittee; Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 1 N, As CS	Guzzo	Shaw
2) Health Care Appropriations Subcommittee	12 Y, 0 N, As CS	Clark	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The proposed committee substitute strengthens the regulation of Assisted Living Facilities (ALFs) and makes other regulatory changes to improve the quality of ALFs.

Specifically, the bill:

- Clarifies who is responsible for assuring that mental health residents in an ALF receive necessary services.
- Requires ALFs to provide information to new residents upon admission that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right.
- Creates a provisional Extended Congregate Care (ECC) license for new ALFs and specifies when the Agency for Health Care Administration (AHCA) may deny or revoke a facility's ECC license.
- Reduces by half the number of monitoring visits AHCA must conduct for ALFs with Limited Nursing Services (LNS) licenses and ECC licenses.
- Requires facilities with one or more, rather than three or more, state supported mental health residents obtain a limited mental health (LMH) license.
- Allows AHCA to revoke the license of a facility with a controlling interest that has or had a 25 percent or greater financial or ownership interest in a second facility which closed due to financial inability to operate or was the subject of other specified administrative sanctions.
- Clarifies the criteria under which AHCA must revoke or deny a facility's license.
- Specifies circumstances under which AHCA must impose an immediate moratorium on a facility.
- Sets fines for all classes of violations to a fixed amount at the midpoint of the current range and multiplies these new fine amounts for facilities licensed for 100 or more beds by 1.5 times.
- Allows AHCA to impose a fine for a class I violation even if it is corrected before AHCA inspects a facility.
- Doubles fines for repeated serious violations.
- Requires that fines be imposed for repeat minor violations regardless of correction.
- Doubles the fines for minor violations if a facility is cited for the same minor violation three or more times over the course of three licensure inspections.
- Specifies a fine amount of $500 for ALFs that are not in compliance with background screening requirements.
- Adds certain responsible parties and agency personnel to the list of people who must report abuse or neglect to the Department of Children and Families' (the DCF) central abuse hotline.
- Requires new facility staff, who have not previously completed core training, to attend a 2 hour pre-service orientation before interacting with residents.
- Requires AHCA to conduct a study of inter-surveyor reliability in order to determine the consistency with which regulations are applied to facilities.
- Requires AHCA to propose a plan for an ALF rating system by November 1, 2013.
- Requires AHCA to create a website to assist consumers in selecting an ALF by January 1, 2014.
- Provides an appropriation.

The bill has an insignificant positive fiscal impact due to increased fines; however, AHCA will require additional staff resources to implement the provisions of the legislation. The additional fine revenue is expected to exceed the cost of the additional resources. The bill provides an appropriation with sufficient trust fund authority to implement the regulatory activities provided in the proposed legislation.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Assisted Living Facility Reform

In April of 2011, the Miami Herald completed a three part investigative series relating to assisted living facilities (ALFs). This series highlighted concerns with the management and administration of ALFs and garnered the attention of not only the public, but many state lawmakers, stakeholders, and facility residents and their families.

Assisted Living Facility Workgroups

In July 2011, Governor Rick Scott directed AHCA to examine the regulation and oversight of ALFs. In response, AHCA created the ALF workgroup. The workgroup's objective was to make recommendations to the Governor and Legislature that would improve the monitoring of safety in ALFs to help ensure the well-being of residents. After a series of meetings, the workgroup produced a final report and recommendations that they felt could strengthen oversight and reassure the public that ALFs are safe. Such recommendations included increasing administrator qualifications, expanding training for administrators and other staff, increasing survey inspection activity, and improving the integration of information among all agencies involved in the regulation of ALFs. The workgroup also noted several other issues that would require more time to evaluate and recommended they be examined by a Phase II workgroup.

Phase II of the workgroup began meeting in June 2012 to resume examining those issues not addressed by Phase I of the workgroup. Phase II of the workgroup will concluded in October, 2012 and produced a final report and recommendations to the Governor and the Legislature on November 26, 2012.

