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 Health Policy

BILL:	CS/SB 382
INTRODUCER:	Health Policy Committee and Senators Sobel and Gaetz
SUBJECT:	Assisted Living Facilities
DATE:	February 3, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 382 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 having significant violations. Among other provisions, the bill:

- Clarifies the criteria under which the Agency for Health Care Administration (AHCA) must revoke or deny a facility's license;
- Adds certain responsible parties and AHCA personnel to the list of people who must report abuse or neglect to the Department of Children and Families' (DCF) central abuse hotline; and,
- Requires the AHCA to implement an ALF rating system by March 1, 2016, and to add certain content to its website by November 1, 2015, to help consumers select an ALF.

II. Present Situation:

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[1] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-

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

administration of medication.[2] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[3]

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.[4] The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.[5] If, as determined by the facility administrator or health care provider, a resident no longer meets the criteria for continued residency or the facility is unable to meet the resident's needs, the resident must be discharged in accordance with the Resident Bill of Rights.[6]

As of December 1, 2014, there were 3,027 licensed ALFs in Florida having a total of 88,306 beds.[7] An ALF must have a standard license issued by the AHCA under 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 (LNS),[8] limited mental health services (LMH),[9] and extended congregate care services (ECC).[10] There are 826 facilities with LNS specialty licenses, 260 with ECC licenses, and 955 with LMH specialty licenses.[11]

Limited Nursing Services Specialty License

An 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

An ECC specialty license enables a facility to provide, directly or through contract, services performed by licensed nurses and supportive services[12] to persons who otherwise would be

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[2] Section 429.02(16), F.S.
[3] Section 429.02(1), F.S.
[4] For specific minimum standards see Fla. Admin. Code R 58A-5.0182.
[5] Section 429.26, F.S., and Fla. Admin. Code R 58A-5.0181.
[6] Section 429.28, F.S.
[7] Agency for Health Care Administration, *Assisted Living Facility Directory* (December 1, 2014), http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/docs/alf/Directory_ALF.pdf (last visited Jan. 26, 2015).
[8] Section 429.07(3)(c), F.S.
[9] Section 429.075, F.S.
[10] Section 429.07(3)(b), F.S.
[11] *See* Agency for Health Care Administration, *Assisted Living Facility*, http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/alf.shtml (follow the hyperlinks for the ALF directories found under the "Notices/Updates" heading) (last visited Jan. 26, 2015).
[12] 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. Fla. Admin. Code R. 58A-5.030(8)(a).

disqualified from continued residence in an ALF.[13] 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. A facility licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility having 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.[14]

Limited Mental Health Specialty License

An ALF that serves three or more mental health residents must obtain an LMH specialty license.[15] A mental health resident is an individual who receives social security disability income (SSDI) or supplemental security income (SSI) due to a mental disorder and who receives optional state supplementation (OSS).[16] The department must ensure that a mental health resident is assessed and determined able to live in an ALF with an LMH license.[17]

The administrator of an 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.[18] 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.

ALF Staff Training

Administrators and Managers

Administrators and other ALF staff must meet minimum training and education requirements established in rule by the Department of Elder Affairs (DOEA),[19] intended to assist facilities in appropriately responding to the needs of residents, maintaining resident care and facility standards, and meeting licensure requirements.[20]

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[13] An ECC program must provide additional services as required by the resident's service plan including: 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 Fla. Admin. Code R. 58A-5.030.
[14] Section 429.07(3)(b), F.S.
[15] Section 429.075, F.S.
[16] 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/statesupp.php (last visited Jan. 26, 2015).
[17] Section 394.4574(2)(a), 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.
[18] Fla. Admin. Code R. 58A-5.029(2)(c)3.
[19] Fla. Admin. Code R. 58A-5.0191.
[20] Section 429.52(1), F.S.

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.[21]

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every 2 years.[22] 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.[23]

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.[24] 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. 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 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 the ECC supervisor, if different from the administrator, must complete four hours of initial training in extended congregate care either 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 having Alzheimer's disease or related disorders.[25]

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.[26]

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[21]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.
[22] Fla. Admin. Code R. 58A-5.0191(1)(c).
[23] Fla. Admin. Code R. 58A-5.0191.
[24] *Id*
[25] Fla. Admin. Code R. 58A-5.0191(7)(a) and (b).
[26] Fla. Admin. Code R. 58A-5.0191(7)(c).

