

**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 Judiciary

**BILL:** CS/SB 646

**INTRODUCER:** Health Policy Committee; and Children, Families, and Elder Affairs Committee

**SUBJECT:** Assisted Living Facilities

**DATE:** March 29, 2013      **REVISED:** \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Looke   | Stovall        | HP        | <b>Fav/CS</b>    |
| 2. | Shankle | Cibula         | JU        | <b>Favorable</b> |
| 3. | _____   | _____          | _____     | _____            |
| 4. | _____   | _____          | _____     | _____            |
| 5. | _____   | _____          | _____     | _____            |
| 6. | _____   | _____          | _____     | _____            |

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

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

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

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 646 strengthens the enforcement of current regulations for Assisted Living Facilities (ALF or facility) by revising fines imposed for licensure violations, clarifying existing enforcement tools, and requiring an additional inspection for facilities with significant violations. Specifically, the bill:

- Specifies who is responsible for assuring that mental health residents in an ALF receive necessary services.
- Clarifies the duties of the state Long-Term Care Ombudsman Program.
- Creates a provisional Extended Congregate Care (ECC) license for new ALFs and specify 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 the AHCA must conduct for ALFs with Limited Nursing Services (LNS) licenses and ECC licenses.
- Requires that facilities having one or more, rather than three or more, state supported mental health residents obtain a limited mental health (LMH) license.
- Allows the 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 that closed due to

financial inability to operate or that was the subject of other specified administrative sanctions.

- Clarifies the criteria under which the AHCA must revoke or deny a facility's license.
- Specifies circumstances under which the AHCA must impose an immediate moratorium<sup>1</sup> on a facility.
- Sets fines for all classes of violations<sup>2</sup> 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 the AHCA to impose a fine for a class I violation even if it is corrected before the AHCA inspects a facility.
- Doubles fines for repeated serious violations.
- Requires that fines be imposed for repeat minor violations<sup>3</sup> 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.<sup>4</sup>
- 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 an additional inspection, within 6 months, of a facility cited for specified serious violations.
- Requires new facility staff, who have not previously completed core training, to attend a 2 hour pre-service orientation before interacting with residents.
- Requires the AHCA to conduct a study of inter-surveyor reliability in order to determine the consistency with which regulations are applied to facilities and requires the AHCA to report its findings and recommendations by November 1, 2013.
- Requires the AHCA to propose a plan for an ALF rating system by November 1, 2013.
- Requires the AHCA to revise its website used by consumers to select ALFs by January 1, 2014.

The bill substantially amends sections 394.4574, 400.0074, 400.0078, 429.07, 429.075, 429.14, 429.178, 429.19, 429.28, 429.34, and 429.52 of the Florida Statutes.

The bill creates two new unnumbered sections of the Florida Statutes.

## II. Present Situation:

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>5</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living

<sup>1</sup> "Moratorium" means a prohibition on the acceptance of new clients. Section 408.803(10), F.S.

<sup>2</sup> The classes of violations can be found in s. 408.813, F.S.

<sup>3</sup> Class III and class IV violations.

<sup>4</sup> Background screening requirements are found in s. 408.809, F.S.

<sup>5</sup> Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

and the self-administration of medication.<sup>6</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>7</sup>

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.<sup>8</sup> The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.<sup>9</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>10</sup>

There are currently 3,036 licensed ALFs in Florida with 85,413 beds.<sup>11</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. 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,<sup>12</sup> limited mental health services,<sup>13</sup> and extended congregate care services.<sup>14</sup> There are 1,073 facilities having limited nursing services specialty licenses (LNS licenses), 279 having extended congregate care (ECC licenses), and 1,084 having limited mental health specialty licenses (LMH licenses).<sup>15</sup>

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

A 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 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.

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

The primary purpose of ECC services is to allow residents to remain in a familiar setting as they become more impaired with physical or mental limitations. An ECC specialty license enables a facility to provide, directly or through contract, services performed by licensed nurses and supportive services<sup>16</sup> to persons who otherwise would be disqualified from continued residence

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<sup>6</sup> Section 429.02(16), F.S.

<sup>7</sup> Section 429.02(1), F.S.

<sup>8</sup> For specific minimum standards see Rule 58A-5.0182, F.A.C.

<sup>9</sup> Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.

<sup>10</sup> Section 429.28, F.S.

<sup>11</sup> Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.