The issue of improving inter-agency communication was included in the workgroup's recommendations. Specifically, the workgroup recommended improving coordination between various federal, state and local agencies with any role in long-term care facilities oversight, especially ALFs. This includes AHCA, the Long Term Care Ombudsman Program, local fire authorities, local health departments, the Department of Children and Families, the Department of Elder Affairs, local law enforcement and the Attorney General's Office.[1]

Assisted Living Facility Negotiated Rulemaking Committee

In June, 2012, DOEA, in consultation with AHCA, DCF, and DOH, began conducting negotiated rulemaking meetings to address ALF regulation. The purpose of the meetings was to draft and amend mutually acceptable proposed rules addressing the safety and quality of services and care provided to residents within ALFs. Most of the issues addressed by the Committee were identified by Phase I of the workgroup as areas of concern that could be reformed via the rulemaking process. The Committee produced a Final Summary Report containing all the proposed rule changes agreed upon by the Committee. These proposed rule changes are currently in the final stages of the standard proposed rule changing process required by law.

[1] Florida Assisted Living Workgroup, Phase II Recommendations, November 26, 2012, available at http://www.ahca.myflorida.com/SCHSCommitteesCouncils/ALWG/index.shtm.

Assisted Living Facilities - General

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.[2,3] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[4] Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[5]

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.[6] The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on certain criteria.[7] 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.[8]

There are currently 3,036 licensed ALFs in Florida with 85,413 beds.[9] An ALF must have a standard license issued by AHCA, pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S.

Specialty Licensed Facilities

In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include: limited nursing services,[10] limited mental health services,[11] and extended congregate care services.[12]

Limited Mental Health License

A mental health resident is "an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation."[13] A LMH license is required for any facility serving 3 or more mental health residents. [14] To obtain this license, the facility may not have any current uncorrected deficiencies or violations and facility administrator, as well as staff providing direct care to residents must complete 6 hours of training related to LMH duties, which is either provided by or approved by DCF.[15] A LMH license can be obtained during initial licensure, during relicensure, or upon request of the licensee.[16] There are 1,073 facilities with LMH licenses.[17]

[2] Section 429.02(5), F.S.
[3] An ALF does not include an adult family-care home or a non-transient public lodging establishment.
[4] Section 429.02(16), F.S.
[5] Section 429.02(1), F.S.
[6] For specific minimum standards see Rule 58A-5.0182, F.A.C.
[7] S. 429.26, F.S., and Rule 58A-5.0181, F.A.C.
[8] S. 429.28, F.S.
[9] Agency for Health Care Administration, information provided to the Health Innovation Subcommittee February 4, 2013.
[10] S. 429.07(3)(c), F.S.
[11] S. 429.075, F.S.
[12] Section 429.07(3)(b), F.S.
[13] S. 429.02, F.S.
[14] S. 429.075, F.S.
[15] S. 429.075, F.S.
[16] S. 429.075, F.S.
[17] Agency for Health Care Administration, information provided to the Health Innovation Subcommittee February 4, 2013.

Extended Congregate Care License

The ECC specialty license allows an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services to individuals who would otherwise be disqualified from continued residency in an ALF.[18] There are 279 facilities with ECC licenses.[19]

In order for ECC services to be provided, AHCA must first determine that all requirements in law and rule are met. ECC licensure is regulated pursuant to s. 429.07, F.S., and Rule 58A-5, F.A.C.

The primary purpose of ECC services is to allow residents, as their acuity level rises, 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 supervision.

Licensed ECC facilities may provide the following additional services:[20]

- Total help with bathing, dressing, grooming, and toileting;
- Nursing assessments conducted more frequently than monthly;
- Measuring and recording basic vital functions and weight;
- Dietary management, including providing special diets, monitoring nutrition, and observing the resident's food and fluid intake and output;
- Assisting with self-administered medications;
- Supervising residents with dementia and cognitive impairments;
- Health education, counseling, and implementing health-promoting programs;
- Rehabilitative services; and
- Escort services to health-related appointments.

