

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 248

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Assisted Living Facilities

DATE: October 9, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Hendon		cf SPB 7000 as introduced
2.				
3.				
4.				
5.				
6.				

I. Summary:

SB 248 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 new ALF license for flexible beds, specifies the services available through that license, and provides requirements for a facility with the license.
- Creates a provisional Extended Congregate Care (ECC) license for new ALFs and specifies when the Agency for Health Care Administration (AHCA or agency) may deny or revoke a facility’s ECC license.
- Reduces the number of monitoring visits AHCA must conduct for ALFs with Limited Nursing Services (LNS) licenses and ECC licenses.
- Specifies when AHCA may waive a monitoring visit in facilities with an ECC or LNS license.
- 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 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 AHCA must revoke or deny a facility’s license.

- Specifies circumstances under which AHCA must impose an immediate moratorium¹ on a facility.
- Sets fines for all classes of violations² to a fixed amount at the midpoint of the current range and multiplies these new fine amounts by 1.5 for facilities licensed for 100 or more beds.
- 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 violations³ regardless of correction.
- Doubles the fines for minor violations if a facility is cited for the same minor violation during the previous two licensure inspections.
- Specifies a fine amount of \$500 for ALFs that are not in compliance with background screening requirements.⁴
- Amends the definition of “assistance with self-administration of medicine” to add several actions to the list of services in which unlicensed staff can assist residents.
- Requires AHCA to impose a \$2,500 fine against a facility that does not show good cause for terminating the residency of an individual.
- 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’ (DCF) central abuse hotline.
- Requires an additional inspection at a cost to the facility, within six months, of a facility cited for specified serious violations.
- Clarifies that in a continuing care facility or retirement community, ALF staffing requirements apply only to residents of units designated for independent living as an ALF.
- Requires new facility staff, who have not previously completed core training, to attend a two hour pre-service orientation before interacting with residents.
- Requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of inter-surveyor reliability in order to determine the consistency with which AHCA applies regulations to facilities, and requires OPPAGA to report its findings and recommendations by November 1, 2014.
- Requires AHCA to implement an ALF rating system by November 1, 2014.
- Requires AHCA to add certain content to its website by January 1, 2015, to help consumers select an ALF.

This bill substantially amends the following sections of the Florida Statutes: 394.4574, 400.0074, 400.0078, 429.02, 429.07, 429.075, 429.14, 429.178, 429.19, 429.256, 429.28, 429.34, 429.41, and 429.52.

This bill creates section 429.55, Florida Statutes.

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

¹ “Moratorium” means a prohibition on the acceptance of new clients. Section 408.803(10), F.S.

² The classes of violations can be found in s. 408.813, F.S.

³ Class III and class IV violations.

⁴ Background screening requirements are found in s. 408.809, F.S.

II. Present Situation:

An assisted living facility (ALF or facility) 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.⁵ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.⁶ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.⁷

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

As of October 1, 2013, there were 3,047 licensed ALFs in Florida with a total of 86,356 beds.¹¹ An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA or agency), 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,¹² limited mental health services,¹³ and extended congregate care services.¹⁴ There are 1,024 facilities having limited nursing services specialty licenses (LNS licenses), 276 having extended congregate care (ECC licenses), and 1,039 having limited mental health specialty licenses (LMH licenses).¹⁵

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.

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

⁶ Section 429.02(16), F.S.

⁷ Section 429.02(1), F.S.

⁸ For specific minimum standards see Rule 58A-5.0182, F.A.C.

⁹ Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.

¹⁰ Section 429.28, F.S.

¹¹ Fla. Agency for Health Care Admin., *Assisted Living Facility Directory* (Oct. 1, 2013), http://ahca.myflorida.com/MCHO/Health_Facility_Regulation/Assisted_Living/docs/alf/Directory_ALF.pdf (last visited Oct. 2, 2013).

¹² Section 429.07(3)(c), F.S.

¹³ Section 429.075, F.S.

¹⁴ Section 429.07(3)(b), F.S.

¹⁵ See Fla. Agency for Health Care Admin., *Assisted Living Facility*, http://ahca.myflorida.com/MCHO/Health_Facility_Regulation/Assisted_Living/alf.shtml (follow the hyperlinks for the ALF directories found under the "Notices/Updates" heading) (last visited Oct. 2, 2013).

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 services¹⁶ to persons who otherwise would be disqualified from continued residence in an ALF.¹⁷ 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.¹⁸

Limited Mental Health Specialty License

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

The administrator of 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.²² 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.

