HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 767 Assisted Living Facilities
SPONSOR(S): Health Market Reform Subcommittee, Grant, M.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee	13 Y, 0 N, As CS	Guzzo	Calamas
2) Health Care Appropriations Subcommittee	8 Y, 0 N	Nobles	Clark
3) Health & Human Services Committee			

SUMMARY ANALYSIS

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. ALFs are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S., and rule 59A-36. The bill amends various provisions in Ch. 429 regulating ALFs. Specifically, the bill:

- Requires AHCA to conduct a full inspection instead of an abbreviated biennial licensure inspection to review key quality-of-care standards for a facility that has a history of class I, class II, or uncorrected class III violations resulting from complaints referred by the State Long-Term Care Ombudsman Program.
- Codifies current rule requirements to law relating to training and education of facility staff.
- Allows ALFs to admit or retain residents that require the use of assistive devices, which are defined as any device designed or adapted to help a resident perform an action, task, an activity of daily living, a transfer, prevention of a fall, or recovery from a fall.
- Allows ALFs to admit residents that require 24-hour nursing care, or residents that are 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.
- Allows ALFs to admit residents who are bedridden if they are bedridden for no more than 7 days, or for an ALF licensed as extended congregate care, no more than 14 days.
- Allows the use of certain physical restraints in ALFs, including, full-bed rails and geriatric chairs.
- 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 the facility.
- 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 purpose.
- Authorizes rules to address technological advances in the provision of care, safety, and security, including the use of devices, equipment and other security measures for wander management, emergency response, staff risk management, and for the general safety and security of residents, staff, and the facility.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Long-Term Care Ombudsman Program

The State Long-Term Care Ombudsman Program (LTCOP) is a statewide, volunteer-based system of local councils that act as advocates for residents of long-term care facilities.[1] Through 14 district and regional offices that together cover the entire state, volunteers identify, investigate, and resolve complaints made by, or on behalf of, residents of assisted living facilities (ALFs), nursing homes, adult family care homes, board and care facility, or any other similar residential adult care facility.[2]

In addition to investigating and resolving complaints, the LTCOP:

- Monitors, and comments 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;
- Provides information and referrals with regard to long-term care facilities; and
- Conducts annual assessments of long-term care facilities.[3]

A representative of the LTCOP has the right to enter an ALF unannounced to determine compliance with part I of ch. 429, F.S., part II of ch. 408, F.S., and applicable rules. Data collected by the LTCOP may be used by AHCA in investigations involving violations of regulatory standards.[4]

Assisted Living Facilities

Licensure

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.[5] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[6] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[7]

ALFs are licensed and regulated by AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S., rule 59A-36, F.A.C. 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,[8] limited mental health services, and extended congregate care services.[9]

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[1] Part I of ch. 400, F.S.
[2] Florida Ombudsman Program, *FY 2019 Annual Report,* available at http://www.ombudsman.myflorida.com/publications/ar/LTCOP_2019_Annual_Report.pdf (last visited January 13, 2020).
[3] Id.
[4] S. 429.34(1), F.S.
[5] S. 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.
[6] S. 429.02(16), F.S.
[7] S. 429.02(1), F.S.
[8] S. 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed as a 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.).
[9] 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.

Current law requires rules governing ALFs promote a safe and sanitary environment that is residential and non-institutional in design or nature.[10] Current law also requires rules set requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space and other housing conditions that are not in conflict with ch. 553, F.S., governing building construction standards. Current law also requires AHCA to develop key quality-of-care standards for ALFs with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.[11] Rules must also address moratoriums, classification of deficiencies, the levying of penalties and the use of income from fees and fines.[12]

Some counties and municipalities require all businesses to obtain a business tax receipt, formerly known as an occupational license[13], prior to engaging in business.[14] A business tax receipt serves as evidence that a business is in compliance with all business tax regulations of the local governing authority.[15] Current law requires counties and municipalities to verify with AHCA that an ALF is licensed prior to issuing an occupational license. The term occupational license is no longer used in the Local Business Tax Act in ch. 205, F.S.[16]

Inspections, Surveys and Monitoring Visits

Current law requires AHCA to adopt rules on uniform standards and criteria to be used during standard biennial licensure inspections to determine compliance with facility standards and residents' rights. The rule requires AHCA to utilize certain core survey tasks during an inspection, including:

