

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 670

INTRODUCER: Senator Rader

SUBJECT: Assisted and Independent Living Facility Task Force

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 670 creates s. 393.25, F.S., to establish a 16 member Assisted and Independent Living Facility Task Force (the task force) within the Agency for Persons with Disabilities. The objective of the task force is studying and evaluating proposals to construct assisted living facilities and independent living facilities for individuals with an intellectual disability, autism, or a mental illness. The task force is required to submit a report, which must include its findings, conclusions, and recommendations, by February 1, 2020, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill requires the Agency for Persons with Disabilities to use existing resources to administer and support the task force.

The bill appears to terminate the task force upon the submission of the task force report and specifies an expiration date for the statutory provision.

The bill takes effect upon becoming a law.

**II. Present Situation:**

**Task Force Requirements under section 20.03, Florida Statutes**

Section 20.03(8), F.S., defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.” This provision specifies that the existence of a task force terminates upon the completion of its assignment.

## Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities in the state. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.<sup>1</sup> APD's overarching goal is to prevent or reduce the severity of the developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.<sup>2</sup>

Persons with developmental disabilities reside in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.<sup>3</sup> Pursuant to s. 393.067, F.S., APD licenses and regulates community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, and residential habilitation centers.<sup>4</sup>

Individuals who meet Medicaid eligibility requirements may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver for individuals with developmental disabilities administered by APD or in an intermediate care facility for the developmentally disabled (ICF/DD).<sup>5</sup> While the majority of APD clients live in the community, a small number live in ICF/DDs. ICF/DDs are considered institutional placements and are licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400, F.S.<sup>6</sup>

Section 393.063, F.S., identifies the various types of congregate living facilities available to APD clients based on individual needs and choices.<sup>7</sup> Pursuant to s. 393.067, F.S., APD licenses foster care facilities, group home facilities, residential habilitation center facilities, and comprehensive transitional education programs.<sup>8</sup>

## Assisted Living Facilities

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

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<sup>1</sup> Section 393.063(9), F.S.

<sup>2</sup> Section 393.062, F.S.

<sup>3</sup> A "residential facility" is a facility providing room and board and personal care for persons who have developmental disabilities, s. 393.063(28), F.S.

<sup>4</sup> Agency for Persons with Disabilities, *Planning Resources*, <http://apd.myflorida.com/planning-resources/> (last visited Feb. 25, 2019).

<sup>5</sup> Section 393.0662, F.S.

<sup>6</sup> Section 393.063(25), F.S.

<sup>7</sup> Agency for Persons with Disabilities, *Senate Bill 670 Agency Analysis* (February 7, 2019) (on file with the Senate Committee on Children, Families and Elder Affairs).

<sup>8</sup> *Id.*

exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>9</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>10</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>11</sup>

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.<sup>12</sup> 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,<sup>13</sup> limited mental health services,<sup>14</sup> and extended congregate care services.<sup>15</sup>

Currently, there are 3,083 licensed ALF's in Florida.<sup>16</sup>

### **Independent Living**

Neither the term “independent living” nor “independent living facility” is defined in Florida Statutes. “Independent living” can refer to when an elderly person still has the physical and mental capacity to live independently but wants companionship or otherwise needs supportive services.<sup>17</sup> It can also encompass a living arrangement for people with disabilities who need supportive services.

In 1988, the Legislature created the Florida Independent Living Council.<sup>18</sup> The council is responsible for, among other things, jointly developing and submitting the state plan for independent living.<sup>19</sup> The council works to ensure that persons with disabilities have an opportunity for input into the development of the State Plan for Independent living and works for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities.<sup>20</sup> The council describes the independent living philosophy as “promot[ing] consumer control of services, self-determination and equal access and participation in every aspect of community life, to the level that individual wishes.”<sup>21</sup>

Independent living communities are communities in which healthy individuals can live on their own but that do not offer assisted living or nursing services. Independent living communities can

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<sup>9</sup> Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

<sup>10</sup> Section 429.02(17), F.S.

<sup>11</sup> Section 429.02(1), F.S.

<sup>12</sup> Section 429.07(2), F.S.

<sup>13</sup> Section 429.07(3)(c), F.S.

<sup>14</sup> Section 429.075, F.S.

<sup>15</sup> Section 429.07(3)(b), F.S.

<sup>16</sup> Agency for Health Care Administration, Florida Health Finder Search, *facility/provider type: Assisted Living Facility*, (search conducted Feb. 26, 2019), available at <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Feb. 26, 2019).

<sup>17</sup> According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, available at <http://www.aPlaceforMom.com/independent-living/florida> (last visited March 13, 2019).

<sup>18</sup> Chapter 88-214, Laws of Fla.

<sup>19</sup> Section 413.395, F.S.

<sup>20</sup> Floridasilc.org, *About Independent Living*, available at <https://www.floridasilc.org/independent-living/> (last visited March 13, 2019).

<sup>21</sup> *Id.*

offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.<sup>22</sup> Currently, there are over 200 independent living communities in Florida.<sup>23</sup>

### III. Effect of Proposed Changes:

**Section 1** establishes the Assisted and Independent Living Task Force within APD for administrative purposes only. APD is to use existing and available resources to support the activities of the task force.