<sup>12</sup> Section 429.07(3)(c), F.S.

<sup>13</sup> Section 429.075, F.S.

<sup>14</sup> Section 429.07(3)(b), F.S.

<sup>15</sup> Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.

<sup>16</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.

in an ALF.<sup>17</sup> A facility 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, a facility with an ECC license still may not serve residents who require 24-hour nursing supervision.<sup>18</sup>

### **Limited Mental Health Specialty License**

An ALF that serves three or more mental health residents must obtain an LMH specialty license.<sup>19</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>20</sup> The Department of Children and Families (DCF) must ensure that a mental health resident is assessed and determined able to live in an ALF with an LMH license.<sup>21</sup>

The administrator in a LMH facility must consult with a mental health resident and the resident's case manager to develop and help execute a community living support plan for the resident detailing the specific needs and services the resident requires.<sup>22</sup> The LMH licensee must also execute a cooperative agreement with 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.

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

In addition to ch. 429, F.S., ALFs are also subject to regulation under Rule 58A-5, of the Florida Administrative Code (F.A.C.). These rules are adopted by the Department of Elder Affairs (DOEA) in consultation with the AHCA, the DCF, and the Department of Health (DOH).<sup>23</sup> In June 2012, the 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, F.A.C. On November 28, 2012, the DOEA issued a proposed rule and held three public hearings on the

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<sup>17</sup> An ECC program may provide additional services, such as the following: 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; 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>18</sup> Section 429.07(3)(b), F.S.

<sup>19</sup> Section 429.075, F.S.

<sup>20</sup> Section 429.02(15), F.S. 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)*, <http://elderaffairs.state.fl.us/faal/operator/statesupp.html> (Last visited March 22, 2013).

<sup>21</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.

<sup>22</sup> Rule 58A-5.029(2)(c)3., F.A.C.

<sup>23</sup> Section 429.41(1), F.S.

proposed rule. The public comment period for the proposed rule ended on December 21, 2012, and the DOEA has not yet issued a final rule.<sup>24</sup>

## **ALF Staff Training**

### ***Administrators and Managers***

Administrators and other ALF staff must meet minimum training and education requirements established by the DOEA by rule.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</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, must retake the ALF core training and retake the competency test.<sup>28</sup>

### ***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 which covers various topics as mandated in rule.<sup>29</sup> 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 complete 1 hour of elopement training and 1 hour of training on do not resuscitate orders. The staff may be required to complete training on special topics such as self administration of medication and Alzheimer's disease, if applicable.

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<sup>24</sup>The DOEA rule, documents, and dates for the negotiated rulemaking can be found at: Department of Elderly Affairs, *Assisted Living Facility (ALF) Negotiated Rulemaking*, [http://elderaffairs.state.fl.us/doea/alf\\_rulemaking.php](http://elderaffairs.state.fl.us/doea/alf_rulemaking.php) (Last visited March 22, 2013).

<sup>25</sup> Rule 58A-5.0191, F.A.C. Many of the training requirements in rule may be subject to change due to the recent the DOEA negotiated rulemaking process.

<sup>26</sup> Section 429.52(1), F.S.

<sup>27</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>28</sup> Rule 58A-5.0191, F.A.C.

<sup>29</sup> See note 24.

### ***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. The administrator and ECC supervisor 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.<sup>30</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 after beginning employment in the facility. The training must address ECC concepts and requirements, including statutory and rule requirements and the delivery of personal care and supportive services in an ECC facility.<sup>31</sup>

### ***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 having mental health diagnoses and a minimum of 3 hours of continuing education dealing with mental health diagnoses or mental health treatment every 2 years.<sup>32</sup>

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

The 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.<sup>33</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>34</sup>

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<sup>30</sup> Rule 58A-5.0191(7)(b), F.A.C.

<sup>31</sup> Rule 58A-5.0191(7)(c), F.A.C.

<sup>32</sup> Section 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.

<sup>33</sup> See below information under subheading "Violations and Penalties" for a description of each class of violation.

<sup>34</sup> See s. 429.34, F.S., and Rule 58A-5.033, F.A.C.

## Abbreviated Surveys

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>35</sup>

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items the agency must inspect.<sup>36</sup> The AHCA must expand an abbreviated survey or conduct a full survey if violations that threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.<sup>37</sup>

## Monitoring Visits

Facilities with LNS or ECC licenses are subject to monitoring visits by the AHCA in which the agency inspects the facility for compliance with the requirements of the specialty license type. A 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.<sup>38</sup> An ECC licensee is subject to quarterly monitoring inspections. 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>39</sup>

## Violations and Penalties

Part II of ch. 408, F.S., provides 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 residents.

- Class I violations are those conditions that the 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

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<sup>35</sup> Rule 58A-5.033(2), F.A.C.

<sup>36</sup> Rule 58A-5.033(2)(b).

<sup>37</sup> *Id.*

<sup>38</sup> Section 429.07(3)(c), F.S.

<sup>39</sup> Section 429.07(3)(b), F.S.

licensed for limited mental health. The AHCA must fine a facility between \$5,000 and \$10,000 for each violation.

- Class II violations are those conditions that the AHCA determines directly threaten the physical or emotional health, safety, or security of the clients. Examples include 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 a food storage area. The AHCA must fine a facility between \$1,000 and \$5,000 for each violation.
- Class III violations are those conditions that the 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. The AHCA must fine a facility 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. The AHCA can only fine a facility (between \$100 and \$200 for each violation) if the problem is not corrected.<sup>40,41</sup>

In addition to financial penalties, AHCA can take other actions against a facility. The AHCA may deny, revoke, and suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S. The 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.<sup>42</sup> The AHCA may also impose an immediate moratorium or emergency suspension on any provider if it determines that any condition that presents a threat to the health, safety, or welfare of a client.<sup>43</sup> The AHCA is required to publicly post notification of a license suspension, revocation, or denial of a license renewal, at the facility.<sup>44</sup> Finally, Florida's Criminal Code, under ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons<sup>45</sup> and disabled adults.<sup>46</sup>

### **Central Abuse Hotline**

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

<sup>40</sup> 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.

<sup>41</sup> Section 429.19(2), F.S.

<sup>42</sup> Section 429.14(4), F.S.

<sup>43</sup> Section 408.814, F.S.

<sup>44</sup> Section 429.14(7), F.S.

<sup>45</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>46</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.



suspected abuse, neglect, or exploitation of a vulnerable adult<sup>47</sup> at any hour of the day or night, any day of the week.<sup>48</sup> 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.<sup>49</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>50</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 program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the Secretary of Elderly Affairs.<sup>51</sup> The ombudsman program 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 ALFs, nursing homes, 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 program and the statewide toll-free telephone number for receiving complaints.<sup>52</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, or the disclosure is required by court order.<sup>53</sup> In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.

### **The Miami Herald Articles and the Governor's Assisted Living Workgroup**

Beginning on April 30, 2011, the Miami Herald published a four-part series, titled "Neglected to Death," which detailed abuses occurring in ALFs and the state regulatory responses to such cases. The paper 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 series detailed examples of abuses, neglect, and even death that took place in facilities.<sup>54</sup> The series also criticized the state's regulatory and law

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<sup>47</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>48</sup> 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.

<sup>49</sup> Section 415.1034, F.S.

<sup>50</sup> 42 U.S.C. 3058. *See also* s. 400.0061(1), F.S.

<sup>51</sup> Section 400.0063, F.S.

<sup>52</sup> Section 400.0078, F.S.

<sup>53</sup> Section 400.0077(1)(b), F.S.

<sup>54</sup> Rob Barry, Michael Sallah and Carol Marbin Miller, *Neglected to Death, Parts 1-3*, THE MIAMI HERALD, April 30, 2011

enforcement agencies' responses to the problems. The paper concluded that the state's agencies, and in particular the AHCA, failed to enforce existing laws designed to protect Florida's citizens who reside in ALFs.<sup>55</sup>

Soon after the Miami Herald series, Governor Rick Scott vetoed HB 4045,<sup>56</sup> which reduced requirements relating to ALFs. The Governor then directed the AHCA to form a task force for the purpose of examining current assisted living regulations and oversight.<sup>57</sup> The task force referred to as the Assisted Living Workgroup, held meetings and produced two reports, one in August of 2011 and one in October of 2012. In addition to public testimony and presentations, the Assisted Living Workgroup focused on assisted living regulation, consumer information and choice, and long term care services and access.<sup>58</sup> The workgroup made numerous recommendations in its two reports.<sup>59</sup>

### III. Effect of Proposed Changes:

#### Section 1:

The bill amends s. 394.4574, F.S., to specify 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. Section 394.4574, F.S., 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. The entity must also report to the appropriate regulatory oversight organization any concerns about a regulated provider acting in a manner with the potential to cause harm to the resident.