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 three hours of continuing education dealing with mental health diagnoses or mental health treatment every 2 years.[27]

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;
- To monitor facilities cited in the previous year for a class I or class II, or four or more uncorrected class III, violations;[28]
- 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; or
- To determine if a facility is operating without a license.[29]

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, class II, or uncorrected class III violations.
- Confirmed complaints from the long-term care ombudsman council which were reported to the AHCA by the council.
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.[30]

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items the AHCA must inspect.[31] 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.[32]

Monitoring Visits

Facilities with LNS or ECC licenses are subject to monitoring visits in which the AHCA inspects the facility for compliance with the requirements of the specialty license. An LNS licensee is

[27] Section 429.075(1), F.S. and Fla. Admin. Code R. 58A-5.0191(8).
[28] *See* "Violations and Penalties" subheading below for a description of the violations.
[29] Section 429.34, F.S.
[30] Fla. Admin. Code R. 58A-5.033(1)(a).
[31] Fla. Admin. Code R. 58A-5.033(1)(b).
[32] Fla. Admin. Code R. 58A-5.033(1)(c).

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.[33] 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.[34]

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 licensed for limited mental health.
  - The AHCA must fine a facility between $5,000 and $10,000 for each class I violation.
  - During Fiscal Years 2011-2012 and 2012-2013, the AHCA entered 115 final orders for class I violations with an average fine amount of $6,585 for facilities having fewer than 100 beds and $7,454 for facilities having 100 or more beds.[35]
- **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 a 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.
  - During Fiscal Years 2011-2012 and 2012-2013, the AHCA entered 749 final orders for class II violations with an average fine amount of $1,542 for facilities having fewer than 100 beds and $1,843 for facilities having 100 or more beds.
- **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.

[33] Section 429.07(3)(c)2., F.S.
[34] Section 429.07(3)(b)2., F.S.
[35] Agency for Health Care Administration, *Senate Bill 248 Analysis* (Nov. 26, 2013) (on file with the Senate Committee on Health Policy).

- During Fiscal Years 2011-2012 and 2012-2013, the AHCA entered 507 final orders for uncorrected class III violations with an average fine amount of $766 for facilities having fewer than 100 beds and $614 for facilities having 100 or more beds.

- **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 may fine a facility between $100 and $200 for each violation but only if the problem is not corrected.
  - During Fiscal Years 2011-2012 and 2012-2013, the AHCA entered 18 final orders for uncorrected class IV violations with an average fine amount of $165 for facilities having fewer than 100 beds and $100 for facilities having 100 or more beds.[36,37,38]

In addition to financial penalties, the 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.[39] The AHCA may also impose an immediate moratorium or emergency suspension on any provider if it finds any condition that presents a threat to the health, safety, or welfare of a client.[40] The AHCA is required to publicly post notification of a license suspension, revocation, or denial of a license renewal, at the facility.[41] Finally, ch. 825, F.S., Florida's Criminal Code, provides criminal penalties for the abuse, neglect, and exploitation of elderly persons[42] and disabled adults.[43]

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 suspected abuse, neglect, or exploitation of a vulnerable adult[44] at any hour of the day or night,

[36] 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.
[37] Section 429.19(2), F.S.
[38] Agency for Health Care Administration, *Senate Bill 248 Analysis* (Nov. 26, 2013) (on file with the Senate Committee on Health Policy)
[39] Section 429.14(4), F.S.
[40] Section 408.814, F.S.
[41] Section 429.14(7), F.S.
[42] "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.
[43] "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.
[44] "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.

any day of the week.[45] 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.[46]

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.[47] 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 DOEA Secretary.[48] 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.[49] The names and 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.[50] 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 the 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 AHCA 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 AHCA 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.

[45] 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; and immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline. Section 415.103(1), F.S.
[46] Section 415.1034, F.S.
[47] 42 U.S.C. 3058, et. seq. *See also* s. 400.0061(1), F.S.
[48] Section 400.0063, F.S.
[49] Section 400.0078(2), F.S.
[50] Section 400.0077(1)(b), F.S.

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 newspaper spent a year examining thousands of state inspections, police reports, court cases, autopsy files, emails, and death certificates and conducted dozens of interviews with operators and residents throughout Florida. The series detailed examples of abuses, neglect, and deaths that took place in facilities.[51] The series also examined the state's regulatory and law enforcement agencies' responses to the problems. The newspaper 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.[52]

Soon after *The Miami Herald* series, Governor Rick Scott vetoed HB 4045,[53] which reduced regulatory requirements on ALFs. The Governor then directed the AHCA to form a task force for the purpose of examining current assisted living regulations and oversight. 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. The workgroup made numerous recommendations in its two reports. [54]

III. Effect of Proposed Changes:

Section 1 amends s. 394.4574, F.S., to clarify that Medicaid managed care plans are responsible for state-supported mental health residents enrolled in their plans and that managing entities under contract with the DCF are responsible for mental health residents who are not enrolled with a Medicaid managed care 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 with ensuring 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.