- Conducting a tour of the facility to observe and assess resident behavior and demeanor, adherence to facility abuse prohibition policy, adherence to facility infection control policy, and more;
- Conducting interviews with residents or their family members and staff; and
- Reviewing facility records.[17]

Current law also authorizes AHCA to use an abbreviated biennial licensure inspection that consists of key quality-of-care standards in lieu of a full inspection if the facility has a good record of past performance.[18] Current law requires a full inspection if a facility has a history of class I or class II violations, uncorrected class II violations, confirmed ombudsman complaints or confirmed licensure complaints.[19]

Section 408.813, F.S. categorizes violations into four classes according to the nature and gravity of its probable effect on residents. If an ALF is cited for a class I violation or three or more class II violations arising from separate surveys within a 60-day period or due to unrelated circumstances during the same survey, AHCA must conduct an additional licensure inspection within six months.[20]

During any calendar year in which no survey is performed, AHCA may conduct at least one monitoring visit of a facility, as necessary, to ensure compliance of a facility with a history of certain violations that threaten the health, safety, or security of residents. If warranted, AHCA will perform an inspection as a part of a complaint investigation of alleged noncompliance with the Resident Bill of Rights.[21]

Training and Education

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[10] S. 429.41(1), F.S.
[11] S. 429.41(5), F.S. AHCA reviews the key quality-of-care standards for compliance during an abbreviated biennial licensure inspection (s. 429.41(5), F.S.).
[12] S. 429.41(1)(f), F.S.
[13] Ch. 2006-152 Laws of Fla., amended ch. 205, F.S., to change the title from Local Occupational License Tax Act to Local Business Tax Act. The bill also changed all references of occupational license to business tax.
[14] S. 205.053, F.S.
[15] S. 205.022(2), F.S.
[16] Supra at 13.
[17] Rule 59A-36.001, F.A.C.
[18] S. 429.41(5), F.S.
[19] Id.
[20] S. 429.34(2), F.S.
[21] Id.

Prior to 2019, the state had a bifurcated, two agency regulatory structure for ALFs. The Department of Elder Affairs (DOEA), was responsible for rulemaking while AHCA was responsible for enforcing the rules. In 2019, the legislature transferred rulemaking authority to AHCA to create operational efficiencies by virtue of allowing the state agency to adopt the rules that they are responsible for enforcing.[22] AHCA has since adopted rules relating to a variety of subjects, including, rules on training and education requirements for ALF administrators and staff.[23] Training and education requirements are also provided in statute. There are some differences in terminology used in the rule as compared to the statute. The training and education requirements in statute are also difficult to interpret as far as which requirements apply to administrators, and which requirements apply to other facility staff.

Current law requires all new ALF employees to complete a pre-service orientation prior to interacting with residents.[24]

Current law requires all administrators to complete a competency test to indicate successful completion of training and education requirements within 90 day of employment.[25]

Current ALF rule requires ALF staff who provide direct care to residents, other than administrators or managers, to participate in in-service training on certain topics, including, infection control, reporting adverse incidents, safe food handling practices, and emergency evacuation procedures.[26] Certificates or copies of certificates indicating completion of training requirements are required to be documented in the facility's personnel file, but the rule does not specify that the a single certificate of completion coving all required in-service training topics may be issued if the training is provided in a single training course.

Current ALF law authorizes AHCA to establish registration requirements for trainers to train ALF staff, and AHCA has already adopted such rules.[27] However, current law does not authorize AHCA to adopt rules on the revocation of a trainer's registration.

Current law authorizes AHCA to adopt rules to establish specific policies and procedures on resident elopement and resident elopement drill requirements.[28] ALF rule requires all facility staff to participate in in-service training on the facility's procedures for resident elopement within 30 days of employment.[29] ALF rule also requires the facility to document staff participation in resident elopement drills.[30]

Admission

An ALF must provide appropriate care and services to meet the needs of the residents admitted to the facility.[31] The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on certain criteria.[32] Current law requires each resident to be examined by a physician or nurse practitioner within 60 days before admission to the ALF, if possible.[33] If an examination has not been completed prior to admission, an examination must be made within 30 days after admission.[34] Current law requires the completed medical examination to be signed, but does not specify by whom. The owner or facility administrator must use the information contained in the medical examination report to determine the appropriateness of the resident's admission. If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as

