

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 Appropriations

BILL: PCS/CS/SB 402 (831164)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Harrell

SUBJECT: Assisted Living Facilities

DATE: March 2, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>McKnight</u>	<u>Kidd</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>McKnight</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 402 amends various statutes related to the regulation of an assisted living facility (ALF). The bill:

- Allows the use of certain physical restraints in ALFs, including any device the resident chooses to use and is able to remove or avoid independently.
- Requires ALFs to submit a preliminary adverse incident report and final report through the Agency for Health Care Administration's (AHCA) online portal, or by electronic mail if the portal is offline.
- Revises adverse incident reporting notifications for the AHCA and requirements for ALFs.
- Authorizes unlicensed ALF staff to change the bandages of residents for minor cuts and abrasions.
- Authorizes a resident or his or her representative, designee, surrogate, guardian, or attorney, as applicable, to contract for services with a third party and provides requirements for third-party communication with the facility and requires an ALF to document that it received such communication.
- Removes the requirement for ALF staff assisting with the self-administration of medication to read the label of the medication to the resident. Instead, the bill requires staff to, in the presence of the resident, confirm the medication is correct and advise the resident of the medication name and dosage. The bill also allows the resident to sign a waiver to opt-out of being orally advised and provides the waiver that must be immediately updated each time the resident's medications and dosage change.

- Allows ALFs to admit residents that require 24-hour nursing care, residents that are receiving hospice services, or residents who are bedridden that meet specific criteria.
- Clarifies the requirements for a resident to be admitted to and retained in an ALF.
- Requires each resident to have a medical examination performed no longer than 60 days prior to or up to 30 days after admission to the ALF and requires the AHCA to adopt a form in rule that may be used by the health care practitioner performing the medical examination.
- Amends the Resident Bill of Rights to allow the State Long-Term Care Ombudsman Program to provide assistance to a resident who needs to be relocated due to the closure of a facility.
- Requires an ALF to notify a resident's representative or designee of the need for health care services and assist in making appointments if an underlying condition of dementia or cognitive impairment is determined to exist. If the resident does not have a representative or designee or the ALF cannot reach their representative or designee, the ALF must arrange for the necessary care and services to treat the condition with an appropriate health care provider.
- Amends the AHCA's rulemaking authority to account for technological advances in the provision of care, safety, and security.
- Clarifies who may approve an ALF's comprehensive emergency management plan and allows an ALF to submit the plan up to 30 days after receiving a license.
- Requires the AHCA to conduct a full inspection instead of an abbreviated biennial licensure inspection to review the key quality-of-care standards for a facility that has a class I, class II, or uncorrected class III violation resulting from a complaint referred by the State Long-Term Care Ombudsman Program.
- Consolidates provisions related to firesafety into its own section of law rather than being intermingled with the AHCA's rulemaking authority.
- Amends several provisions related to the ALF administrator core competency curriculum and examination to clarify that the AHCA must adopt an outline and learning objectives for such curriculum.

The bill does not have a fiscal impact on state revenues or expenditures.

The bill takes effect July 1, 2020.

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

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.

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

There are 3,069 licensed ALFs in Florida having a total of 107,144 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,⁸ limited mental health,⁹ and extended congregate care.¹⁰

ALF Staff Training

Administrators and Managers

Administrators and other ALF staff must meet minimum training and education requirements established in rule by the AHCA,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 AHCA 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

⁴ See Rule 59A-36.007, F.A.C., for specific minimum standards.

⁵ Section 429.26, F.S., and Rule 59A-36.006, F.A.C.

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 October 30, 2019).

⁸ Section 429.07(3)(c), F.S.

⁹ Section 429.075, F.S.

¹⁰ Section 429.07(3)(b), F.S.

¹¹ Rule 59A-36.011, F.A.C.

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 Rule 59A-36.011, F.A.C.

¹⁵ *Id.*

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 limited nursing services or extended congregate care 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 council¹⁸ which were reported to the AHCA by the council; or
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.¹⁹

¹⁶ *Id.*

¹⁷ Section 429.34, F.S.

¹⁸ Florida’s Long-Term Care Ombudsman Program was founded in 1975 as a result of the federal Older Americans Act, which grants a special set of residents’ rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities and adult family care homes. Volunteer ombudsmen seek to ensure the health, safety, welfare and rights of these residents throughout Florida. See <http://ombudsman.myflorida.com/AboutUs.php> (last visited on October 30, 2019).