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[51] 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 web links to the three-part series) (Last visited on Jan. 27, 2015).

[52] *Id.*

[53] 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 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.

[54] Agency for Health Care Administration, *Assisted Living Workgroup*, found at http://ahca.myflorida.com/SCHS/ALWG/wgmembers.shtml (last visited Jan. 27, 2015).

Section 2 amends s. 400.0074, F.S., to require the Long-Term Care Ombudsman Program's administrative assessments of facilities be comprehensive in nature. This section also requires ombudsmen to conduct an exit consultation with the facility administrator to discuss issues and concerns from the visit.

Section 3 amends s. 400.0078, F.S., to require an ALF to include a statement that retaliatory action cannot be taken against a resident for presenting grievances when that ALF provides the required information to new residents upon admission to the facility about the purpose of the Long-Term Care Ombudsman Program.

Section 4 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 two or more years before being issued a full ECC license;
- Clarifying under what circumstances the AHCA may deny or revoke a facility's ECC license;
- 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; and
- Clarifying under what circumstances the AHCA may waive one of the required monitoring visits for facilities with ECC licenses and also authorizing the AHCA to waive the required monitoring visit for facilities with an LNS license under the same conditions.

This section of the bill also creates 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 which the 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, the AHCA must grant the facility a full ECC license.
- If the licensee fails to demonstrate compliance with the requirements of an ECC license or fails to admit an ECC resident within 3 months, the provisional ECC license expires.

Section 5 amends s. 429.075, F.S., to require facilities having one or more state-supported mental health residents to obtain a LMH license. Current law requires an ALF to obtain an LMH license only if it has three or more state-supported mental health residents.

Section 6 amends s. 429.14, F.S., to clarify the use of administrative penalties, to:

- Allow the AHCA to immediately revoke, rather than only deny,[55] a facility's or a controlling interest's license if that facility or controlling interest 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 the AHCA must deny or revoke a facility's license; and

[55] Denial of a license occurs when the AHCA refuses to renew the facility's license at the end of the 2-year licensure period.

- Require that the AHCA 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.

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

Section 7 amends s. 429.178, F.S., to make technical changes and to conform to changes elsewhere in the bill.

Section 8 amends s. 429.19, F.S., relating to the impositions of fines, as follows:

- The dollar amount of fines for facilities having fewer than 100 beds is set at $7,500 for class I violations, $3,000 for class II violations, $750 for class III violations, and $150 for class IV violations. These figures represent the midpoint of the current ranges for fines in current law.
- The dollar amount of fines for facilities having 100 or more beds is set at $11,250 for class I violations, $4,500 for class II violations, $1,125 for class III violations, and $225 for class IV violations. These fines are 1.5 times the amount of the fines for facilities having fewer than 100 beds.
- The bill requires the AHCA to impose a fine on a facility for a class I violation, even if the facility corrects the violation before the AHCA conducts an investigation. Facilities can still challenge such fines through an administrative hearing pursuant to ch. 120, F.S.
- The bill doubles the fines for facilities with repeat class I and class II violations.
- The bill imposes a fine on facilities with repeat class III and class IV violations stemming from the same regulation, regardless of correction. Current law prohibits the AHCA from assessing fines for corrected class III and class IV violations.
- The bill doubles the fines for class III or class IV violations if a facility is cited three or more times for one or more such violations stemming from the same regulation over the course of three licensure inspections.
- The bill substitutes a fine of $500 for failure to comply with background screening requirements. This fine will take the place of any fine assessed based on the class of violation.

Section 9 amends s. 429.256, F.S., to allow unlicensed staff to assist with several additional services that fall under the category of assistance with self-administration of medication. Specifically, unlicensed staff will be allowed to assist with:

- Taking a prefilled insulin syringe to a resident;
- The resident's 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;
- The resident's use of a glucometer to perform blood-glucose level checks;
- Putting on and taking off anti-embolism stockings;
- Applying and removing an oxygen cannula, but not titrating the oxygen levels;
- The resident's use of a continuous positive airway pressure device, but not titrating the device;

- Measuring vital signs; and
- The resident's use of colostomy bags.

Section 10 amends s. 429.28, F.S., to require the posted notice of a resident's rights, obligations, and 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 who has exercised an enumerated right.

Section 11 amends s. 429.34, F.S., to require certain state officials, such as Medicaid Fraud investigators and state or local fire marshals, to report any knowledge or reasonable suspicion that a vulnerable adult has been or is being abused, neglected, or exploited to the DCF central abuse hotline. The bill provides that a facility having 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 6 months. The licensee must pay a fee to the AHCA to cover the cost of the additional inspection.