Before being admitted to an ECC licensed facility to receive ECC services, the prospective resident must undergo a medical examination.[21] The ALF must develop a service plan that sets forth how the facility will meet the resident's needs and must maintain a written progress report on each resident who receives ECC services.

ALFs with an ECC license must meet the following staffing requirements:[22]

- Specify a staff member to serve as the ECC supervisor if the administrator does not perform this function;
- The administrator of an ECC licensed facility must have 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; and
- A baccalaureate degree may be substituted for one year of the required experience and a nursing home administrator licensed under chapter 468, F.S., shall be considered qualified.

An ECC administrator or supervisor, if different from the administrator, must complete the core training required of a standard licensed ALF administrator (26 hours plus a competency test), and 4 hours of initial training in ECC care within 3 months of beginning employment. The administrator must complete a minimum of 4 hours of continued education every 2 years. [23]

[18] S. 429.07(3)(b), F.S.
[19] *See supra* at FN 17.
[20] Rule 58A-5.030(8)(b), F.A.C.
[21] Rule 58A-5.030(6), F.A.C.
[22] Rule 58A-5.030(4), F.A.C.
[23] Rule 58A-5.0191(7), F.A.C.

All staff providing direct ECC care to residents must complete at least 2 hours of initial service training, provided by the administrator, within 6 months of beginning employment.[24]

ALFs with a standard license must pay a biennial license fee of $300 per license, with an additional fee of $50 per resident. The total fee may not exceed $10,000. In addition to the total fee assessed for standard licensed ALFs, facilities providing ECC services must pay an additional fee of $400 per license, with an additional fee of $10 per resident.[25]

Limited Nursing Services License

Limited nursing services are services beyond those provided by standard licensed ALFs. A facility with a LNS specialty license may provide the following services:[26]

- Passive range of motion exercises;
- Ice caps or heat relief;
- Cutting toenails of diabetic residents;
- Ear and Eye irrigations;
- Urine dipstick tests;
- Replacement of urinary catheters;
- Digital stool removal therapies;
- Applying and changing routine dressings that do not require packing or irrigation;
- Care for stage 2 pressure sores;
- Caring for casts, braces and splints;
- Conducting nursing assessments;
- Caring for and monitoring the application of anti-embolism stockings or hosiery;
- Administration and regulation of portable oxygen;
- Applying, caring for and monitoring a transcutaneous electric nerve stimulator; and
- Catheter, colostomy, ileostomy care and maintenance.

A facility holding only a standard or LNS license must meet the admission and continued residency criteria contained in Rule 59A-5.0181, F.A.C.[27] The following admission and continued residency criteria for potential residents must be met:[28]

- Be at least 18 years of age;
- Be free from signs and symptoms of any communicable disease;
- Be able to perform the activities of daily living;
- Be able to transfer, with assistance if necessary;
- Be capable of taking their own medications with assistance from staff if necessary;
- Not be a danger to themselves or others;
- Not require licensed professional mental health treatment on a 24-hour a day basis;
- Not be bedridden;
- Not have any stage 3 or 4 pressure sores;
- Not require nursing services for oral or other suctioning, assistance with tube feeding, monitoring of blood gases, intermittent positive pressure breathing therapy, or treatment of surgical incisions or wounds;
- Not require 24-hour nursing supervision;
- Not require skilled rehabilitative services; and
- Have been determined by the administrator to be appropriate for admission to the facility.

[24] *Id.*
[25] S.429.07(4), F.S.
[26] Rule 58A-5.031(1), F.A.C.
[27] Rule 58A-5.031(2), F.A.C.
[28] Rule 58A-5.0181(1), F.A.C.

