

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7019 PCB HMR 19-01 Aging Programs
SPONSOR(S): Health Market Reform Subcommittee, Tomkow, Josie
TIED BILLS: **IDEN./SIM. BILLS:** SB 184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Market Reform Subcommittee	13 Y, 0 N	Royal	Crosier
1) Health Care Appropriations Subcommittee	8 Y, 0 N	Nobles	Clark
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The Department of Elderly Affairs (DOEA), in consultation with Agency for Health Care Administration (AHCA), is responsible for rulemaking for assisted living facilities (AFLs), hospices, adult family care homes, and adult day cares, while AHCA enforces the rules through inspections and administrative actions.

The bill transfers rulemaking authority, along with all powers, duties, functions, records, personnel, property, salary rates, budget authority and administrative authority from DOEA to AHCA for assisted living facilities, hospices, adult family care homes, and adult day care centers. Under the bill, one, rather than two, state agencies would be responsible for regulating these facilities.

The bill has both positive and negative fiscal impacts on DOEA and ACHA, and will result in the moving of one FTE from DOEA to AHCA to accommodate this impact.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The state has a bifurcated, two agency regulatory structure for several types of health care facilities:

- Assisted Living Facilities
- Hospice
- Adult Family Care Homes
- Adult Day Care Centers

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 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

ALFs are licensed and regulated by AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S.⁴ 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,⁵ limited mental health services,⁶ and extended congregate care services.⁷

The Department of Elder Affairs (DOEA), in consultation with AHCA, is responsible for rulemaking while AHCA enforces the rulemaking through inspections and administrative actions.

As of February 4, 2019, there were 3,083 licensed ALFs.⁸

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

² S. 429.02(16), F.S.

³ S. 429.02(1), F.S.

⁴ 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 mental health; licensed adult family care homes; a person providing housing, meals, and one or more personal services on a 24-hour 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.

⁵ 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.)

⁶ 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 a 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.)

⁷ 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.

⁸ AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Assisted Living Facilities*, <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited February 4, 2019).

Hospice

Hospice is a program of care and support for terminally ill patients, which helps them to live comfortably.⁹ A specially trained team of professionals and caregivers provide care for the terminally ill patient's physical, emotional, social, and spiritual needs, and provide support to family caregivers.¹⁰ The team that provides hospice services includes physicians, nurses, medical social workers, spiritual and pastoral counselors, home health aides, therapists, bereavement counselors, and specially trained volunteers.¹¹ Hospice care includes the following items and services:

- Nursing care;
- Physical or occupational therapy, or speech-language pathology services;
- Medical social services;
- Home health aide and homemaker services;
- Medical supplies, including prescription drugs and biologicals, and the use of medical appliances;
- Physician services;
- Short-term inpatient care; and
- Counseling.¹²

Hospice care may be provided to a patient in an inpatient hospice facility, with licensed beds;¹³ it may also be provided to the patient in the patient's home or in another facility, such as a hospital or a nursing home.

Florida law defines a hospice as a corporation or limited liability company that provides a continuum of palliative¹⁴ and supportive care for a terminally ill¹⁵ patient and his or her family members.¹⁶ Section 400.601(6), F.S., defines "hospice services" as the items and services furnished to a patient and his or her family by a hospice and specifies where those services may be provided.¹⁷

AHCA and the DOEA regulate hospices pursuant to part IV of Chapter 400, F.S., part II of Chapter 408, F.S., and Chapter 58A-2, F.A.C. The Department of Elder Affairs (DOEA), in consultation with AHCA, is responsible for rulemaking while AHCA enforces the rules through inspections and administrative actions.

As of February 4, 2019, there are 47 licensed hospice providers in Florida, with 1,038 licensed beds.¹⁸

Adult Family Care Homes

Adult family care homes (AFCHs) are private residences licensed to provide housing, meals, and personal care services¹⁹ to up to five disabled adults²⁰ or frail elders²¹ who are unable to live

⁹ Centers for Medicare and Medicaid Services, *Medicare Hospice Benefits*, available at <https://www.medicare.gov/Pubs/pdf/02154-Medicare-Hospice-Benefits.PDF> (last visited February 4, 2019).