Section 12 amends s. 429.41, F.S., to provide that if a continuing care facility or a retirement community licenses part of a building for ALF services, the staffing requirements established in rule apply only to the residents receiving assisted living services.

Section 13 amends s. 429.52, F.S., to require that facilities provide a 2-hour, pre-service orientation for all new facility employees who have not previously completed core training. The pre-service orientation must cover topics that help new employees provide responsible care and respond to the needs of the residents. A new employee and the facility's administrator must sign a statement that the new ALF staff member has completed the pre-service orientation. The signed statement must be kept in that staff member's file. The bill clarifies that the pre-service orientation can be provided by the ALF instead of requiring that it be provided by a trainer registered with the DOEA.

The bill also increases the training requirements for staff who assist residents with medication from four to 6 hours.

Section 14 creates an undesignated section of law which finds that consumers need additional information in order to select an ALF. The bill requires the AHCA to implement a rating system for ALFs by March 1, 2016. This section also requires the AHCA to create a consumer guide website with information on ALFs no later than November 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 the date of any corrective action taken by the facility; and
- Links to inspection reports.

Section 15 appropriates $156,943 in recurring funds and $7,546 in nonrecurring funds from the AHCA's Health Care Trust Fund for two full-time equivalent senior attorney positions for the AHCA for the purpose of implementing the bill's regulatory provisions.

Section 16 provides an effective date of July 1, 2015.

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 382 requires the AHCA to conduct a new survey of an ALF within 6 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 the AHCA, fees and fines from ALFs under current law do not cover the cost of regulating such facilities statewide.

B. Private Sector Impact:

The bill revises the fine amounts for each of the four classes of violations. Specifically, the bill sets the dollar amount of fines for facilities having 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. Current law provides for a range of fine amounts. For example a facility cited for a class I violation can be fined between $5,000 and $10,000 under current law. Under the bill, for facilities having 100 or more beds, fines are multiplied by 1.5 to help resolve an inequity in penalties whereby small facilities can pay the same fine amount as much larger facilities. Fixing the fine amounts at the mid-point of each range will provide for more predictable outcomes for facilities that are cited for violations.

Additionally, the bill provides for the following changes to the fine amounts:

- A $2,500 fine if a facility removes a resident without cause, as determined by a state court;
- A doubling of fines for class I or II violations if the facility was previously cited for one or more class I or II violations during the last licensure inspection; and

- An imposition of a fine for class I violations regardless of whether they were corrected prior to being cited by the AHCA.

The AHCA estimates that the new fine structure will initially cost facilities cited for violations a total of approximately $1.3 million per year. However, these increased costs could be reduced by increased compliance with ALF regulations and a corresponding reduction in the number of cited violations.[56] All fines are subject to challenge through an administrative hearing under ch. 120, F.S.

Facilities having significant uncorrected violations will be more likely to see their licenses suspended or revoked under the bill.

Facilities having any state-supported mental health residents will need to meet limited mental health licensure requirements. Facilities that currently have fewer than three state-supported mental health 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 the 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 2-hour pre-service training session before they work with residents. Additionally, the bill increases the training requirements for staff who assist residents with medication from four to 6 hours. The cost of both of these training requirements is not expected to be significant.

C. Government Sector Impact:

The bill will generate approximately $1.1 million of additional net revenues for the AHCA per year when accounting for revenue generated and expenditures incurred as a result of the bill. The bill appropriates $156,943 in recurring funds, $7,546 in nonrecurring funds, and two full-time equivalent positions from the AHCA's Health Care Trust Fund for implementing the bill's regulatory provisions. These costs will likely be offset, and additional revenue will likely be generated, through the increased fines directed to the Health Care Trust Fund. The AHCA estimates, based on the number of violations cited over the past 2 years, that the new fine structure in the bill will generate approximately $1.3 million additional revenue per year. However, this amount could decrease if the new fine amounts result in increased compliance and fewer cited violations.[57]

VI. Technical Deficiencies:

None.

[56] Agency for Health Care Administration, *Senate Bill 248 Analysis* (Nov. 26, 2013) (on file with the Senate Committee on Health Policy).
[57] See Supra note 56

VII. Related Issues:

None.

VIII. Statutes Affected:

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

This bill creates an undesignated section of Florida law.

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 Health Policy on February 3, 2015:
The CS amends SB 382 to remove the requirement that the Office of Program Policy Analysis and Governmental Accountability conduct a study of ALF inter-surveyor reliability and to remove the requirement that the AHCA create a monitored ALF public comment page as well as the appropriations required to create and maintain the comment page.

B. Amendments:

None.