¹⁹ Rule 59A-36.023, F.A.C.

III. Effect of Proposed Changes:

The bill amends various sections in ch. 429, F.S., related to the regulation of ALFs. In addition to technical and conforming changes:

Section 1 amends s. 429.02, F.S., to define “assistive device” to mean any device designed or adapted to help a resident perform an action, a task, an activity of daily living, or a transfer; prevent a fall; or recover from a fall. The term does not include a total body lift or a motorized sit-to-stand lift, with the exception of a chair lift or recliner lift that a resident is able to operate independently. Additionally, the bill amends the definition of “extended congregate care” to make conforming and technical changes and “physical restraint” to eliminate specific examples of what qualifies as a physical restraint and to specify that a device the resident chooses to use and is able to remove does not qualify as a physical restraint.

Section 2 amends s. 429.07, F.S., to specify that required written progress reports maintained on the services offered by extended congregate care and limited nursing services must cover only those services offered by the ALF, not those offered by third parties.

Section 3 amends s. 429.11, F.S., to specify that a county or municipality may not issue a business tax receipt, rather than an occupational license, to an ALF without first determining that the ALF is licensed by the AHCA. This is a technical change in terminology.

Section 4 amends s. 429.176, F.S., to specify that when an ALF changes administrators, the owner of the ALF must provide the AHCA with documentation that the new administrator meets educational requirements (in addition to core training requirements that are already required) within 90 days of the change.

Section 5 amends s. 429.23, F.S., to require ALFs to submit the adverse incident preliminary report and final report through AHCA’s online portal, or by electronic mail if the portal is offline, instead of by facsimile or United States Mail. The bill also adds language to prevent an ALF from being fined for failing to submit a final report until three days after AHCA notifies the ALF that the final report is due if the incident is determined to, in fact, not be an adverse incident. The bill also eliminates the requirement that each ALF file a monthly report with the AHCA that includes any liability claim filed against it.

Section 6 amends s. 429.255, F.S., to authorize unlicensed ALF staff to change the bandages of residents for minor cuts and abrasions. The bill also authorizes a resident or his or her representative, designee, surrogate, guardian, or attorney, as applicable, to contract for services with a third party, provided the resident meets the criteria for residency and continued residency. The third-party is required to communicate with the facility regarding the resident’s condition and the services being provided in accordance with the facility’s policies. The ALF is required to document that it received such communication.

Section 7 amends s. 429.256, F.S., to include transdermal patches in the list of medications that unlicensed ALF staff may assist a resident in self-administering. The bill also clarifies that assistance with the self-administration of medication includes:

- A staff member confirming that the medication is intended for the resident and orally advising the resident of the medication's name and dosage.²⁰ The resident may sign a written waiver to opt-out of being orally advised the medication name and dosage. The waiver must identify all of the medications intended for the resident, including names and dosages of the medications, and must immediately be updated each time the resident's medications or dosages change; and
- A staff member assisting with the self-administration of a medication that is prescribed "as needed" if the resident requesting the medication is aware of his or her need for the medication and understands the purpose for taking the medication.²¹

Section 8 amends s. 429.26, F.S., to require that each resident receive a medical examination by a licensed physician, a licensed physician assistant, or a licensed advanced practice registered nurse within 60 days before admission to the facility or within 30 days after admission to the facility. The practitioner performing the examination must fill out and sign a form that reflects the resident's condition on the date the examination is performed. The bill specifies that the medical examination form required for admittance to an ALF does not guarantee admission to, continued residency in, or the delivery of services at the facility and must be used only as an informative tool to assist in the determination of the appropriateness of the resident's admission or continued residency. The form used may be the practitioner's own form or a form adopted by the AHCA in rule, both of which must include the following information on the resident:

- Height, weight, and known allergies.
- Significant medical history and diagnoses.
- Physical or sensory limitations, including the need for fall precautions or recommended use of assistive devices.
- Cognitive or behavioral status and a brief description of any behavioral issues known or ascertained by the examining practitioner, including any known history of wandering or elopement.
- Nursing, treatment, or therapy service requirements.
- Whether assistance is needed for ambulating, eating, or transferring.
- Special dietary instructions.
- Whether the resident has any communicable diseases, including necessary precautions that are necessary due to such diseases.
- Whether the resident is bedridden and the presence of any pressure sores.
- Whether the resident needs 24-hour nursing supervision or psychiatric care.
- A list of current prescribed medications as known or ascertained by the examining practitioner and whether the resident can self-administer medications, needs assistance, or needs medication administration.