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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> (see left side of article to access weblinks to the three-part series).

<sup>55</sup> *Id.*

<sup>56</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>57</sup> The task force is now referred to as the "Assisted Living Workgroup." Membership details of the task force are available at Florida Agency for Health Care Administration, *Assisted Living Workgroup Members*, <http://ahca.myflorida.com/SCHS/CommitteesCouncils/ALWG/wgmembers.shtml>, (Last visited Mar. 22, 2013).

<sup>58</sup> Agency For Health Care Administration, Assisted Living Workgroup, *Final Report And Recommendations*, <http://ahca.myflorida.com/SCHS/ALWG2011/alwg2011.shtml> (Last visited Mar. 22, 2013).

<sup>59</sup> *Id.*

**Section 2:**

The bill amends s. 400.0074, F.S., to require the Long-Term Care Ombudsman Program's administrative assessments of ALFs be comprehensive in nature. This section also requires ombudsmen to conduct an exit interview with the facility to discuss issues and concerns from the visit in areas affecting the rights, health, safety, and welfare of residents, and recommend improvements.

**Section 3:**

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

**Section 4:**

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 a 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 the AHCA when it has admitted one or more residents requiring ECC services. After the facility admits one or more ECC residents, the AHCA must inspect the facility for compliance with the requirements of the ECC license. If the licensee demonstrates compliance, the 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.
- 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 the AHCA to waive the required monitoring visit for facilities with an LNS license under the same conditions.
- Clarifying under what circumstances the AHCA may deny or revoke a facility's ECC license.

**Section 5:**

The bill amends s. 429.075, F.S., to change the requirement that facilities with three or more state supported mentally ill residents obtain a LMH license. Under the bill facilities with one or more state supported mentally ill residents must obtain a LMH license. This will expand the protections and services to all state supported mentally ill residents in ALFs.

**Section 6:**

The bill amends s. 429.14, F.S., to strengthen the administrative penalties available to the AHCA by:

- Allowing the 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 that was the subject of other specified administrative sanctions.
- Adding additional criteria under which the AHCA must deny or revoke a facility's license.
- Requiring the AHCA to impose an immediate moratorium on a facility that fails to provide the AHCA with access to the facility, prohibits a regulatory inspection, denies access to records, or prohibits the confidential interview of facility staff or residents.
- Exempting 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 the AHCA.

**Section 7:**

The bill amends s. 429.178, F.S., to make technical changes and to conform this section to other parts of the bill.

**Section 8:**

The bill amends s. 429.19, F.S., to reduce the discretion of the AHCA when imposing fines to make such penalties more predictable. Specifically, the bill:

- Fixes 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 fewer than 100 beds at the time of the violation. This is the midpoint of the current ranges for fines in current law.
- Multiplies 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.
- Allows 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 may still challenge such fines through an administrative hearing pursuant to ch. 120, F.S.
- Doubles the fines for facilities with repeat class I and class II violations.
- Imposes 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.
- Doubles 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.
- Fines 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.

**Section 9:**

The bill amends s. 429.28, F.S., to require the notice of a resident's rights, obligations, and prohibitions specify that complaints to the ombudsman program, as well as the names and identities of the complainant and any residents involved, are confidential. The notice must also contain information that retaliatory action cannot be taken against a resident for presenting

grievances or for exercising any other resident right. This section also creates a fine of \$2,500 which is imposed if a facility cannot show good cause in state court for terminating the residency of an individual. Section 429.28, F.S., is updated to reflect the most recent name of Disability Rights Florida.

**Section 10:**

The bill amends s. 429.34, F.S., to require certain state officials, such as Medicaid Fraud investigators, staff from the Attorney General's Office, and state or local fire marshals report to the DCF central abuse hotline any knowledge or reasonable suspicion that a vulnerable adult has been or is being abused, neglected, or exploited. The bill provides that a facility with one or more class I violations, two or more class II violations cited within 60 days, or two or more unrelated class II violations cited during one survey is subject to an additional inspection within 6 months. The licensee must pay a fee to the AHCA to cover the cost of the additional inspection.

**Section 11:**

The bill amends s. 429.52, F.S., to require that, effective October 1, 2013, a facility 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.

