

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 443 Nursing Home and Assisted Living Facility Resident Rights  
**SPONSOR(S):** Health Innovation Subcommittee; Slosberg  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Royal	Crosier
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Nursing homes are regulated by the Agency for Health Care Administration (AHCA) under the Health Care Licensing Procedures Act (Act) in part II of chapter 408, F.S. Assisted Living Facilities (ALF) are licensed and regulated by AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S.

Current law requires nursing home facilities provide copies of a resident's records, including any medical records and records concerning the care and treatment of the resident performed at the facility, within 14 working days after receipt of a written request by a current resident or the resident's authorized representative.

Federal regulations require nursing home facilities provide residents with access to personal and medical records within 24 hours, excluding weekends and holidays, of an oral or written request of the resident. Nursing home facilities must allow residents to obtain a copy of the records within 2 working days of the request.

Current law requires ALFs to provide residents with at least 45 days' notice for the relocation of a resident or residency termination. Reasons for relocation must be set forth in writing. In order for a facility to terminate the residency of an individual without notice, the facility must show good cause in a court of competent jurisdiction.

CS/HB 443 requires nursing homes to notify residents and the State Long Term Care Ombudsman with the facility's current contact information, including a functional telephone number, and to notify residents and the State Long Term Care Ombudsman of any change in contact information within 30 days after such change and authorizes AHCA to take disciplinary action against nursing homes that fail to do so.

The bill also aligns Florida law with federal regulations regarding the provision of records to nursing home residents.

The bill requires an ALF to provide residents with 45 days' written notice of relocation or termination of residency. The bill also requires an ALF that is relocating a resident to provide the reasons for relocation to the resident or the resident's legal representative.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### **Nursing Homes**

###### *Licensure*

Nursing homes are regulated by AHCA under the Health Care Licensing Procedures Act (Act) in part II of chapter 408, F.S., which contains uniform licensing standards for 29 provider types including nursing homes. In addition, nursing homes must comply with the requirements contained in the individual authorizing statutes of part II of chapter 400, F.S., which includes unique provisions for licensure beyond the uniform criteria. AHCA must electronically provide a list by name and address of all nursing home facilities in this state, including any prior name by which a facility was known during the previous 24-month period.<sup>1</sup>

###### *Access to Records*

Section 400.145, F.S. requires nursing home facilities provide copies of a resident's records, including any medical records and records concerning the care and treatment of the resident performed at the facility, within 14 working days after receipt of a written request by a current resident or the resident's authorized representative. The facility must provide the records within 30 days if the request relates to a former resident. If the facility determines that disclosure of the records to the resident would be detrimental to the physical or mental health of the resident, the facility may refuse to furnish the records directly to the resident. If the facility refuses to furnish the records directly to the resident, the resident may request the facility provide the records to another medical provider designated by the resident.

Federal regulations require nursing home facilities provide residents with access to personal and medical records within 24 hours, excluding weekends and holidays, of an oral or written request of the resident. Nursing home facilities must allow residents to obtain a copy of the records within 2 working days of the request.<sup>2</sup>

##### **Assisted Living Facilities**

###### *Licensure*

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>3</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>4</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>5</sup>

ALFs are licensed and regulated by AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S.<sup>6</sup> In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to

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<sup>1</sup> S. 400.191(2)(a)2, F.S. The list can be obtained at: <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited December 15, 2017).

<sup>2</sup> 42 CFR 483.10

<sup>3</sup> S. 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

<sup>4</sup> S. 429.02(16), F.S.

<sup>5</sup> S. 429.02(1), F.S.

<sup>6</sup> Under s. 429.04, F.S., the following are exempt from licensure: ALFs operated by an agency of the federal government; facilities licensed under ch. 393, F.S., relating to individuals with developmental disabilities; facilities licensed under ch. 394, F.S., relating to

provide additional care. These specialty licenses include limited nursing services,<sup>7</sup> limited mental health services,<sup>8</sup> and extended congregate care services.<sup>9</sup> The Department of Elder Affairs (DOEA) is responsible for establishing training requirements for ALF administrators and staff.<sup>10</sup>

As of November 20, 2017, there are 3,108 licensed ALFs in Florida with 98,833 beds.<sup>11</sup>

### *Resident's Rights*

When individuals enter assisted living facilities, they gain special "Residents' Rights"<sup>12</sup>, which includes the right to receive at least 45 days' notice of relocation or termination of residency from the facility. A notice of at least 45 days is not required if, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. If a resident has been adjudicated mentally incapacitated, the resident's guardian must be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons for relocation must be set forth in writing. In order for a facility to terminate the residency of an individual without notice, the facility must show good cause in a court of competent jurisdiction.