The bill establishes criteria that for a resident's appropriateness for admission or continued residency, including:

- A facility may admit or retain a resident who receives a health care service or treatment that is designed to be provided within a private residential setting if all requirements for providing that service or treatment are met by the facility or a third party.

²⁰ Current law requires the staff member read the label on the medication. It is unclear whether the label must be read to the resident, however.

²¹ Current law requires the resident to be competent.

- A facility may admit or retain a resident who requires the use of assistive devices.²²
- A facility may admit or retain an individual receiving hospice services if the arrangement is agreed to by the facility and the resident, additional care is provided by a licensed hospice, and the resident is under the care of a physician who agrees that the physical needs of the resident can be met at the facility. The resident must have a plan of care that delineates how the facility and the hospice will meet the scheduled and unscheduled needs of the resident, including, if applicable, staffing for nursing care.
- A facility may not retain a resident who requires 24-hour nursing supervision, except for a resident who is enrolled in hospice services pursuant to part IV of chapter 400.
- A facility may not admit or retain a resident who is bedridden²³ except that:
 - A bedridden resident may be admitted or retained if he or she is receiving hospice services if the arrangement is agreed to by the facility and the resident, additional care is provided by a licensed hospice, and the resident is under the care of a physician who agrees that the physical needs of the resident can be met at the facility.
 - A facility may retain a bedridden resident if the resident is bedridden for no more than seven days or up to 14 days if the facility is licensed to provide extended congregate care.

Additionally, the bill amends the requirement that an ALF must arrange for the necessary care and services to treat a resident who has developed dementia or cognitive impairment to instead require the ALF to notify the resident's designee or representative of the need for such health care services and to assist in making appointments for the resident. If the resident's designee or representative cannot be located or is unresponsive, the ALF retains the requirement to arrange the necessary care for the resident.

Section 9 amends s. 429.28, F.S., to require that a document stating the reasons for relocation of a resident be provided to the resident or the resident's representative; and to clarify the AHCA rulemaking and inspection authority required by the resident's bill of rights.

Section 10 amends s. 429.31, F.S., to provide relocation assistance to a resident of an ALF whose residency is being terminated due to closure of the facility. Specifically, the bill requires the notice of relocation or termination to state that the resident may contact the State Long-Term Care Ombudsman Program for assistance with relocation and must include the statewide toll-free telephone number of the program. The bill requires an ALF to notify the AHCA of its plans to discontinue facility operation. Further, the bill requires the AHCA, upon receiving notice of a facility's voluntary or involuntary termination, to immediately inform the State Long-Term Care Ombudsman Program so they can provide assistance with relocation to the resident.

Section 11 amends s. 429.41, F.S., to:

- Clarify that the AHCA may account for technological advances in the provision of care, safety, and security, including the use of devices, equipment, and other security measures related to wander management, emergency response, staff risk management, and the general safety and security of residents, staff, and the facility in its rules.

²² The term "assistive devices" is defined in section 1 of the bill.

²³ The bill defines "bedridden" as a resident who is confined to a bed because of the inability to: move, turn, or reposition without total physical assistance; transfer to a chair or wheelchair without total physical assistance; or sit safely in a chair or wheelchair without personal assistance or a physical restraint.

- Remove language regarding firesafety standards that are being placed in new section 429.435, F.S. (See section 12 of the bill).
- Clarify that rule requirements for maintenance and sanitary conditions include furnishings for resident bedrooms or sleeping areas, locking devices and linens, but do not include requirements that are duplicative of those in ch. 553, or ss. 381.006, 381.0072, and 633.206, F.S. The bill also requires that the rules clearly delineate the respective responsibilities of the AHCA's licensure and survey staff and the county health departments to ensure that inspections are not duplicative and allows the AHCA to collect fees²⁴ for food service inspections conducted by the county health department and transfer such fees to the Department of Health.
- Remove the requirement that comprehensive emergency management plans be made available for review by appropriate volunteer organizations and require that an ALF submit its plan to the county emergency management agency within 30 days after being issued a license rather than requiring the plan to be approved prior to the issuance of the license.
- Allow the use of physical restraints (as defined in section 1 of the bill) other than Posey restraints²⁵ in accordance with the AHCA rules. Such rules must specify requirements for care planning, staff monitoring, and periodic review by a physician.
- Require the establishment of specific ALF elopement drill requirements, in addition to elopement policies and procedures on resident elopement, and require administrators and direct care staff to review elopement procedures to address resident elopement as part of the elopement drill.
- Allow the AHCA to use an abbreviated survey for an ALF that has had a confirmed ombudsman council complaint or licensure complaint unless such complaint results in a class I, II, or uncorrected class III violation.
- Require the AHCA to adopt key quality-of-care standards in rule and eliminate the requirement to incorporate input from the state long-term care ombudsman council and representatives of provider groups.

Section 12 creates s. 429.435, F.S., to consolidate requirements relating to uniform fire safety standards for ALFs into the new section. The requirements of this section are transposed from s. 429.41, F.S.

Section 13 amends s. 429.52, F.S., to require the AHCA, in conjunction with ALF providers, to develop core training requirements for administrators consisting of core training learning objectives. The bill also requires the AHCA to adopt a curriculum outline that includes the learning objectives.

The bill requires staff assisting with the self-administration of medication to complete six additional hours of training before providing such assistance and two hours of continuing education annually thereafter. The bill also specifies that topics covered in the preservice orientation for ALF staff are not required to be covered again in staff in-service training and that all required in-service training may be completed in a single course.

²⁴ The quarterly fee of \$300 is established in current law under s. 381.0072, F.S.

²⁵ Posey restraints are a generic term for a restraint that restricts a patient's free movement while the patient is in bed.

Additionally the bill requires the AHCA to establish core trainer registration and removal requirements.

Section 14 establishes an effective date of July 1, 2020.

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, 429.31, 429.41, and 429.52.

This bill creates section 429.435 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on February 18, 2020:

The committee substitute:

- Removes the definitions of “abuse”, “exploitation”, and “neglect”.
- Amends the definition of “extended congregate care” to make conforming and technical changes.
- Clarifies that a facility that is licensed to provide extended congregate care services must maintain a written progress report on each person who receives nursing services from the facility’s staff. Previously, the bill did not specify nursing services.
- Removes the provision from the definition of “adverse incident” to only include events associated with the ALF’s intervention rather than the resident’s underlying disease or condition.
- Revises adverse incident reporting notifications for the AHCA and requirements for ALFs.
- Authorizes unlicensed ALF staff to change the bandages of residents for minor cuts and abrasions.
- Provides for a resident a resident or his or her representative, designee, surrogate, guardian, or attorney, as applicable, to contract for services with a third party. The third-party is required to communicate with the facility regarding the resident’s condition and the services. The ALF is required to document that it received such communication.
- Clarifies that residents who receive assistance with the self-administration of medication must be orally advised of the medication’s name and dosage and allows a resident to sign a waiver to opt-out of being orally advised. The waiver must include specified information and immediately be updated each time the resident’s medications or dosages change.
- Clarifies the medical examination form must (formerly may) be used only as an informative tool to determine the appropriateness of the resident’s admission to or continued residency on the facility.
- Amends the Resident Bill of Rights to allow the State Long-Term Care Ombudsman Program to provide assistance to a resident who needs to be relocated due to the closure of a facility.
- Removes the prohibition against geriatric chairs as an allowable use of physical restraints.
- Makes technical and conforming changes.

CS by Health Policy on November 5, 2019:

The CS:

- Amends the definition of “neglect” to include the failure to prevent sexual abuse.
- Maintains current law requiring an ALF to submit a preliminary adverse incident report to the AHCA within one business day of the incident occurring.
- Prevents AHCA from fining an ALF for not filing a full adverse incident report until three days after the AHCA provides the ALF with a reminder that the report is due.
- Specifies that the medical examination required for admittance to an ALF is not a guarantee of admission, continued residency, or services to be delivered and that the medical examination is to be used as an informative tool to assist in the determination of the appropriateness of the resident’s admission or continued residency.
- Specifies that an ALF must still arrange the necessary care and services to treat a resident with dementia or other similar condition if the ALF cannot locate the resident’s representative or he or she is not responsive.
- Specifies ss. 381.006 and 381.0072, F.S., in requiring that ALF rules not conflict with or duplicate provisions in the specified sections. Currently, the bill specifies the entire chapter of law.
- Maintains current law authority for AHCA to adopt rules over elopement policies and procedures.
- Specifies that the six hours of training necessary to provide assistance with medication is in addition to other required training.

B. Amendments:

None.