

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 1082

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Legg

SUBJECT: Adult Day Care Centers

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Brown	Pigott	AHS	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1082 creates a definition for “adult day care services” and “respite” in relation to adult day care centers.

The bill allows for a licensed adult day care center to continue to operate in the event the center needs to temporarily relocate due to alterations to the center’s facility that may constitute a hazard, under certain conditions. The bill allows centers in operation more than one year to be granted a conditional license for a new location before moving to the new location.

The bill adds “the existence of unsafe conditions at the center that materially affect the well-being, health, or safety of center participants” as grounds for regulatory action by the Agency for Health Care Administration.

The bill requires adult day care centers to provide training to certain employees on the most current information regarding Alzheimer’s disease and dementia-related disorders, among other training required under current law. The bill requires all such training to be offered annually.

The bill modifies information that certain adult day care centers must disclose under certain conditions and removes certain statutory provisions related to licensure fees.

The bill has no fiscal impact.

II. Present Situation:

The Agency for Health Care Administration (AHCA) is authorized by statute to regulate, develop, establish, and enforce basic standards for adult day care centers (centers). An adult day care center is defined as “any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.”¹

Section 429.90, F.S., assures the implementation of a program that provides therapeutic social and health activities and services to adults in an adult day care center. A participant² in an adult day care center must have functional impairments and be in need of a protective environment where therapeutic social and health activities and services are provided. Centers are prohibited from accepting participants who require medication during the time spent at the center and who are incapable of self-administration of medications, unless there is a person licensed to administer medications at the center.³

Every adult day care center must offer a planned program of varied activities and services promoting and maintaining the health of participants and encouraging leisure activities, interaction, and communication among participants on a daily basis. Centers are required to make these activities and services available during at least 60 percent of the time the center is open.⁴ A center is required to have at least one staff member for every six participants, but at no time may a center have less than two staff members present, one of whom must be certified in first aid and cardiopulmonary resuscitation (CPR).⁵

Licensure

Section 429.907, F.S., provides that a license issued by the AHCA is required before an adult day care center may operate in this state.⁶ Separate licenses are required for centers operated on separate premises even though operated under the same management. Separate licenses are not required for separate buildings on the same premises.⁷

If a licensed center becomes wholly or substantially unusable due to a disaster or emergency, the licensee may continue to operate under its current license in premises separate from that authorized under the license. The location of the premises must be specified in the center’s comprehensive emergency management plan submitted to and approved by the applicable county emergency management authority. The center must notify the AHCA and county emergency management authority within 24 hours of operating in the separate premises.⁸ The licensee can

¹ Section 429.901(1), F.S.

² Section 429.901(8), F.S., defines a participant as “a recipient of basic services or of supportive and optional services provided by an adult day care center.”

³ Rule 58A-6.006, F.A.C.

⁴ Rule 58A-6.008, F.A.C.

⁵ Rule 58A-6.006, F.A.C.

⁶ Section 429.907(1), F.S.

⁷ Section 429.904(2)(a)

⁸ Section 429.907(2)(b)1.a. and b., F.S.

continue to operate at the separate premises for up to 180 days, which may be extended by the AHCA beyond the initial 180 days.⁹

An applicant must pay a fee with each license application and the fee amount may not exceed \$150.¹⁰ County-operated or municipally-operated centers applying for licenses are exempt from the payment of the license fee.¹¹

Staff Training

Section 429.917, F.S., provides staff training requirements for centers that offer care to persons with Alzheimer's disease or other related disorders. These centers must provide staff with basic written information about interacting with participants with Alzheimer's disease or dementia-related disorders.¹² Newly hired adult day care center personnel who are expected to, or whose responsibilities require them to, have direct contact with participants who have Alzheimer's disease or dementia-related disorders must complete initial training of at least one hour within the first three months after beginning employment.¹³ Additionally, staff who provide direct care to participants with Alzheimer's disease or a dementia-related disorder must complete an additional three hours of training within nine months after beginning employment.¹⁴

Specialized Alzheimer's Services

In 2012, the Legislature created s. 429.918, F.S., which is known as the "Specialized Alzheimer's Services Adult Day Care Act" (the Act). Under the Act, an adult day care center may apply to the agency to have its license designated as a "specialized Alzheimer's services adult day care center," if the requirements under the Act have been met. For such designation, the Act requires a center to meet a series of qualifications, including:¹⁵

- Having a mission statement that includes a commitment to providing dementia-specific services and disclose in the center's advertisements or in a separate document, which must be made available to the public upon request, the services that distinguish the care as being suitable for a person who has Alzheimer's disease or a dementia-related disorder;
- Providing participants with a documented diagnosis of Alzheimer's disease or a dementia-related disorder (ADRD) with a program for dementia-specific, therapeutic activities, including, but not limited to, physical, cognitive, and social activities appropriate for the ADRD participant's age, culture, and level of function;
- Maintaining at all times a minimum staff-to-participant ratio of one staff member who provides direct services for every five ADRD participants;
- Providing ADRD participants with a program for therapeutic activity at least 70 percent of the time that the center is open;
- Providing ADRD participants with hands-on assistance with activities of daily living, inclusive of the provision of urinary and bowel incontinence care;

⁹ Section 429.907(2)(b)2, F.S.