### **State Long-Term Care Ombudsman Program**

The State Long-Term Care Ombudsman Program (LTCOP) within the DOEA is a statewide, volunteer-based system of local councils that act as advocates for residents of long-term care facilities.<sup>13</sup> The LTCOP was established by Title VII of the federal Older Americans Act<sup>14</sup> and its operation is governed by state statute.<sup>15</sup> Through 13 districts<sup>16</sup> that together cover the entire state, volunteers identify, investigate, and resolve complaints made by, or on behalf of, residents of nursing homes, assisted living facilities, adult family care homes, and continuing care retirement communities. In addition to investigating and resolving complaints, the LTCOP performs the following services or activities:

- Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

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mental health; licensed adult family care homes; a person providing housing, meals, and one or more personal services on a 24-basis in the person's own home to no more than 2 adults; certain facilities that have been incorporated in this state for 50 years or more on or before July 1, 1983; certain continuing care facilities; certain retirement facilities; and residential units located within a community care facility or co-located with a nursing home or ALF in which services are provided on an outpatient basis.

<sup>7</sup> S. 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.)

<sup>8</sup> S. 429.075, F.S. A facility that serves one or mental health residents must obtain a licensed mental health license. A limited mental health ALF must assist a mental health patient in carrying out activities identified in the resident's community support living plan. A community support plan is written document that includes information about the supports, services, and special needs of the resident to live in the ALF and a method by which facility staff can recognize and respond to the signs and symptoms particular to that resident which indicate the need for professional services (s. 429.02(7), F.S.)

<sup>9</sup> S. 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an ALF. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.

<sup>10</sup> S. 429.52, F.S.

<sup>11</sup> Agency for Health Care Administration, *Facility/Provider Search Results-Assisted Living Facilities*, available at <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (report generated on November 20, 2017).

<sup>12</sup> S. 429.028, F.S.

<sup>13</sup> For 2015-2016, 292 volunteers worked an estimated 39,292 hours, which resulted in estimated average savings in salaries and administrative costs of \$925,719. See Florida's Long-Term Care Ombudsman Program, *2015-2016 Annual Report*, available at [http://ombudsman.myflorida.com/publications/ar/LTCOP\\_2015\\_2016\\_Annual\\_Report.pdf](http://ombudsman.myflorida.com/publications/ar/LTCOP_2015_2016_Annual_Report.pdf) (last visited December 15, 2017).

<sup>14</sup> 42 U.S.C. §§ 3001 et seq. (as amended by Public Law 106-501).

<sup>15</sup> Part I, Ch. 400, F.S.

<sup>16</sup> The 13 districts are: Northwest Florida, Panhandle, North Central Florida, First Coast, West Coast, West Central Florida, East Central Florida, Southwest Florida, Palm Beach County, Broward County, South Dade & the Keys, North Dade, and South Central Florida.

- Monitoring of and commenting on the development and implementation of federal, state, and local laws, regulations, and policies regarding health, safety, and welfare of residents in long-term care facilities.
- Providing information and referrals with regard to long-term care facilities.
- Conducting annual assessments of long-term care facilities.
- Aiding the development of resident and family councils.<sup>17</sup>

An ombudsman “is a specially trained and certified volunteer who has been given authority under federal and state law to identify, investigate and resolve complaints made by, or on behalf of, long-term care facility residents.”<sup>18</sup> It is important to note that the LTCOP does not have enforcement or regulatory oversight. Certified ombudsmen in the local councils work as independent advocates for residents to mediate disputes on an informal basis.

Florida law requires that the Office of State Long-Term Care Ombudsman (office) maintain a statewide system for collecting and analyzing data relating to complaints and conditions in long-term care facilities.<sup>19</sup> The office must also publish the information pertaining to the number and types of complaints received by the program on a quarterly basis.<sup>20</sup> Additionally, federal law requires the office to have a statewide data system to collect, analyze, and report data on residents, facilities, and complaints to federal officials as well as the National Ombudsman Resource Center.<sup>21</sup>

Ombudsmen also complete annual assessments of each long-term care facility in the state to ensure the health, safety, and welfare of the residents.<sup>22</sup> No advance warning of the assessment is to be given to the long-term care facility. An ombudsman is not allowed to forcibly enter the facility to complete the assessment; however, the administrator of the facility commits a violation of part I of ch. 400, F.S., if the ombudsman is not allowed to enter the facility, and, in such circumstances, the Agency for Health Care Administration (AHCA) may use appropriate administrative remedies.<sup>23</sup> The AHCA also conducts routine licensure and complaint surveys of nursing homes, assisted living facilities, and adult day care homes. As part of the survey process, the AHCA must complete offsite survey preparation, which includes a review of information about the facility prior to the survey. One of the sources of this information is the State Long-Term Care Ombudsman.

## **Effect of the Bill**

### **Nursing Homes**

CS/HB 443 requires nursing homes to notify residents and the State Long Term Care Ombudsman with the facility’s current contact information, including a function telephone number, and to notify residents and the State Long Term Care Ombudsman of any change in contact information within 30 days after such change. The bill requires AHCA take disciplinary action against any facility that fails to comply with the notification requirements.

The bill aligns Florida law with federal requirements regarding the provision of records to nursing home residents. The bill requires nursing homes provide current residents access to personal and medical records within 24 hours, excluding weekends and holidays, of the request and provide a copy of the records to the resident or resident’s authorized representative within 2 working days of the request.

<sup>17</sup> S. 200.0065, F.S.

<sup>18</sup> Florida’s Long-Term Care Ombudsman Program, *Residents and Families*, available at <http://ombudsman.myflorida.com/ResidentFam.php> (last visited on December 15, 2017).

<sup>19</sup> S. 400.0089, F.S.

<sup>20</sup> Id.

<sup>21</sup> 42 U.S.C. s. 3058g(c) and 42 U.S.C. s. 3058g(h)(1).

<sup>22</sup> S. 400.0074, F.S.; the entire list of responsibilities of an ombudsman can be found at s. 400.0065, F.S.

<sup>23</sup> Id.

The bill allows a facility to refuse to furnish psychiatric records to a resident if a licensed medical professional determines that disclosure to the resident would reasonably be likely to endanger the life or physical safety of the resident or another person. If a facility refuses to furnish the records to a resident, the resident may request in writing that the records be furnished to another licensed medical provider designated by the resident.

### **Assisted Living Facilities**

The bill requires an ALF to provide residents with 45 days written notice of relocation or termination of residency from the facility. The bill requires an ALF that is relocating a resident to provide the reasons for relocation of a resident to the resident or the resident's legal representative.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 400.102, F.S., relating to action by agency against licensee: grounds.

**Section 2:** Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.

**Section 3:** Amends s. 400.145, F.S., relating to copies of records of care and treatment of resident.

**Section 4:** Amends s. 429.28, F.S., relating to resident bill or rights.

**Section 5:** Reenacts s. 400.121, F.S., relating to denial, suspension, revocation of license; administrative fines; procedure; order to increase staffing.

**Section 6:** Provides an effective date of July 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

ALFs may incur additional expenses due to the requirements to provide a copy of the reasons for relocation to the resident or resident's authorized representative and a copy of the relocation notice to the State Long Term Care Ombudsman Program.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not affect local government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 17, 2018, the Health Innovation Subcommittee adopted two amendments that:

- Requires assisted living facilities to provide residents with 45 days' written notice of relocation or termination of residency.
- Removed the requirement for an assisted living facility to send a copy of the notice of relocation or termination of residency to the State Long-Term Care Ombudsman Program.
- Reinstated current law removed by the bill that requires nursing homes provide former residents copies of their records within 30 days of their request.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.