**Section 12:**

The bill creates a new, unnumbered section of the Florida Statutes which requires the AHCA to conduct a study of inter-surveyor reliability to determine if different surveyors consistently apply licensure standards. The 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.

**Section 13:**

The bill creates a new, unnumbered section of the Florida Statutes which finds that consumers need additional information in order to select an ALF. To facilitate this, the bill requires the AHCA to propose a rating system for ALFs. The AHCA must submit the proposal to the Governor, the President of the Senate, and the Speaker of the House by November 1, 2013. This section also requires the AHCA to create a consumer guide website by January 1, 2014. The website must contain information on ALFs and include a monitored comment section.

**Section 14:**

The bill provides that it takes effect 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:**

CS/SB 646 requires the Agency for Health Care Administration (AHCA) to conduct a new survey of facilities within 6 months after finding a class I or two or more class II violations. The AHCA must assess a fee on the facility for the cost of the survey as is the case in other surveys. Facilities with serious violations which require this additional survey will pay this additional fee. It should be noted that according to the AHCA, current fees and fines from ALFs do not cover the cost of regulating such facilities statewide.

**B. Private Sector Impact:**

Facilities will see more consistent regulation and more predictable penalties under the bill. 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 having fewer than 100 beds that commit 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 fines, while other will see an increase. The range for fines for class II, III, and IV violations are replaced with an amount equal to the midpoint of the range. Fines for facilities having 100 beds or more will see higher fines. This will help resolve an inequity in penalties whereby small facilities must pay the same fine amount as larger facilities.

Facilities that remove residents without cause, as determined by a state court, will be assessed a fine of \$2,500. Facilities will 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 will be fined \$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. This due process is retained under the bill.

Facilities will 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 having specialty licenses which meet licensure standards will 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 having any state supported mentally ill residents must meet limited mental health licensure requirements. Facilities with one or two state supported mentally ill residents which 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.

Facilities having significant uncorrected violations will be more likely to see their licenses suspended or revoked under the bill. Closing facilities that have significant problems will improve the public's assessment of ALFs and may improve the financial success of those facilities that meet licensure standards.

**C. Government Sector Impact:**

CS/SB 646 will have an insignificant fiscal impact on the AHCA. Specifically, the bill rearranges the regulatory efforts of the agency. The additional 6 month survey for problem facilities will increase the work of the AHCA surveyors, while the reduction in monitoring visits for facilities with specialty licenses will reduce the workload. The bill requires the agency to redesign its existing website for health care facilities. The redesigned website must provide regulatory information in an understandable way and allow for the posting of comments from the public on assisted living facilities. The agency will have to monitor comments for profanity prior to posting to the redesigned website. The costs of these requirements will be insignificant.

The AHCA and the DOEA may need to revise their rules regulating assisted living facilities. The bill requires the AHCA to study the extent to which surveyors are consistent. The bill requires the AHCA to propose a rating system for assisted living facilities that would help consumers in selecting a facility. The cost of these requirements would be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by the Health Policy Committee on March 7, 2013:**

This CS makes substantial changes to SB 646 to:

- Require a community living support plan for a mental health resident to be completed and submitted to the administrator of an ALF upon admission of that resident.
- Clarify that the Ombudsman must conduct an exit consultation with a facility's administrator only in the areas affecting the rights, health, safety, and welfare of the residents.
- Clarify that residents must receive information that retaliatory action cannot be taken against a resident for presenting grievances to the Ombudsman program or for exercising any other resident right.
- Return provisions regarding the revocation of a facility's license for intentional acts of facility staff to current law.
- Remove provisions that require the AHCA to deny or revoke the license of a facility that has been conditionally licensed for 180 or more consecutive days.
- Exempt facilities from the 45-day notice requirement in s. 429.28(k), F.S., if the facility is required to relocate some or all of its residents due to action by the AHCA.
- Specify that certain provisions that deal with repeat class III and IV violations are exempt from ss. 408.813(2)(c) and (d) and 408.832, F.S. in order to avoid conflicts with those sections.
- Clarify that the \$500 fine for not complying with background screening requirements is instead of the fines listed for class I through class IV violations.
- Mandate the AHCA post to its ALF website a list of an ALF's violations with, for each violation, an understandable summary, any sanction imposed by final order, and a summary of any corrective action taken.

- B. **Amendments:**

None.