¹⁰ Section 429.907(3), F.S.

¹¹ Section 429.907(4), F.S.

¹² Section 429.917(1)(a), F.S.

¹³ Section 429.917(1)(b), F.S.

¹⁴ Section 429.917(1)(c), F.S.

¹⁵ Section 429.918(4), F.S.

- Using assessment tools that identify the ADRD participant’s cognitive deficits and identify the specialized and individualized needs of the ADRD participant and the caregiver;
- Creating an individualized plan of care for each ADRD participant which addresses the identified, dementia-specific needs of the ADRD participant and the caregiver;
- Conducting a monthly health assessment of each ADRD participant which includes, but is not limited to, the ADRD participant’s weight, vital signs, and level of assistance needed with activities of daily living;
- Completing a monthly update in each ADRD participant’s file regarding the ADRD participant’s status or progress toward meeting the goals indicated on the individualized plan of care;
- Assisting in the referral or coordination of other dementia-specific services and resources needed by the ADRD participant or the caregiver, such as medical services, counseling, medical planning, legal planning, financial planning, safety and security planning, disaster planning, driving assessment, transportation coordination, or wandering prevention;
- Offering, facilitating, or providing referrals to a support group for persons who are caregivers to ADRD participants;
- Providing dementia-specific educational materials regularly to ADRD participants, as appropriate, and their caregivers;
- Routinely conducting and documenting a count of all ADRD participants present in the center throughout each day;
- Being designated as a secured unit or having one or more working alarms or security devices installed on every door that is accessible to ADRD participants which provides egress from the center or areas of the center designated for the provision of specialized Alzheimer’s services;
- Not allowing an ADRD participant to administer his or her own medication; and
- Making the ADRD participant’s eligibility for admission contingent on whether the ADRD participant has a coordinated mode of transportation to and from the adult day care center, to ensure that the participant does not drive to or from the center.

The Act also provides for specific requirements for the operators and staff of a specialized Alzheimer’s services adult day care center that are more stringent than those for other centers.¹⁶

The Act provides that licensed adult day care centers that are not designated as specialized Alzheimer’s services adult day care centers are not prohibited from providing adult day care services to persons with Alzheimer’s disease or other dementia-related disorders.¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 429.901, F.S., to define “adult day care services” as community-based group services designed to provide social, health, therapeutic, recreational, nutritional, or respite services to adults who need supervised care in a safe environment during the day. The services should be designed to:

- Delay or prevent institutionalization;
- Improve the ability to function independently through the delivery of individualized care;

¹⁶ Section 429.918(5)-(6), F.S.

¹⁷ Section 429.918(11), F.S.

- Offer an alternative setting for adults who have chronic and long-term health care needs;
- Improve or stabilize cognitive functioning;
- Educate caregivers;
- Provide respite for caregivers; and
- Increase access to resources and information.

The bill also defines “respite” as short-term, temporary relief for a person who is caring for a family member who might otherwise require permanent placement in a facility outside the home.

Section 2 amends s. 429.907, F.S., to provide that if a licensed center becomes wholly or substantially unusable due to alterations to the center’s building that may constitute a hazard to the safety of the participants, the facility may continue to operate under its current license in premises separate from the premises authorized under the license if the licensee notifies the AHCA within 30 days after commencement of the building alterations. This notification is added to two other conditions that the licensee must meet under current law in order to continue to operate under its current license in separate premises. The bill adds the third condition and requires the licensee to meet only one of the three instead of requiring both of the current-law conditions to be met.

Under the bill, a center may be granted a conditional license for a new facility if the center has been in operation for more than one year before moving to the new location. Within six months after the center relocates, the AHCA must inspect the new location. An application for a conditional license renewal must be submitted at least 60 days before its current conditional license expires.

The bill removes from statute the provision that the licensure application fee may not exceed \$150. The provision for county-operated or municipally-operated centers applying for licensure to be exempt from the fee is also removed from statute.

Section 3 amends s. 429.911, F.S., relating to the denial, suspension, or revocation of a license under certain conditions. The bill adds the existence of unsafe conditions at the center which materially affect the well-being, health, or safety of center participants as grounds for AHCA action.

Section 4 amends s. 429.915, F.S., to add the additional category of temporary relocation as a condition under which the AHCA may issue a conditional license.

Section 5 amends s. 429.917, F.S., to require that the additional training required in s. 429.917(1)(c), F.S. for employees providing direct care to participants with Alzheimer’s disease or dementia-related disorders must include the most current information regarding Alzheimer’s disease and dementia-related disorders. The bill provides that all training specifically required for employees providing direct care must be offered annually.

The bill requires that a licensed center claiming to provide special care for persons with Alzheimer’s disease or related disorders, but which does not claim to be licensed or designated to provide specialized Alzheimer’s disease services, must disclose those services that distinguish

the care as being especially applicable to or suitable for such persons, and such center must document how those services are so distinguished. This differs from current law in that:

- Under the current provisions of s. 429.917(2), F.S., *any* licensed center claiming to provide such special care must disclose in advertisements or in a separate document those services that distinguish the care as being especially applicable and suitable, regardless of whether the center claims to be specially licensed or designated.
- The bill will apply these revised provisions only to licensed centers that do not claim to be licensed or designated to provide specialized Alzheimer's disease services.

The effect is that a center with a license as a designated specialized Alzheimer's services adult day care center under s. 429.918, F.S., currently must meet the disclosure requirements but, under the bill, will no longer be required to make the disclosure if it claims to be licensed or designated to provide specialized Alzheimer's disease services. A center not making that claim will remain subject to the bill's revised disclosure requirements if the center claims to provide special care for persons who have Alzheimer's disease or other related disorders.

Section 6 amends s. 429.931, F.S., to provide that in addition to the requirement for construction and renovation of a center to comply with the provisions of ch. 553, F.S., pertaining to building construction standards, the repair of a center must also comply with those provisions. The bill also provides that a center must notify the AHCA 30 days before the commencement of construction, repairs, or renovation of a center to request a conditional license if the construction, repairs, or renovation will require the center to temporarily relocate.

Section 7 amends s. 400.141, F.S., regarding the administration and management of nursing homes, to remove from s. 400.141(1)(f), F.S., the requirement that nursing homes providing adult day services must comply with the requirements of s. 429.905(2), F.S. There is only one requirement applicable to nursing homes under s. 429.905(2), F.S., which is that a nursing home that holds itself out to the public as an adult day care center must be licensed as such and must meet all standards prescribed by statute and rule.

Section 8 provides an effective date of July 1, 2014.

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:**

Current law places a cap of \$150 on the fee for submitting an application for adult day care center licensure. CS/SB 1082 removes that cap. The fee is set by rule.

Current law also exempts county-operated or municipally-operated centers from paying the fee. The bill removes that exemption.

B. Private Sector Impact:

The bill requires adult day care center staff providing direct care to participants to receive the most current information regarding Alzheimer's and dementia-related disorders and to receive this training and other training annually. There may be additional expenses incurred by centers to provide this training.

Entities applying for licensure under the bill may be required to pay application fees higher than the current cap of \$150.

C. Government Sector Impact:

The removal of the exemption for county-operated or municipally-operated centers from paying the fee will have an indeterminate fiscal impact on local governments, but the effect should be insignificant.

The Agency for Health Care Administration advises that the bill has no fiscal impact on state government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 146-152 lack clarity and appear to contain a grammatical error. The bill would be clearer by replacing those lines with the following:

(2) A center licensed under this part which claims to provide that it provides special care for persons who have Alzheimer's disease or ~~other~~ related disorders, but does not claim to be licensed or designated to provide specialized Alzheimer's disease services, must disclose in its advertisements or in a separate document those specific services that are distinguish the care as being especially applicable to, or suitable for, such persons, and the center must document the qualifying attributes of those services.

Even with this clarification, however, it is still unclear to whom the information must be disclosed, under what circumstances it must be disclosed, and what sort of documentation would

satisfy the statutory requirement. It is also unclear what constitutes a “claim” or the act of making a claim.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 429.901, 429.907, 429.911, 429.915, 429.917, 429.931, and 400.141.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 18, 2014:

- The CS removes Section 2 from the bill as-filed. The original Section 2 of the bill would have amended s. 429.905, F.S., to remove provisions from current law that provide exemptions from part III of ch. 429, F.S., for freestanding inpatient hospice facilities providing day care services to hospice patients only. The original Section 2 would also have removed statutory provisions of current law regarding the monitoring by the Agency for Health Care Administration of assisted living facilities, hospitals, and nursing homes that provide certain adult day care services while not being licensed as an adult day care facility.

- B. **Amendments:**

None.