¹⁶ 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. Rule 58A-5.030(8)(a), F.A.C.

¹⁷ 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.

¹⁸ Section 429.07(3)(b), F.S.

¹⁹ Section 429.075, F.S.

²⁰ 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. Dep't of Elder Affairs, *Florida Affordable Assisted Living: Optional State Supplementation (OSS)*, <http://elderaffairs.state.fl.us/faal/operator/statesupp.html> (last visited Oct. 1, 2013).

²¹ 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.

²² Rule 58A-5.029(2)(c)3., F.A.C.

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 AHCA, DCF, and the Department of Health (DOH).²³ 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, F.A.C. On November 28, 2012, DOEA issued a proposed rule and held three public hearings on the proposed rule, ending on December 21, 2012.²⁴ In June 2013, DOEA withdrew the proposed rule in order to get a revised Statement of Estimated Regulatory Costs, and it plans to move forward with the rule, including seeking ratification from the Legislature on the portions of the rule that require it.²⁵

ALF Staff Training

Administrators and Managers

Administrators and other ALF staff must meet minimum training and education requirements established by DOEA by rule.²⁶ 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.²⁷

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 three months after becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.²⁸

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every two 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.²⁹

²³ Section 429.41(1), F.S.

²⁴ See Dep't of Elder Affairs, *Assisted Living Facility (ALF) Negotiated Rulemaking*, http://elderaffairs.state.fl.us/doea/alf_rulemaking.php (last visited Oct. 1, 2013).

²⁵ Conversation with Adam Lovejoy, Legislative Affairs Director, Department of Elder Affairs (Sept. 17, 2013).

²⁶ Rule 58A-5.0191, F.A.C. Many of the training requirements in rule may be subject to change due to the DOEA negotiated rulemaking process.

²⁷ Section 429.52(1), F.S.

²⁸ 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.

²⁹ Rule 58A-5.0191, F.A.C.

Staff with Direct Care Responsibilities

Facility administrators or managers are required to provide or arrange for six hours of in-service training for facility staff who provide direct care to residents which covers various topics as mandated in rule.³⁰ Staff training requirements must generally be met within 30 days after staff begin employment at the facility. However, staff must have at least one 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 six hours of in-service training, staff must complete one hour of elopement training and one 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.

ECC Specific Training

The administrator and ECC supervisor, if different from the administrator, must complete four hours of initial training in extended congregate care prior to the facility receiving its ECC license or within three months after beginning employment in the facility as an administrator or ECC supervisor. The administrator and ECC supervisor must also complete a minimum of four hours of continuing education every two 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.³¹

All direct care staff providing care to residents in an ECC program must complete at least two hours of in-service training, provided by the facility administrator or ECC supervisor, within six 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.³²

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 six hours of specialized training in working with individuals having mental health diagnoses and a minimum of three hours of continuing education dealing with mental health diagnoses or mental health treatment every two years.³³

Inspections and Surveys

The agency 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.

³⁰ Rule 58A-5.0191, F.A.C.

³¹ Rule 58A-5.0191(7)(b), F.A.C.

³² Rule 58A-5.0191(7)(c), F.A.C.

³³ Section 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.

- 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.³⁴
- 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.³⁵

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.³⁶

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items the agency must inspect.³⁷ The agency 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.³⁸

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. 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 services and to determine if the facility is complying with applicable regulatory requirements.³⁹ An ECC licensee is subject to quarterly monitoring inspections. At least one registered nurse must be included in the inspection team. The agency 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.⁴⁰

³⁴ See “Violations and Penalties” subheading below for a description of the violations.

³⁵ See s. 429.34, F.S., and Rule 58A-5.033, F.A.C.

³⁶ Rule 58A-5.033(2), F.A.C.

³⁷ Rule 58A-5.033(2)(b).

³⁸ *Id.*

³⁹ Section 429.07(3)(c), F.S.

⁴⁰ Section 429.07(3)(b), F.S.

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. The agency must fine a facility 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 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 agency must fine a facility 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. The agency 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 agency can only fine a facility (between \$100 and \$200 for each violation) if the problem is not corrected.^{41,42}

In addition to financial penalties, AHCA can take other actions against a facility. The agency may deny, revoke, and suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S. The agency 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 two years.⁴³ The agency 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.⁴⁴ The agency is required to publicly post notification of a license suspension, revocation, or denial of a license

⁴¹ When fixing the amount of the fine, 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.

⁴² Section 429.19(2), F.S.

⁴³ Section 429.14(4), F.S.

⁴⁴ Section 408.814, F.S.

renewal, at the facility.⁴⁵ Finally, ch. 825, F.S., Florida's Criminal Code, provides criminal penalties for the abuse, neglect, and exploitation of elderly persons⁴⁶ and disabled adults.⁴⁷

Central Abuse Hotline

The department 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 adult⁴⁸ at any hour of the day or night, any day of the week.⁴⁹ 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.⁵⁰

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.⁵¹ 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 DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.⁵² 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.⁵³ 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

⁴⁵ Section 429.14(7), F.S.

⁴⁶ "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.

⁴⁷ "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.

⁴⁸ "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.

⁴⁹ The central abuse hotline is operated by 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.

⁵⁰ Section 415.1034, F.S.

⁵¹ 42 U.S.C. 3058. *See also* s. 400.0061(1), F.S.

⁵² Section 400.0063, F.S.

⁵³ Section 400.0078, F.S.

complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure, or the disclosure is required by court order.⁵⁴ In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.

Consumer Information

Section 400.191, F.S., requires AHCA to provide information to the public about all licensed nursing homes in the state. The information must be provided in a consumer-friendly electronic format to assist consumers and their families in comparing and evaluating nursing homes. Under s. 400.191(2), F.S., the agency must provide an Internet site that includes information such as a list by name and address of all nursing homes in the state, the total number of beds in each facility, and survey and deficiency information. Additional information that the agency may provide on the site includes the licensure status history of each facility, the rating history of each facility, and the regulatory history of each facility.

There is no similar requirement in law to provide certain consumer information to the public on the licensed ALFs in the state.

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.⁵⁵ The series also criticized the state's regulatory and law enforcement agencies' responses to the problems. The paper concluded that the state's agencies, and in particular AHCA, failed to enforce existing laws designed to protect Florida's citizens who reside in ALFs.⁵⁶

Soon after the Miami Herald series, Governor Rick Scott vetoed HB 4045,⁵⁷ which reduced requirements relating to ALFs. The Governor then directed AHCA to form a task force for the purpose of examining current assisted living regulations and oversight.⁵⁸ The task force referred to as the Assisted Living Workgroup, held meetings and produced two reports, one in August of

⁵⁴ Section 400.0077(1)(b), F.S.

⁵⁵ Rob Barry, Michael Sallah and Carol Marbin Miller, *Neglected to Death, Parts 1-3*, THE MIAMI HERALD, April 30, 2011 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).

⁵⁶ *Id.*

⁵⁷ House Bill 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 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.

⁵⁸ Membership details of the task force are available at Fla. Agency for Health Care Admin., *Assisted Living Workgroup Members*, <http://ahca.myflorida.com/SCHS/CommitteesCouncils/ALWG/wgmembers.shtml> (last visited Oct. 1, 2013).

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.⁵⁹ The workgroup made numerous recommendations in its two reports.⁶⁰

III. Effect of Proposed Changes:

Section 1 of 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 Department of Children and Families (DCF or department) are responsible for residents who are not enrolled with a Medicaid prepaid behavioral health plan. This section requires a mental health resident's community living support plan to 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.

Section 2 of the bill amends s. 400.0074, F.S., to require the Long-Term Care Ombudsman Program's administrative assessments of assisted living facilities (ALF or facility) 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.

Section 3 of the bill amends s. 400.0078, F.S., which requires ALFs to provide information to new residents upon admission to the facility about the purpose of the Long-Term Care Ombudsman Program, to state that retaliatory action cannot be taken against a resident for presenting grievances.

Section 4 of the bill amends s. 429.02, F.S., adding the definition "flexible bed," which means a licensed bed designated to allow a continuing care facility or a retirement community to provide assisted living services for up to 15 percent of the residents living in residential units designated for independent living. A flexible bed is only available for individuals who have been a contract holder of the facility for at least six months.

Section 5 of the bill amends s. 429.07, F.S., to make changes to improve the regulation of facilities with Extended Congregate Care (ECC) and Limited Nursing Services (LNS) specialty licenses. These changes include:

⁵⁹ See Fla. Agency for Health Care Admin., *Assisted Living Workgroup, Phase I*, <http://ahca.myflorida.com/SCHS/CommitteesCouncils/ALWG/archived/ALWG2011.shtml> (last visited Oct. 1, 2013); Fla. Agency for Health Care Admin., *Assisted Living Workgroup, Phase II*, <http://ahca.myflorida.com/SCHS/CommitteesCouncils/ALWG/index.shtml> (last visited Oct. 1, 2013).

⁶⁰ See Fla. Agency for Health Care Admin., *Florida Assisted Living Workgroup, Phase II Recommendations* (Nov. 26, 2012), <http://ahca.myflorida.com/SCHS/CommitteesCouncils/ALWG/docs/ALF-FinalReportandRecommendationsPhaseII.pdf> (last visited Oct. 1, 2013); Fla. Agency for Health Care Admin., *Florida Assisted Living Workshop, Final Report and Recommendations*, <http://ahca.myflorida.com/SCHS/CommitteesCouncils/ALWG/archived/docs/2011/ALWorkgroupFinalReport.pdf> (last visited Oct. 1, 2013).

- Requiring that an ALF be licensed for two or more years before being issued a full ECC license.
- Clarifying under what circumstances AHCA may deny or revoke a facility's ECC license.
- Creating a provisional ECC license for ALFs that have been licensed for less than two years. The provisional license lasts for a period of six months. The facility must inform the Agency for Health Care Administration (AHCA or agency) when it has admitted one or more residents requiring ECC services, after which 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 a full ECC license. If the licensee fails to demonstrate compliance with the requirements of an ECC license, 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 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.

Section 6 of the bill amends s. 429.075, F.S., to require facilities with one or more state supported mentally ill residents to obtain a LMH license. This will expand the protections and services to all state supported mentally ill residents in ALFs.

Section 7 of the bill amends s. 429.14, F.S., to clarify the use of administrative penalties, 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.
- Require that AHCA 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.

The bill also clarifies that if a facility is required to relocate its residents due to agency action, the facility does not have to give residents 45 days' notice as required under s. 429.28(1)(k), F.S.

Section 8 of the bill amends s. 429.178, F.S., to make technical changes and to conform with changes this section to other parts of the bill.

Section 9 of 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:

- Set the dollar amount of fines for facilities with fewer than 100 beds at \$7,500 for class I violations, \$3,000 for class II violations, \$750 for class III violations, and \$150 for class IV violations. This is the midpoint of the current ranges for fines in current law.
- Multiply fine amounts by 1.5 for facilities licensed for 100 or more beds.

- Require AHCA to impose a fine on a facility for a class I violation, even if the facility corrects the violation before 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, that prohibits 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 one or more such violations, stemming from the same regulation, over the course of two licensure inspections.
- Create a fine of \$500 for failure to comply with background screening requirements. This fine will take the place of fines assessed based on the class of the violation.

Section 10 of the bill amends s. 429.256, F.S., to add several actions to the list of services in which unlicensed staff can assist. Specifically, the bill includes the following actions under assistance with self-administration of medication:

- Taking an insulin syringe that is prefilled by a pharmacist or an insulin pen that is prefilled by the manufacturer to a resident.
- Assisting with the use of a nebulizer, including removing the cap of a nebulizer, opening the unit dose of nebulizer solution, and pouring the prescribed premeasured dose into the dispensing cup.
- Using a glucometer to perform blood-glucose level checks.
- Assisting with putting on and taking off antiembolism stockings.
- Assisting with applying and removing an oxygen cannula.
- Assisting with the use of a continuous positive airway pressure device.
- Assisting with measuring vital signs.
- Assisting with colostomy bags.

Section 11 of the bill amends s. 429.28, F.S., to require the posted notice of a resident's rights, obligations, prohibitions, to specify that complaints made to the ombudsman program, as well as the names and identities of the complainant and any residents involved, are confidential. 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 12 amends s. 429.34, F.S., to require certain state officials, such as Medicaid Fraud investigators and state or local fire marshals, to 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 arising from separate surveys within a 60 day period, or two or more unrelated class II violations cited during one survey be subject to an additional inspection within six months. The licensee must pay a fee to AHCA to cover the cost of the additional inspection.

Section 13 of the bill amends s. 429.41, F.S., to provide that if a continuing care facility or a retirement community uses flexible beds, the staffing requirements established in rule only apply to the residents receiving assisted living services.

Section 14 of the bill amends s. 429.52, F.S., to require that facilities provide a two hour preservice orientation for all new facility employees who have not previously completed core training. The preservice orientation must cover topics that help the employee provide responsible care and respond to the needs of the residents. The facility's administrator must attest, under penalty of perjury, that all new ALF staff have completed the preservice orientation at the time of license renewal. The bill clarifies that the preservice orientation can be provided by the ALF instead of requiring that it be provided by a trainer registered with DOEA.