Facilities licensed to provide limited nursing services must employ or contract with a nurse to provide necessary services to facility residents.[29] Licensed LNS facilities must maintain written progress reports on each resident receiving LNS. A registered nurse representing AHCA must visit these facilities at least twice a year to monitor residents and determine compliance.[30] A nursing assessment must be conducted at least monthly on each resident receiving limited nursing services.[31]

Facilities licensed to provide LNS must pay the standard licensure fee of $300 per license, with an additional fee of $50 per resident and the total fee may not exceed $10,000. In addition the standard fee, in order to obtain the LNS specialty license facilities must pay an additional biennial fee of $250 per license, with an additional fee of $10 per bed.[32] There are 1,084 facilities with LNS licenses.[33]

Staff Training

Administrators and Managers

Administrators and other ALF staff must meet minimum training and education requirements established by the DOEA by rule.[34,35] This training and education is intended to assist facilities to appropriately respond to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.[36]

The current ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and passing a competency test. Administrators and managers must successfully complete the core training requirements within 3 months after becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.[37]

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, must retake the ALF core training and retake the competency test.[38]

Staff with Direct Care Responsibilities

Facility administrators or managers are required to provide or arrange for 6 hours of in-service training for facility staff who provide direct care to residents. The training covers a variety of topics as provided by rule.[39] Staff training requirements must generally be met within 30 days after staff begin employment at the facility, however, staff must have at least 1 hour of infection control training before providing direct care to residents. Also, nurses, certified nursing assistants, and home health aides who are on staff with an ALF are exempt from many of the training requirements. In addition to the standard 6 hours of in-service training, staff must also complete 1 hour of elopement training and 1 hour of training on do not resuscitate orders, and may have to complete training on special topics such as self-administration of medication and persons with Alzheimer's disease, if applicable.

[29] Rule 58A-5.031(2), F.A.C.
[30] S. 429.07(2)(c), F.S.
[31] *Id.*
[32] S. 429.07(4)(c), F.S.
[33] *See supra* at FN 17.
[34] Rule 58A-5.0191, F.A.C.
[35] Many of the training requirements in rule may be subject to change due to the recent DOEA negotiated rulemaking process.
[36] Section 429.52(1), F.S.
[37] 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.
[38] Rule 58A-5.0191, F.A.C.
[39] See note 26.

ECC Specific Training

The administrator and ECC supervisor, if different from the administrator, must complete 4 hours of initial training in extended congregate care prior to the facility receiving its ECC license or within 3 months after beginning employment in the facility as an administrator or ECC supervisor. They must also complete a minimum of 4 hours of continuing education every 2 years in topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons with Alzheimer's disease or related disorders.[40]

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 after beginning employment in the facility. The training must address ECC concepts and requirements, including the delivery of personal care and supportive services in an ECC facility.[41]

LMH Specific Training

Administrators, managers, and staff, who have direct contact with mental health residents in a licensed LMH facility must receive a minimum of 6 hours of specialized training in working with individuals with mental health diagnoses and a minimum of 3 hours of continuing education dealing with mental health diagnoses or mental health treatment every 2 years.[42]

Inspections and Surveys

AHCA is required to conduct a survey, investigation, or monitoring visit 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.[43]
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents.
- If 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.[44]

Abbreviated Surveys

An applicant for licensure renewal is eligible for an abbreviated biennial survey by 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 AHCA by the council.
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.[45]

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items that AHCA must inspect.[46] AHCA is required to expand an abbreviated survey or conduct a full survey if

[40] Rule 58A-5.0191(7)(b), F.A.C.
[41] Rule 58A-5.0191(7)(c), F.A.C.
[42] S. 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.
[43] *See below* information under subheading "Violations and Penalties" for a description of each class of violation.
[44] *See* s. 429.34, F.S., and Rule 58A-5.033, F.A.C.
[45] Rule 58A-5.033(2), F.A.C.
[46] Rule 58A-5.033(2)(b)

violations which threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.[47]

Monitoring Visits

Facilities with LNS or ECC licenses are subject to monitoring visits by AHCA in which the agency inspects the facility for compliance with the requirements of the specialty license type. An LNS licensee is subject to monitoring inspections 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.[48] An ECC licensee is subject to quarterly monitoring inspections. At least one registered nurse must be included in the inspection team. 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.[49]

Violations and Penalties

Part II of ch. 408, F.S., provides general licensure standards for all facilities regulated by AHCA. Under s. 408.813, F.S., ALFs may be subject to administrative fines imposed by 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 residents.