The bill directs the task force to evaluate policy proposals that incentivize building contractors and developers to create space for ALFs or independent living facilities within mixed-use developments for individuals who have an intellectual disability, autism, or a mental illness.

The task force is to be chaired by the director of APD, or his or her designee, and composed of 16 members, to include:

- The Secretary of Children Families, or his or her designee;
- The executive director of the Department of Economic Opportunity, or his or her designee;
- The Secretary of Business and Professional Regulation, or his or her designee;
- The executive director of the Commission for the Transportation Disadvantaged, or his or her designee;
- A representative from the Florida Supportive Housing Coalition;
- A representative from the Florida Housing Finance Corporation;
- A representative from the Florida Housing Coalition;
- A representative from the Florida Independent Living Council;
- A representative from the National Alliance on mental Illness of Florida;
- A representative from the Florida Council for Community Health;
- A representative from the Florida League of Cities;
- A representative from the Florida Association of Counties;
- A representative from the Florida Coalition for the Homeless;
- A representative from the Association of Florida Community Developers; and
- A representative from the Associated Builders and Contractors, Inc., of Florida.

Members of the task force shall serve without compensation or reimbursement for per diem or travel expenses. The task force is directed to convene its first meeting by August 1, 2019. The task force must meet as often as necessary to fulfill its responsibilities under the bill, and meetings may be conducted in person, by teleconference, or by other electronic means.

The task force must work in consultation with local and state government to identify potential barriers and opportunities in current law, recommend modifications to existing laws, rules, or policies, recommend financial and regulatory incentives, and propose funding mechanisms to incentivize building contractors and developers to create space for ALFs and independent living

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<sup>22</sup> Senior Living.org, *Selecting an Independent Living Community* (Feb. 14, 2011), available at <http://www.seniorliving.org/lifestyles/independent-living-communities/> (last visited Feb. 26, 2019).

<sup>23</sup> According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, available at <http://www.aplaceformom.com/independent-living/florida> (last visited Feb. 26, 2019).

facilities within mixed-use developments. The task force must also propose an overall governing structure for managing spaces for ALFs and independent living facilities within mixed-use developments.

The task force must submit a report containing its findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2020. The task force will terminate on the earlier of the date the report is submitted. The bill specifies that this section expires February 1, 2021, well within the three year statutory period established in s. 20.03(8), F.S.

**Section 2** provides that the bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that the task force members are to serve without compensation and are not entitled to reimbursement for per diem or travel expense. Thus, to the extent travel is required, the members will incur associated costs.

**C. Government Sector Impact:**

APD will incur an indeterminate amount of administrative expenses as the agency directed to use existing resources to administer and support the activities of the task force. The APD advises that it does not anticipate a fiscal impact to the state or the private sector.<sup>24</sup>

**VI. Technical Deficiencies:**

On line 25 of the bill, the word “or” appears between the terms “assisted living facilities” and “independent living facilities.” In the remaining text (lines 75, 79, 83, 86 and 89), when these two terms are used, they are joined by the word “and.”

The bill requires the task force to convene its first meeting by August 1, 2019, and submit a report some six months later, by February 1, 2020. The task force is terminated “on the earlier date the report is submitted.” The bill provides for the expiration of the section on February 2, 2021, well within the three year lifespan provided in s. 20.03(8), F.S. If the task force is terminated upon the submission of its report - on or before February 1, 2020 - it is unclear why the statutory provision creating it would need to survive for another year.

Since the task force is not of a permanent nature, its existence is under one year, the Legislature may consider creating the task force without specific statutory enactment as provided in s. 20.03(8), F.S.

On line 35, the word “and” is missing between the words “Children” and “Families.”

**VII. Related Issues:**

The bill refers to both assisted living facilities and independent living facilities. Because “assisted living facilities” are specifically defined by statute and regulated by the state, using the term “independent living facility” may cause some confusion as independent living facilities are not licensed entities and the term is not defined by statute or in the bill. Additionally, the term “independent living services” is defined in ch. 413, F.S., to mean “any appropriate rehabilitation service that will enhance the ability of a person who has a significant disability to live independently, to function within her or his family and community and, if appropriate, to secure and maintain employment.”<sup>25</sup> It may be advisable to use a more specific term, such as “independent living community” or “facility for independent living,” to describe the living arrangements intended to be covered in the bill in order to avoid any confusion, and/or define such term for purposes of this section.

The bill provides the task force at least six months between the first meeting date and the deadline for submitting its report. Given the stated purpose of the task force, this six month time period may not provide adequate time for it to complete its study and make its recommendations. Additionally, since the creation of the task force is by specific statutory enactment and therefore

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<sup>24</sup> *Supra* note 7.

<sup>25</sup> Section 413.20(12), F.S.

authorized to exist for up to 3 years, it is unclear why the task force would not be given more time to meet its stated purpose.

**VIII. Statutes Affected:**

This bill creates section 393.25 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.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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