

**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 Committee on Children, Families, and Elder Affairs

BILL: SB 616

INTRODUCER: Senator Bean

SUBJECT: Certification of Assisted Living Facility Administrators

DATE: April 3, 2013

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Hendon  | Hendon         | CF        | <b>Pre-meeting</b> |
| 2. | _____   | _____          | HP        | _____              |
| 3. | _____   | _____          | RC        | _____              |
| 4. | _____   | _____          | _____     | _____              |
| 5. | _____   | _____          | _____     | _____              |
| 6. | _____   | _____          | _____     | _____              |

**I. Summary:**

SB 616 requires all administrators of Assisted Living Facilities (ALFs) to be certified by July 1, 2014. The bill directs the Department of Elder Affairs (DOEA) to approve third-party credentialing entities to certify ALF administrators. The third-party credentialing entities must meet the standards of the National Commission for Certifying Agencies. The certification would take the place of existing training and testing requirements provided in law.

The bill would have an insignificant fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends ss. 429.178, and 429.52 of the Florida Statutes. The bill creates s. 429.55 of the Florida Statutes, and effective July 1, 2014, repeals subsections (2), (3), (4), (8), (9), and (10) of s. 429.52 of the Florida Statutes.

**II. Present Situation:**

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 physical assistance with, or supervision of, the activities of daily living and the self-

<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.

administration of medication.<sup>3</sup> Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>4</sup>

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.<sup>5</sup> The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.<sup>6</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>7</sup>

There are currently 3,036 licensed ALFs in Florida with 85,413 beds.<sup>8</sup> An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA), pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S.

### **Department of Elder Affairs Rules**

In addition to ch. 429, F.S., ALFs are subject to regulation under Chapter 58A-5, Florida Administrative Code. These rules are adopted by DOEA in consultation with AHCA, the Department of Children and Families, and the Department of Health.<sup>9</sup> In June 2012, DOEA initiated a process of negotiated rulemaking to revise many of its rules regarding ALFs. After multiple meetings, a committee that consisted of agency staff, consumer advocates, and industry representatives voted on numerous changes to Rule 58A-5. On November 28, 2012 DOEA issued a proposed rule and held three public hearings on the proposed rule. The public comment period for the proposed rule ended on December 21, 2012 and DOEA has not yet issued a final rule.<sup>10</sup>

### **ALF Administrators and Managers**

Administrators and other ALF staff must meet minimum training and education requirements established by the rule of the DOEA.<sup>11,12</sup> The training and education are intended to assist facilities to respond appropriately to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.<sup>13</sup>

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<sup>3</sup> Section 429.02(16), F.S.

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

<sup>5</sup> For specific minimum standards see Rule 58A-5.0182, F.A.C.

<sup>6</sup> Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.

<sup>7</sup> Section 429.28, F.S.

<sup>8</sup> Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee (Feb. 4, 2013).

<sup>9</sup> Section 429.41(1), F.S.

<sup>10</sup> The DOEA rule, documents, and dates for the negotiated rulemaking, *available at* [http://elderaffairs.state.fl.us/does/alf\\_rulemaking.php](http://elderaffairs.state.fl.us/does/alf_rulemaking.php) (last visited on Apr. 4, 2013).

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

<sup>12</sup> Many of the training requirements in rule may be subject to change due to the recent DOEA negotiated rulemaking process.

<sup>13</sup> Section 429.52(1), F.S.

The current ALF core training requirements established by 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 from the date of becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.<sup>14</sup>

Administrators and managers must participate in 12 hours of continuing education on 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.<sup>15</sup>

### **National Commission for Certifying Agencies**

The National Commission for Certifying Agencies (NCCA) was created in 1987 by the Institute for Credentialing Excellence to help ensure the health, welfare, and safety of the public through the accreditation of a variety of certification programs/organizations that assess professional competence. NCCA accredited programs certify individuals in a wide range of professions and occupations including nurses, automotive professionals, respiratory therapists, counselors, emergency technicians, crane operators, and more. To date, NCCA has accredited approximately 300 programs from more than 120 organizations. Certification organizations that submit their programs for accreditation are evaluated based on the process and not the content; therefore, the standards are applicable to all professions and industries. Program content validity is demonstrated by a comprehensive job analysis conducted and analyzed by experts, with data gathered from stakeholders in the occupation or industry.<sup>16</sup>

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

**Section 1** amends s. 429.178, F.S., relating to special care and training for ALFs that serve residents with dementia such as Alzheimer's Disease. This section of current law references the core training requirements that are repealed by section 3 of the bill.

**Section 2** amends s. 429.52, F.S., to require AFL administrators to meet training and education requirements established by a third-party credentialing entity. This change is effective July 1, 2014. ALF administrators must earn and maintain certification from a third-party credentialing entity approved by the DOEA. The bill limits the additional training that the DOEA can require by rule to ALF staff other than the certified administrator.

**Section 3** repeals subsections (2), (3), (4), (8), (9), and (10) of s. 429.52, F.S., effective July 1, 2014. These statutes require DOEA to develop a competency test covering a range of subjects (2); require that ALF administrators complete training and pass the competency test (3); require

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<sup>14</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>15</sup> Rule 58A-5.0191, F.A.C.

<sup>16</sup> Institute for Credentialing Excellence, National Commission for Certifying Agencies website, *available at* <http://www.credentialingexcellence.org/ncca> (last visited April 4, 2013).

that ALF administrators complete 12 hours of continuing education every two years (4); require that DOEA adopt rules for training and the competency test (8); that trainers register with DOEA (9); and that trainers have certain qualifications such as a 4-year college degree and 3 years of experience managing an ALF (10). These provisions are no longer necessary under the bill due to the creation of s. 429.55, F.S. that assigns similar duties to a third-party credentialing entity.

**Section 4** creates s. 429.55, F.S., which establishes an ALF administrator certification program. The intent is that ALF administrators earn professional certification from a third-party credentialing entity approved by DOEA. The bill states that certification by a nationally-recognized credentialing entity is equal to a state run licensure program. New terms are defined, such as “third-party credentialing entity” to mean a nonprofit organization that administers certification programs using standards established by the National Commission for Certifying Agencies.

DOEA must approve one or more third-party credentialing entities that have:

- Core competencies, certification standards, and tests for ALF administrators that meet the standards established by the National Commission for Certifying Agencies,
- A process to administer ALF certification using standards established by the National Commission for Certifying Agencies,
- A demonstrated ability to administer a code of ethics and a disciplinary process,
- An ability to maintain publicly available website with information on certified ALF administrators,
- The ability to administer continuing education requirements, and
- The ability to administer a program to approve training entities to provide training to ALF administrators.

The bill requires all ALF administrators to be certified by July 1, 2014. Administrators who are not certified after that time are subject to administrative fine pursuant to s. s. 429.19, F.S.

The bill allows for current ALF administrators to be granted certification until October 1, 2014 as long as they have met the current education and training requirements.

The bill requires the third-party credentialing entity to establish “core competencies” that would capture the skills and knowledge needed to operate an ALF. The bill describes the requirements for the certification program. Certification programs must meet the standards of the National Commission for Certifying Agencies and establish minimum requirements for such things as education, supervision, testing, and continuing education. Certification programs must also include a code of ethics and a disciplinary process. The certification programs must also provide a website listing the certified administrators. Lastly, the certification programs must approve training entities that would provide initial and ongoing training to ALF administrators.

**Section 5** provides for an effective date of July 1, 2013.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill requires ALF administrators to be certified. The costs of this certification is not specified in the bill, but would be borne by the administrators or the ALF owners. The third-party credentialing entity would presumably set these fees. The administrators will however, no longer be charged the current fees by DOEA for training and testing. If the certification fees are different from the current DOEA fees, the ALF administrators may be required to pay more or less.

## C. Government Sector Impact:

The bill would have an impact on DOEA whereby some department functions would no longer be required, while new functions would be added. The impact to the state would be insignificant.

**VI. Technical Deficiencies:**

The bill creates s. 429.55(3)(5), F.S., to require continuing education for ALF administrators on a “biannual” basis. This term means twice a year.<sup>17</sup> Current law requires ALF administrators to have 12 hours of continuing education every two years.<sup>18</sup> The bill should read “biennial” or “every two years” if the intent is to continue the frequency of continuing education requirements for ALF administrators.

The bill states that ALF administrators who are not certified after July 1, 2014 are subject to an administrative fine pursuant to s. 429.19, F.S. Fines in this section are separated into four classes based on the severity of the violation. The newly-created violation of an uncertified ALF

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<sup>17</sup> American Heritage College Dictionary (3rd ed. 1993).

<sup>18</sup> s. 429.52(4), F.S.

administrator does not specify what class of violation so AHCA would not have direction on what penalty to assess.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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