- Class I violations are those conditions that AHCA determines present an imminent danger to residents or a substantial probability of death or serious physical or emotional harm. Examples include resident death due to medical neglect, risk of resident death due to inability to exit in an emergency, and the suicide of a mental health resident in an ALF licensed for Limited Mental Health. AHCA must issue a fine between $5,000 and $10,000 for each violation.
- Class II violations are those conditions that AHCA determines directly threaten the physical or emotional health, safety, or security of the clients. Examples include having no qualified staff in the facility, the failure to call 911 in a timely manner for resident in a semi-comatose state, and rodents in food storage area. AHCA must issue a fine a between $1,000 and $5,000 for each violation.
- Class III violations are those conditions that AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients. Examples include missing or incomplete resident assessments, erroneous documentation of medication administration, and failure to correct unsatisfactory DOH food service inspection findings in a timely manner. AHCA must issue a fine between $500 and $1,000 for each violation, but no fine may be imposed if the facility corrects the violation.
- Class IV violations are those conditions that do not have the potential of negatively affecting clients. Examples include failure to file an adverse incident report, incorrect phone numbers posted for advocacy resources, and failure to post current menus. AHCA can only fine a facility (between $100 and $200 for each violation) if the problem is not corrected. [50,51]

In addition to financial penalties, AHCA can take other actions against a facility. AHCA may deny, revoke, and suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S. AHCA is required to deny or revoke the license of an ALF that has two or more class I violations that are similar to violations identified during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.[52] AHCA may also impose an immediate moratorium or emergency suspension on any provider if it determines that any condition presents a threat to the health, safety, or

[47] *Id.*
[48] S. 429.07(3)(c), F.S.
[49] S. 429.07(3)(b), F.S.
[50] When 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.
[51] Section 429.19(2), F.S.
[52] Section 429.14(4), F.S.

welfare of a client.[53] AHCA is required to publicly post notification of a license suspension or revocation, or denial of a license renewal, at the facility.[54] Finally, Florida's Criminal Code, under ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons[55] and disabled adults.[56]

Central Abuse Hotline

The Department of Children and Families (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[57] at any hour of the day or night, any day of the week.[58] Persons listed in s. 415.1034, F.S., 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.[59]

Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman program within the Department of Elder Affairs (DOEA), must "identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect."[60] The program consists of a state and local council, both of which serve under the ombudsman,[61] an individual appointed by Secretary of DOEA to head the ombudsman program.[62] The complaints, as well as the identities of the complainants made to the Ombudsman councils are confidential, with few exceptions.[63] Upon admission to an ALF, residents must be provided a brochure with contact information of the local ombudsman council,[64] to enable the residents to report mistreatments within the ALF.

[53] Section 408.814, F.S.
[54] Section 429.14(7), F.S.
[55] "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.
[56] "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.
[57] "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.
[58] The central abuse hotline is operated by 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.
[59] Section 415.1034, F.S.
[60] S. 400.0065, F.S.
[61] S. 400.0065, F.S.
[62] S. 400.0060, F.S.
[63] S. 400.0077, F.S.
[64] Rule 58A-5.0181, F.A.C.

AHCA Development/Updates

AHCA has taken steps to help provide more efficient and effective care to residents of ALFs. From July 1, 2011 through June 1, 2012, AHCA has:[65]

- Issued 595 final orders for ALFs;
- Issued 11 suspensions and moratoria;
- Issued 9 denials;
- Issued 11 revocations;
- Closed 38 facilities; and
- Imposed $1,513,046 in sanctions by final order.