The bill also increases the training requirements for staff who assist residents with medication from four to six hours.

Section 15 of the bill creates s. 429.55, F.S., creating a new ALF license for flexible beds and providing requirements for a facility with the license. Specifically, a facility with a flexible bed license must:

- Retain a log listing the name of each resident receiving assisted living services in a flexible bed unit, the unit number in which the resident resides, the date that services commenced and ended, and documentation demonstrating that minimum staffing standards are met.
- Specify in the flexible bed contract the process used to determine when a resident is no longer eligible for services provided through the flexible bed license and whether the delivery of services will be covered under an existing residency agreement or will require a fee for service payment.
- Retain each flexible bed contract for five years after the assisted living services end.

A facility with a flexible bed license must provide state surveyors with access to the log, as well as access to the independent living units occupied by residents receiving services through the flexible bed license upon request. A resident living in a building with a flexible bed license may still receive home health services.

Section 16 of the bill creates a new, unnumbered section of the Florida Statutes which requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of inter-surveyor reliability to determine if different surveyors consistently apply licensure standards. The OPPAGA must report its findings and make recommendations to the Governor, the President of the Senate, and the Speaker of the House by November 1, 2014.

Section 17 of 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 AHCA to implement a rating system for ALFs by November 1, 2014. This section also requires AHCA to create a consumer guide website with information on ALFs by January 1, 2015. At a minimum, the website must include:

- Information on each licensed ALF such as the number and type of licensed beds, the types of licenses held by the facility, and the expiration date of the facility's license.
- A list of the facility's violations including a summary of the violation, any sanctions imposed, and a summary of any corrective action taken by the facility.
- Links to inspection reports.
- A monitored comment page to help inform consumers of the quality and care of services in ALFs. The comment page must allow members of the public to post comments on their

experiences with, or observations of, an ALF. A controlling interest in an ALF or an employee or owner of an ALF may not post comments on the page; however, a controlling interest, employee, or owner may respond to comments on the page, and AHCA shall ensure that the responses are identified as being from a representative of the facility.

Section 18 of the bill 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:

This bill requires the Agency for Health Care Administration (AHCA) to conduct a new survey of assisted living facilities (ALF) within six months after finding a class I violation or two or more class II violations. Facilities that require the additional survey will be charged a fee to cover the cost of the additional survey. According to AHCA, current fees and fines from ALFs do not cover the cost of regulating such facilities statewide.

B. Private Sector Impact:

The bill revises the fine amounts used to sanction facilities with violations in order to provide more consistent regulation and more predictable penalties. Specifically, the bill sets the dollar amount of fines for facilities with fewer than 100 beds at \$7,500 for class I violations, \$3,000 for class II violations, \$750 for class III violations, and \$150 for class IV violations. This is the midpoint of the current ranges for fines in current law. For facilities with 100 or more beds, the fine amounts are multiplied by 1.5. This will help resolve an inequity in penalties whereby small facilities can pay the same fine amount as larger facilities. Additionally, the bill provides for the following:

- A \$2,500 fine if a facility removes a resident without cause, as determined by a state court.
- A \$500 fine if a facility violates the background screening requirements. 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.

- A doubling of fines for class 1 or II violations if the facility was previously cited for one or more class I or II violations during the last licensure inspection.
- An imposition of a fine for class I violations regardless of whether they were corrected.

All fines are subject to challenge through an administrative hearing under ch. 120, F.S. This due process is retained under the bill.

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

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 that currently have less than three state supported mentally ill residents and do not meet these requirements may see increased costs to comply.

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

The bill requires facilities to provide all new employees who have not already gone through the ALF core training program with a two hour pre-service training session before they work with residents. In many cases, facilities are already providing similar training. Additionally, the bill increases the training requirements for staff who assist residents with medication from four to six hours. The cost of both of these training requirements is not expected to be significant.

C. Government Sector Impact:

The exact fiscal impact on AHCA is unknown at this time. The bill rearranges the regulatory efforts of the agency. For example, the additional six 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 that a fine be imposed for class III and IV violations if a facility was previously cited for one or more of the same class III and IV violations during the agency's last inspection. The agency anticipates that the number of legal cases will increase due to the increase in administrative fines. However, any increased workload could be paid through additional fine collections.

The bill also 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 cost of these requirements appear to be insignificant.

Finally, the bill requires AHCA to implement a rating system and adopt rules to administer the system by November 1, 2014. The cost of these requirements are not expected to be significant.

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.)

None.

B. Amendments:

None.