¹⁰ Id.

¹¹ Florida Hospice and Palliative Care Association, *About Hospice*, <http://www.floridahospices.org/hospice-palliative-care/about-hospice/>, (last visited February 4, 2019).

¹² 42 U.S.C. § 1395x(dd).

¹³ A hospice must obtain a Certificate of Need (CON) to increase the number of licensed beds in an inpatient facility, see the discussion of CON below.

¹⁴ Palliative care means services or interventions which are not curative but are provided for the reduction or abatement of pain and human suffering. S. 400.601(7), F.S.

¹⁵ Rule 59C-1.0355, F.A.C.; s. 400.601(10), F.S. In Florida, a "terminally ill" patient, for hospice purposes, is as a patient with a medical prognosis that his or her life expectancy is 1 year or less if the illness runs its normal course.

¹⁶ S. 400.601(4), F.S.

¹⁷ Hospice services may be provided in a place of temporary or permanent residence used as the patient's home for the purpose of maintaining the patient at home; or, if the patient needs short-term institutionalization, the services shall be furnished in cooperation with those contracted institutions or in the hospice inpatient facility.

¹⁸ AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Hospice*, <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited February 4, 2019).

independently.²² AFCHs are owned and operated by licensed AFCH “providers” who live with the residents they serve.²³ To reside in an adult family care home, a person must meet the AFCH “residency criteria” established by law and by the provider’s admission policy.²⁴ AFCHs are intended to be a less costly alternative to more restrictive, institutional settings for individuals who do not need 24-hour nursing supervision.²⁵

AHCA and the DOEA regulate adult family care homes pursuant to part II of Chapter 429, F.S., part II of Chapter 408, F.S., and Chapter 58A-14, F.A.C. The DOEA, in consultation with AHCA, is responsible for rulemaking while AHCA enforces the rules through inspections and administrative actions.

As of February 4, 2019, there are 337 licensed adult family care homes in Florida.²⁶

Adult Day Care Centers

Adult day care centers provide therapeutic programs of social health activities and services, leisure services, self-care training, rest, nutritional services, and respite care in a protective, non-institutionalized setting for part of the day for older adults, adults living with dementia, or adults living with disabilities.²⁷

Adult day care centers provide social and some health services to adults who need supervised care in a safe place outside the home during the day.²⁸ They also afford caregivers respite from the demanding responsibilities of caregiving.²⁹ More than 260,000 participants and family caregivers receive services from more than 5,000 adult day services centers.³⁰

AHCA and the DOEA regulate adult family day cares pursuant to part III of Chapter 429, F.S., part II of Chapter 408, F.S., and Chapter 58A-6, F.A.C. The DOEA, in consultation with AHCA, is responsible for rulemaking while AHCA enforces the rules through inspections and administrative actions.

As of February 4, 2019, there are 326 licensed adult family day care centers in Florida.³¹

Effect of the Bill

The bill transfers rulemaking authority, along with all powers, duties, functions, records, personnel, property, salary rates, budget authority and administrative authority from the DOEA to AHCA for

¹⁹ S. 429.65(10), F.S. defines “personal services” as individual assistance with or supervision of the activities of daily living and the self-administration of medication, and other similar services.

²⁰ S. 429.65(8), F.S. defines “disabled adult” as any person between 18 and 59 years of age, inclusive, who is a resident of the state and who has one or more permanent physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

²¹ S. 429.65(9), F.S. defines “frail elder” means a functionally impaired elderly person who is 60 years of age or older and who has physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living and that impede the person’s capacity to live independently.

²² S. 429.65(2), F.S.

²³ Id.

²⁴ 58A-14.0061, F.A.C.

²⁵ The Department of Elder Affairs, *Programs and Services, Adult Family Care Homes*, available at: <http://elderaffairs.state.fl.us/doea/afch.php> (Last viewed February 4, 2019).

²⁶ AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Adult Family Care Homes*, <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited February 4, 2019).