AHCA has also initiated several proactive approaches, including:[66]

- Issuing monthly press releases regarding sanctions, closures, and other actions;
- Holding monthly interagency meetings with Agency partners;
- Establishing an ALF enforcement unit;
- Revising the ALF survey process to include resident interviews; and
- Providing statewide joint training for administrators, providers, and associations.

Effect of Proposed Changes

The bill amends s. 394.4574, F.S., to clarify that Medicaid prepaid behavioral health plans are responsible for enrolled state supported mental health residents and that managing entities under contract with the DCF are responsible for such residents who are not enrolled with a Medicaid prepaid behavioral health plan. This section requires a mental health resident's community living support plan be completed and provided to the administrator of the facility when the facility admits a mental health resident and be updated when there is a significant change to the resident's behavioral health status. The resident's case manager must keep a 2-year record of any face-to-face interaction with the resident. Finally, this section charges the entity responsible for a mental health resident to ensure that there is adequate and consistent monitoring of the community living support plan and to report any concerns about a regulated provider failing to provide services or otherwise acting in a manner with the potential to cause harm to the resident.

The bill amends s. 400.0078, F.S., to require that ALFs provide information to new residents upon admission to the facility that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right.

The bill amends s. 429.07, F.S., to make changes to improve the regulation of facilities with ECC and LNS specialty licenses. These changes include:

- Requiring that an ALF be licensed for 2 or more years before being issued an ECC license that is not provisional.
- Creating a provisional ECC license for ALFs that have been licensed for less than 2 years.
- The provisional license lasts for a period of 6 months.
- The facility must inform AHCA when it has admitted one or more residents requiring ECC services.
- After the facility admits one or more ECC residents, AHCA must inspect the facility for compliance with the requirements of the ECC license.
- If the licensee demonstrates compliance with the requirements of an ECC license, AHCA must grant the facility an ECC license that is not provisional.
- If the licensee fails to demonstrate compliance with the requirements of an ECC license, the licensee must immediately suspend ECC services and the provisional ECC license expires.

[65] Assisted Living Facility Workgroup Phase II, AHCA presentation, June 25, 2012, available at http://www.ahca.myflorida.com/SCHS/CommitteesCouncils/ALWG/index.shtm.
[66] *Id.*

- Reducing monitoring visits for facilities with ECC licenses from quarterly to twice a year, and for facilities with LNS licenses from twice a year to once a year.
- Clarifying under what circumstances the AHCA may waive one of the required monitoring visits for facilities with ECC licenses and also allowing AHCA to waive the required monitoring visit for facilities with an LNS license under the same conditions.
- Clarifying under what circumstances AHCA may deny or revoke a facility's ECC license.

The bill amends s. 429.075, F.S., to require:

- Facilities with one or more mental health residents to obtain a LMH license.
- ALFs to provide written documentation that the facility requested an assessment of a mental health resident for appropriateness of placement, within 72 hours of the resident being admitted.

The bill amends s. 429.14, F.S., to:

- Allow AHCA to revoke, rather than just deny, a license for a facility with a controlling interest that has, or had, a 25 percent or greater financial or ownership interest in a second facility that closed due to financial inability to operate or was the subject of other specified administrative sanctions.
- Add additional criteria under which AHCA must deny or revoke a facility's license unless there are mitigating circumstances. The criteria include:
    - Applicant or licensee had a license that was revoked or denied by AHCA, DCF, DJJ, or APD.
    - There are 2 moratoria issued within a 2-year period.
    - The facility is cited for 2 or more class I violations arising from unrelated circumstances during the same investigation.
    - The facility is cited for 2 or more class I violations within 2 years.
- Require AHCA to impose an immediate moratorium on a facility that fails to provide AHCA with access to the facility, prohibits a regulatory inspection, denies access to records, or prohibits the confidential interview of facility staff or residents.
- Exempt a facility from the 45-day notice requirement in s. 429.28(k), F.S., if that facility is required to relocate all or some of its residents due to action by AHCA.

The bill amends s. 429.19, F.S., relating to the impositions of fines in order to reduce the discretion of AHCA and to make such penalties more predictable. Specifically, the bill would:

- Amend the dollar amount for fines at $7,500 for class I violations, $3,000 for class II violations, $750 for class III violations, and $150 for class IV violations for facilities licensed for few than 100 beds at the time of the violation. This is the midpoint of the current ranges for fines in current law.
- Multiply fine amounts by 1.5 times for facilities licensed for 100 or more beds, so that the fine is $11,250 for class I violations, $4,500 for class II violations, $1,125 for class IV violations, and $225 for class IV violations.
- Allow the AHCA to impose a fine on a facility for a class I violation, even if the facility corrects the violation before the AHCA conducts an investigation. Facilities can still challenge such fines through an administrative hearing pursuant to ch. 120, F.S.
- Double the fines for facilities with repeat class I and class II violations.
- Impose a fine on facilities with repeat class III and class IV violations, regardless of correction. Current law prohibiting the AHCA from assessing fines for corrected class III and IV violations continues for the first survey finding such violations.
- Double the fines for class III or class IV violations if a facility is cited for two or more such violations, stemming from the same regulation, during the AHCA's last two licensure inspections.
- Fine a facility $500 for failure to comply with background screening requirements. This fine will take the place of fines based on the class of the violation.

The bill amends s. 429.41 to clarify that an abbreviated biennial inspection may not be used for a facility that has confirmed ombudsman or licensure complaints, if those complaints resulted in a citation for licensure violation.

The bill amends s. 429.52, F.S., to:

- Require ALFs to provide a 2 hour pre-service orientation for new facility employees who have not previously completed core training. The pre-service orientation must cover topics that help the employee provide responsible care and respond to the needs of the residents. The employee and the facility's administrator must sign an affidavit that the employee completed the orientation and the facility must keep the affidavit in the employee's work file.
- Require AHCA in conjunction with DOEA to establish a database for the collection of documentation relating to the training and competency testing of employees and administrators.

The bill amends s. 429.54, F.S., to require AHCA, DOEA, DCF, and APD to develop or modify electronic systems of communication among state-supported automated systems to ensure that important information is being shared and coordinated timely and effectively to facilitate the protection of residents.

The bill creates s. 429.55, F.S., to require AHCA to conduct a study of inter-surveyor reliability to determine if different surveyors consistently apply licensure standards. AHCA must report its findings and make recommendations to the Governor, the President of the Senate, and the Speaker of the House by November 1, 2013.

The bill creates s. 429.56, F.S., to:

- Require AHCA to propose a rating system for ALFs to assist consumers in selecting the best facility for themselves. AHCA must submit the proposal to the Governor, the President of the Senate, and the Speaker of the House by November 1, 2013.
- Require AHCA to create a webpage, that is easily accessible through the front page of the AHCA website, which contains information on each licensed ALF, including, but not limited to: types of licenses held and its history of violations.
    - The name and address of the facility.
    - The types of licenses held by the facility.
    - The facility's license expiration date and status.
    - Any other relevant information that AHCA currently collects.
    - A list of the facility's violations, including, a summary of the violation, any sanctions imposed by final order, and the date of the correction.
    - Links to inspection reports on file with AHCA.

Finally, the bill provides an appropriation for two full-time equivalent positions, with associated salary rate, in order to address the increased workload associated with additional appeals and litigation related to the regulatory changes included in the legislation. Additionally, the bill provides nonrecurring budget authority for the cost of the data systems required in the legislation.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.4574, F.S., relating to responsibilities for coordination of services for a mental health resident who resides in an assisted living facility that holds a limited mental health license.

Section 2: Amends s. 400.0078, F.S., relating to citizen access to State Long-Term Care Ombudsman Program services.