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22 Ch. 2019-11 Laws of Fla.
23 Rule 59A-36.011, F.A.C.
24 S. 429.52, F.S., and rule 59A-36.011(2), F.A.C.
25 Id.
26 Rule 59A-36.011(3), F.A.C.
27 S. 429.52(12), F.S., F.S., and rule 59A-36.029, F.A.C.
28 S. 429.41(1)(l), F.S.
29 Rule 59A-36.011(3)(f), F.A.C.
30 Id.
31 For specific minimum standards, see Rule 59A-36.006, F.A.C.
32 S. 429.26, F.S.
33 S. 429.26(4), F.S.
34 S. 429.26(5), F.S.

determined by the facility administrator or a health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.[35]

Current law allows an ALF to retain a terminally ill resident (including a resident who requires 24-hour nursing supervision, who no longer meets the criteria for continued residency), if the following conditions are met:

- The arrangement is mutually agreeable to the resident and the facility,
- Additional care is rendered through a licensed hospice, and
- The resident is under the care of a physician who agrees that the physical needs of the resident are being met.[36]

Rule 59A-36.006, F.A.C., authorizes an ALF with a standard license, a limited nursing services license, or a limited mental health license to retain a resident who is bedridden for up to 7 days. Further, the rule authorizes an ALF with an extended congregate care license to retain a resident who is bedridden for up to 14 days.

Resident Rights and Safety

A physical restraint is a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint.[37] The term also includes any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. Current law limits the use of physical restraints by an ALF to half-bed rails as prescribed by the resident's physician with consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact.[38] Current ALF rule requires the prescribing physician to assess the need of the resident for physical restraints annually. Current law does not expressly authorize the use of geriatric chairs or full bed rails.

Current laws requires an ALF to provide notice of relocation to a resident, unless, the resident has been certified by a physician to require an emergency relocation to a facility that can provide a more skilled level of care, or, if the resident engages in a pattern of conduct that is harmful or offensive to other residents.[39] The notice of relocation must be in writing, and, must be provided at least 45 days prior to a change in residency.[40] Currently, the ALF is not required to provide notice of relocation to the resident's guardian, unless the resident has been adjudicated mentally incapacitated.

In the event an ALF decides to close its business operation, the facility must inform each resident or the next of kin, legal representative, or agency acting on each resident's behalf, of the expected time of discontinuance of the operation.[41] An ALF resident may have several agencies acting on their behalf, so it may be unclear to an ALF exactly which agency they are required to notify, and there is no statutory requirement for them to specifically notify AHCA. The notice of relocation or termination of residency must be provided at least 45 days prior to a change in residency.[42] In the event a resident doesn't have anyone to represent them, the facility is responsible for referral to an appropriate social service agency for placement.[43] AHCA is required to monitor the transfer of residents to other facilities and ensure that resident's rights are being protected.[44] AHCA, in consultation with the Department of Children and Families, must specify procedures for ensuring that all residents who receive services are appropriately relocated.[45]

[35] Rule 59A-36.006(5), F.A.C.
[36] S. 429.26(9) and (11), F.S.
[37] S. 429.02(18), F.S.
[38] S. 429.41(1)(k), F.S.
[39] S. 429.28(1)(k), F.S.
[40] Id.
[41] S. 429.31(1), F.S.
[42] S. 429.28(1)(k), F.S.
[43] S. 429.31(1), F.S.
[44] S. 429.31(2), F.S.
[45] Id.

On October 31, 2019, the Miami Herald published an article about the closure of an ALF in Broward County describing issues faced by residents in receiving assistance with relocating to another facility.[46] According to the article, while the facility did timely notify its residents and AHCA, many residents did not receive the proper assistance with finding a new facility from the facility or state agencies.[47]

Assistance to Residents

Currently, the Resident Bill of Rights states that a resident has the right to assistance from the ALF in obtaining access to adequate and appropriate health care. Such assistance includes the management of medication, assistance in making appointments for health care services, providing transportation to health care appointments, and performing certain other health care services by appropriately licensed personnel or volunteers.

An unlicensed ALF staff member may provide assistance to a resident who is medically stable with self-administration of a routine, regularly scheduled medication that is intended to be self-administered if there is a documented request by and the written informed consent of the resident.[48] Assistance with medication includes, among other things, in the presence of the resident, reading the label, opening the container, removing the prescribed amount from the container, and closing the container.[49] Current law, does not provide that the resident may opt out of being read the label by facility staff.

Self-administered medication includes legend and over-the-counter oral dosage forms, topical dosage forms and topical ophthalmic, otic, and nasal dosage forms including solutions, suspensions, sprays, and inhalers. Currently, an unlicensed ALF staff member is not authorized to provide assistance to a resident with the self-administration of a transdermal patch.

Currently, unlicensed ALF staff are prohibited from assisting with the self-administration of medications, ordered by a physician, that have prescriptive authority to be given "as needed", unless, at the request of a competent resident, the order is written with specific parameters that remove independent judgement on the part of the unlicensed person.[50]

Current law requires ALFs to notify a licensed physician when a resident exhibits signs of dementia or cognitive impairment or has a change of condition in order to rule out the presence of an underlying physiological condition that may be contributing to such dementia or impairment.[51] If an underlying condition is determined to exist, ALF must arrange, with the appropriate health care provider, the necessary care and services to treat the condition.[52]

Adverse Incident Reporting Requirements

When an ALF has reason to believe that an adverse incident has occurred, current law requires them to submit a preliminary report to AHCA by electronic mail, facsimile, or United States mail, within one business day after the occurrence of an adverse incident.[53] The report must include information regarding the identity of the affected resident, the type of adverse incident, and the status of the facility's investigation of the incident. After submission of the preliminary report, if the event is still considered an adverse incident by the facility, the facility must submit a full report to AHCA by electronic mail, facsimile, or United States mail, within 15 days, which must include the results of the facility's investigation into the adverse incident.[54]

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[46] Jack Brook, *Retirement Home Had Bad Bed Bugs. It's Closing, but Could Residents Wind Up Somewhere Worse,* Miami Herald, Oct. 31, 2019, available at https://www.miamiherald.com/news/local/article235871067.html (last visited January 4, 2020).
[47] Id. "AHCA spokesman said in a statement to the Miami Herald that AHCA had been properly notified by owners about the closure, but more than a week after the ALF handed out its notice to residents, word had not reached a key state monitor tasked with protecting residents' rights." "Broward's district ombudsman manager said she was not aware of the facility closing until contacted by a Miami Herald reporter."
[48] S. 429.256(2), F.S.
[49] S. 429.256(3)(b), F.S.
[50] S. 429.256(4)(g), F.S.
[51] S. 429.26(7), F.S.
[52] Id.
[53] S. 429.23(3), F.S.
[54] S. 429.23(4), F.S.

However, if, after submission of a preliminary report, the facility determines that the event was not an adverse incident, the facility is responsible for withdrawing the preliminary report. If a facility fails to withdraw a preliminary report, AHCA has no way of knowing that the event was determined not to be an adverse incident, so they still expect the facility to timely file a full report. A facility that fails to withdraw a preliminary report and later fails to timely file a full report will be subject to a citation from AHCA for failure to timely file a final report.

According to AHCA, based on ALF adverse incident reports submitted since June 27, 2017, AHCA has initiated 60 investigations on ALFs that forgot to withdraw preliminary reports prior to the deadline for final reports.[55]

Currently, AHCA is not required to remind the facility that an adverse incident report is due. However, AHCA does send an automated email one day prior to the deadline for the final report.[56]

Emergency Management Plan

Pursuant to s. 429.41, F.S., each ALF must prepare a written comprehensive emergency management plan that must address the following:

- Provision for all hazards;
- Provision for the care of residents remaining in the facility during an emergency, including, emergency power, supplies, and equipment;
- Provision for the care of additional residents who may be evacuated to the facility during an emergency;
- Identification of residents with Alzheimer's disease or related disorders, and residents with mobility limitations who may need specialized assistance;
- Identification of and coordination with the local emergency management agency;
- Arrangement for post-disaster activities, including, responding to family inquiries, transportation, and obtaining medical intervention for residents; and
- Identification of staff responsible for implementing each part of the plan.[57]