²⁷ S. 429.901, F.S.; National Adult Day Services Association, *About Adult Day Services*, available at: <https://www.nadsa.org/learn-more/about-adult-day-services/> (last viewed February 4, 2019).

²⁸ Id.

²⁹ Id.

³⁰ National Adult Day Services Association, *Frequently Asked Questions*, available at: <https://www.nadsa.org/learn-more/> (last viewed February 4, 2019).

³¹ AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Adult Day Care Center*, <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited February 4, 2019).

assisted living facilities, hospices, adult family care homes, and adult day care centers. Under the bill, one, rather than two, state agencies would be responsible for regulating these facilities.

The bill requires DOEA to provide AHCA, upon request, with any documents and information needed for AHCA's regulation of hospices, assisted living facilities, adult family-care homes, and adult day care centers.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law relating to the transfer of powers, duties, and functions of the Department of Elderly Affairs relating to hospices, assisted living facilities, adult family-care homes, and adult day care centers to the Agency for Health Care Administration.

Section 2: Amends s. 20.41, F.S., relating to the Department of Elder Affairs.

Section 3: Amends s. 20.42, F.S., relating to the Agency for Health Care Administration.

Section 4: Amends s. 400.605, F.S., relating to administration; forms; fees; rules; inspections; fines.

Section 5: Amends s. 400.60501, F.S., relating to outcome measures; adoption of federal quality measures; public reporting; annual report.

Section 6: Amends s. 400.6095, F.S., relating to patient admission; assessment; plan of care; discharge; death.

Section 7: Amends s. 400.610, F.S., relating to administration and management of a hospice.

Section 8: Amends s. 429.02, F.S., relating to definitions.

Section 9: Amends s. 429.17, F.S., relating to expiration of license; renewal; conditional license.

Section 10: Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.

Section 11: Amends s. 429.23, F.S., relating to internal risk management and quality assurance program; adverse incidents and reporting requirements.

Section 12: Amends s. 429.24, F.S., relating to contracts.

Section 13: Amends s. 429.255, F.S., relating use of personnel; emergency care.

Section 14: Amends s. 429.256, F.S., relating assistance with self-administration of medication.

Section 15: Amends s. 429.27, F.S., relating property and personal affairs of residents.

Section 16: Amends s. 429.275, F.S., relating business practice; personnel records; liability insurance.

Section 17: Amends s. 429.31, F.S., relating to closing of facility; notice; penalty.

Section 18: Amends s. 429.34, F.S., relating to right of entry and inspection.

Section 19: Amends s. 429.41, F.S., relating to rules establishing standards.

Section 20: Amends s. 429.42, F.S., relating to pharmacy and dietary standards.

Section 21: Amends s. 429.52, F.S., relating to staff training and educational programs; core educational requirement.

Section 22: Amends s. 429.54, F.S., relating to collection of information; local subsidy.

Section 23: Amends s. 429.63, F.S., relating to legislative intent; purpose.

Section 24: Amends s. 429.67, F.S., relating to licensure.

Section 25: Amends s. 429.71, F.S., relating to classification of deficiencies; administrative fines.

Section 26: Amends s. 429.73, F.S., relating to rules and standards relating to adult family-care homes.

Section 27: Amends s. 429.75, F.S., relating to training and education programs.

Section 28: Amends s. 429.81, F.S., relating to residency agreements.

Section 29: Amends s. 429.929, F.S., relating to rules establishing standards.

Section 30: Amends s. 765.110, F.S., relating to health care facilities and providers; discipline.

Section 31: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill shifts the function of rulemaking for ALFs, hospices, adult family care homes and adult day care centers from DOEA to AHCA. This increases AHCA's workload. However, the bill also transfers resources and personnel, including one FTE, used by DOEA for rulemaking for ALFs, hospices, adult family care homes and adult day care centers to AHCA. This transfer will cover the costs associated with AHCA's increased rulemaking responsibilities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill transfers rules and rulemaking authority for assisted living facilities, hospices, adult family care homes and adult day care centers from DOEA to AHCA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES