

-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: CS/SB 1592

INTRODUCER: Children, Families, and Elder Affairs and Senator Harrell

SUBJECT: Assisted Living Facilities

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

I. Summary:

CS/SB 1592 makes a number of changes relating to assisted living facilities (ALFs). The bill authorizes and encourages the use of safety devices to protect residents in ALFs. The bill updates the fire safety code that all ALFs must meet. The bill clarifies the administration of the core training requirements for ALF staff and administrators. The bill provides requirements for the medical examination that residents must undergo to determine appropriate placement in an ALF. The bill requires ALFs to provide information on the Long-Term Care Ombudsman Program when providing a notice for eviction.

The bill does not have a fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

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

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

² Section 429.02(17), 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.

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

There are 3,081 licensed ALFs in Florida having a total of 106,016 beds.⁷ An ALF must have a standard license issued by the Agency for Health Care Administration (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 an 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

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),¹¹ that are intended to assist ALFs in appropriately responding to the needs of residents, maintaining resident care and facility standards, and meeting licensure requirements.¹²

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 three months after becoming an ALF administrator or manager. The minimum passing score for the competency test is 75 percent.¹³

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every two years.¹⁴ 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.¹⁵

⁶ Section 429.28, F.S.

⁷ Agency for Health Care Administration, Health Care Finder see <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx>, (last visited April 3, 2019).

⁸ Section 429.07(3)(c), F.S.

⁹ Section 429.075, F.S.

¹⁰ Section 429.07(3)(b), F.S.

¹¹ Fla. Admin. Code R. 58A-5.0191.

¹² Section 429.52(1), F.S.

¹³ 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.

¹⁴ Fla. Admin. Code R. 58A-5.0191(1)(c).

¹⁵ Fla. Admin. Code R. 58A-5.0191.

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.¹⁶ 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 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.

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 ALFs licensed to provide LNS or ECC services;
- To monitor ALFs cited in the previous year for a class I or class II violation or for four or more uncorrected class III violations;
- 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 an ALF 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 an ALF is operating without a license.¹⁷

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; or
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.¹⁸

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items the AHCA must inspect.¹⁹ 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.²⁰

¹⁶ *Id.*

¹⁷ Section 429.34, F.S.

¹⁸ Fla. Admin. Code R. 58A-5.033(1).

¹⁹ *Id.*

²⁰ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 429.02, providing definitions for part I of chapter 429, F.S., governing ALFs to add a definition of “assistive device.” The term is defined as any device to help a resident perform an activity of daily living, but does not include lifts such as a total body lift or a chair lift. The bill revises the definition of a “physical restraint” to exclude devices that the resident is able to remove themselves.

Section 2 amends s. 429.11, F.S., relating to obtaining an initial ALF license, to update the term occupational license with the term “business tax receipt” to reflect the current terminology used by local governments.

Section 3 amends s. 429.176, F.S., relating to change of administrators in an ALF to require new administrators provide documentation that they meet educational requirements (GED or high school diploma) and have completed the core competency training and passed the test.

Section 4 amends s. 429.23, F.S., relating to risk management and quality assurance for ALFs. The bill clarifies the requirement that ALFs investigate adverse incidences in the facility and make a report to the agency. The bill encourages ALFs to use safety devices to improve the safety of the facility residents and staff. Safety devices are not defined in the bill.

Section 5 amends s. 429.255, F.S., relating to use of ALF staff and emergency care. The bill clarifies that a resident or resident’s representative may contract with a third party for services to be provided at the ALF. The third party must coordinate care with the ALF and the ALF must document such services.

Section 6 amends s. 429.256, F.S., relating to assistance with self-administration of medication. The bill requires that the ALF confirm that the medication is for the resident and advise the resident of the name and purpose of the medication.

Section 7 amends s. 429.26, F.S., relating to the appropriate placement of residents in an ALF. The bill adds that in addition to the ALF owner’s assessment of the needs of a prospective resident, there must be a medical examination. The bill specifies the requirements for the medical examination. AHCA must develop a form for the medical examination and certain information must be collected, including whether the resident needs 24-hour nursing care. The bill allows an ALF to retain a resident that receives health care services from a third party provider, and a resident who requires safety or assistive devices. The bill allows placement of an ALF resident that requires 24-hour nursing care if they are a hospice patient.

The bill allows the placement of a resident who is bed ridden for 7 or less consecutive days in an ALF. For ALFs with a specialty license for Extended Congregate Care, to retain a resident who is bed ridden for 14 or less consecutive days. These changes would allow ALF residents needing more acute care to be served in an ALF rather than a nursing home. Currently persons who require 24-hour nursing care would need to be placed in a nursing home.

Section 8 amends s. 429.28, F.S., relating to the ALF residents bill of rights. The bill requires that the written notice to residents who are to be evicted include information on obtaining

assistance from the Long-Term Care Ombudsman Program. The bill states that it is a right for a resident to live in an ALF that meets the uniform fire safety standards in s. 633.206, F.S., and environmental practices established under ss. 381.006, 318.0072, and 381.0098, F.S. The bill also requires that visitors comply with the AFL's security procedures.

Section 9 amends s. 429.41, F.S., relating to licensure standards. The bill revises legislative intent that licensure standards "promote" rather than "ensure" quality care for residents. The bill adds legislative intent that safety devices are allowed in ALFs. The bill provides intent that the licensing standards "promote," rather than "ensure," that the physical plant provides for the health and safety of the residents.

The bill removes references to national fire safety standards. Instead, sections 8 and 10 of the bill require an ALF to meet the uniform fire safety standards in s. 633.206, F.S. The bill deletes an outdated requirement for the Department of Elder Affairs to provide copies of proposed rules to the Legislature.

The bill requires AHCA to use an abbreviated inspection under certain circumstances. Current law allows AHCA discretion on when to use an abbreviated inspection. The bill also changes the criteria for using an abbreviated inspection from having no confirmed complaints to the long-term care ombudsman to having no confirmed complaints that led to a licensure violation. Some ombudsman complaints are confirmed but when AHCA investigates, the circumstances have changed and no licensure violation is found.

Section 10 creates s. 429.435, F.S., to establish uniform fire safety standards for ALFs. The bill requires the State Fire Marshal to establish such fire safety standards for ALFs and provides certain requirements. A fire safety evacuation test must be made by the fire marshal within 6 months of an ALF opening. Named national fire safety standards must be used in developing the uniform ALF fire safety standards. A local government may only charge a fee that would cover the cost for an inspection of a ALF sprinkler system. Local fire marshals must annually inspect ALFs for compliance with fire safety standards. ALFs operating before July 1, 2016 may continue to be regulated by the previous fire safety standards.

Section 11 amends s. 429.52, F.S., relating to ALF staff training. The bill clarifies the educational requirements and core training requirements. Current rule requires a GED or high school diploma.²¹ The bill requires training for the assistance with self-administration of medication occur before staff provides such assistance. The bill requires the Department of Elder Affairs to develop rules regarding the administration of the training competency test and an outline of the training curriculum. The rules must also provide for the removal of core trainers.

Section 12 amends s. 429.07, F.S., establishing a license fee for ALFs. The bill corrects a cross-reference for the required medical examination of ALF residents.

Section 13 provides an effective date of July 1, 2019.

²¹ Agency for Health Care Administration bill analysis, dated March 11, 2019. On file with the Committee on Children, Families and Elder Affairs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 429.02, 429.07, 429.11, 429.176, 429.23, 429.255, 429.256, 429.26, 429.28, 429.41, and 429.52.

This bill creates section 429.435 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 8, 2019:

- The CS removes changes to s. 429.19, F.S., relating to ALF violations of licensure standards and fines, to clarify that ALFs are not to be fined under parts II, III, and IV of chapter 400. Part II of that chapter governs nursing homes, part III governs home health agencies, and part IV governs hospice providers.
- The CS amends s. 429.02, providing definitions for part I of chapter 429, F.S., governing ALFs to add a definition of “assistive device.” The term is defined as any device to help a resident perform an activity of daily living, but does not include lifts such as a total body lift or a chair lift. The bill revises the definition of a “physical restraint” to exclude devices that the resident is able to remove themselves.
- The CS amends s. 429.176, F.S., relating to change of administrators in an ALF to require new administrators provide documentation that they meet educational requirements (GED or high school diploma) and has completed the core competency training and passed the test.
- The CS removes language that would have eliminated the educational requirements of ALF administrators.
- The bill requires that the written notice to residents who are to be evicted include information on obtaining assistance from the Long-Term Care Ombudsman Program.

B. Amendments:

None.