Section 3: Amends s. 429.07, F.S., relating to license required; fee.

Section 4: Amends s. 429.075, F.S., relating to limited mental health licenses.

Section 5: Amends s. 429.14, F.S., relating to administrative penalties.

Section 6: Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.

Section 7: Amends s. 429.41, F.S., relating to rules establishing standards.

Section 8: Amends s. 429.52, F.S., relating to staff training and educational programs; and core educational requirements.
Section 9: Amends s. 429.54, F.S., relating to collection of information; local subsidy.
Section 10: Creates s. 429.55, F.S., relating to inter-surveyor reliability.
Section 11: Creates s. 429.56, F.S., relating to consumer information.
Section 12: Provides an appropriation for the purpose of implementing regulatory activities.
Section 13: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill amends the administrative penalties and fines for all classes of violations. AHCA estimates there will be minimal fiscal increase from the fines on facilities with less than 100 beds. Facilities that exceed 100 beds will have their fine amounts increased over the current maximum fees for certain violations. Over a six year period, beginning in Fiscal Year 2006-07, in excess of $5.4 million in fines and penalties have been imposed on ALFs, with over $1.6 million imposed in FY 2011-12. Fine revenues of $398,070 are expected and will provide sufficient revenues to pay for the expenses of the proposed legislation. [67]

2. Expenditures:

AHCA estimates an increase in the number of legal cases that will be generated as a result of the increased administrative penalties and fines. AHCA anticipates that an additional 143 legal cases will be created and will need two full-time equivalent Senior Attorney positions to process the additional cases. The total fiscal impact is $159,308 for Year 1 and $151,322 for each recurring year. AHCA estimates that the additional fines collected will exceed the cost of the two full-time equivalent positions. The bill provides an appropriation with trust fund authority for AHCA to implement the regulatory activities required in the bill.

Additionally, AHCA has indicated that they will experience nonrecurring costs associated with creating the ALF administrator and employee training database and with creating the website containing information about ALFs for the public. AHCA estimates a Year 1 cost of $200,080 ($100,040 for each system). AHCA estimates that the additional fines collected will exceed the cost of the data systems. The bill provides an appropriation with trust fund authority for AHCA to implement the regulatory activities required in the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill revises fines used to sanction facilities with violations, but such fines can still be challenged and settled through ch. 120, F.S. Facilities with fewer than 100 beds with class I violations will now be assessed a fine of $7,500 (current law allows the fine to be between $5,000 and $10,000). Some facilities will see a reduction in their fine, while other will see an increase. The range for fines for class

[67] Agency for Health Care Administration, Bill Analysis & Economic Impact Statement for HB 1319, April 5, 2013.

II, III, and IV violations are replaced with an amount equal to the midpoint of the range. Fines for facilities with 100 beds or more will see higher fines.

Facilities would also be assessed a fine for class I violations even if they are corrected when the AHCA visits the facility. Facilities violating the background screening requirements would be levied a fine of $500. Currently, facilities are cited for a class II or III violation for not screening the background of facility staff so the fine amount can vary. All fines are subject to challenge through an administrative hearing under ch. 120, F.S.

Facilities would be required to provide new employees that have not already gone through the ALF core training program with a 2 hour pre-service training session before they work with residents. The cost of this training is not expected to be significant and in many cases is already provided.

Facilities with specialty licenses that meet licensure standards would see fewer monitoring visits from the AHCA. This will positively impact the facilities as they will have less interruption of staff time due to such visits.

Facilities with any state supported mentally ill residents would have to meet limited mental health licensure requirements with one or more mental health residents. Facilities with one or two state supported mentally ill residents that do not meet these requirements may see increased costs to comply. Some facilities with one or two such residents however, may already meet the requirements for a limited mental health license.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 10, 2013, the Health Care Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute to the committee substitute. The amendment provides an appropriation for the purpose of implementing the regulatory activities provided in the proposed legislation.

This analysis is drafted to the committee substitute to the committee substitute.