The comprehensive emergency management plan is subject to review and approval by the county emergency management agency. The county emergency management agency is required to ensure that volunteer organizations and other agencies are given the opportunity to review the plan, including DOH, AHCA, and the Division of Emergency Management.[58]

New ALFs, and facilities whose ownership has been transferred, must submit an emergency management plan to the local emergency management agency within 30 days of obtaining a license.[59]

Uniform Fire Safety Standards

Section 633.206, F.S., authorizes the State Fire Marshal to establish uniform fire safety standards for ALFs, of which the State Fire Marshal is the final administrative interpreting authority. The State Fire Marshal is authorized to inspect an ALF at any reasonable hour if there is reasonable cause to believe that a violation of the fire safety code may exist.[60] Pursuant to rules adopted by the State Fire Marshal, the uniform fire safety standards applicable to ALFs in Florida are the standards of the National Fire Protection Association (NFPA) for life safety in the NFPA 101, Life Safety Code.[61]

[55] Agency for Health Care Administration, 2020 Legislative Bill Analysis-HB 767, December 16, 2019 (on file with Health Market Reform Subcommittee staff).
[56] Id.
[57] Rule 59A-36.019, F.A.C.
[58] S. 429.41(1)(b), F.S.
[59] Id.
[60] S. 633.216, F.S.
[61] Rule 69A-40.028, F.A.C.

The uniform fire safety standards for ALFs in Florida, adopted and enforced by the State Fire Marshal, allow the use of locking devices in ALFs.[62] Locking devices can be used in ALFs to separate certain residents by the level of care they are receiving.[63] For example, a locking device can be used to keep residents in a memory care unit separate from the general population of the facility. Locking devices may also be used for delayed egress on facility exit doors. For example, when someone pushes the horizontal crash bar of the locked door, a local buzzer will sound, and the door will automatically open within 15 seconds. Currently, AHCA does not have statutory authority to adopt rules on the use of locking devices in ALFs.

As of January 3, 2020, there were 3,080 licensed ALFs.[64]

Effect of the Bill

Licensure

The bill authorizes AHCA to adopt rules to cultivate technological advances in the provision of care, safety, and security, including the use of devices, equipment and other security measures for wander management, emergency response, staff risk management, and for the general safety and security of residents, staff, and the facility.

As a condition of licensure, ALFs must be inspected by the local county health department for food safety and environmental sanitation requirements, the local authority having jurisdiction over fire and life safety matters, as well as by AHCA. The bill moves portions of current law, which will result in no practical or measured effect. Specifically, the bill moves current law that:

- Authorizes AHCA to adopt rules relating to a safe and decent living environment and the sanitary condition of facilities that are not in conflict with the requirements in ch. 553, F.S., s. 381.006, F.S., s. 381.0072, F.S., or s. 633.206, F.S.[65]
- Requires the rules to clearly delineate the respective responsibilities of the agency's licensure and survey staff and the county health departments and ensure that inspections are not duplicative; and
- Authorizes AHCA to collect fees for food service inspections conducted by county health departments and transfer the fees to the Department of Health.

The bill authorizes AHCA to adopt rules relating to furnishings for resident bedrooms or sleeping areas, linens, and other housing conditions relating to hazards, to promote the health, safety, and welfare of residents suitable to the size of the structure. AHCA has already adopted rules on all of these topics, so this will have no practical effect.

The bill removes the authority for rules that set standards for plumbing, heating, cooling, lighting, ventilation, living space and other housing conditions because references to the Florida Building Code were removed from ALF rules in 2010.[66] The bill removes the authority for rules that address the use of income from fees and fines because it is duplicative of a provision in s. 408.818, F.S. The bill removes the requirement that key quality-of-care standards be developed with input from the ombudsman and representatives of provider groups as the rulemaking process already allows for public participation.

The bill makes a conforming change to the prohibition on a county or municipality issuing an occupational license to a facility prior to determining whether the facility is licensed as an ALF by

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[62] NFPA 101, *Life Safety Code,* 2018 Edition.
[63] Greene, L, *Following the Code-Code Changes are an Important Part of Access Control or Egress,* Security Today, April 1, 2016, available at https://securitytoday.com/Articles/2016/04/01/Following-the-Code.aspx (last visited January 19, 2020).
[64] AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Assisted Living Facilities,* http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (last visited January 4, 2020).
[65] Ch. 553, F.S., contains Building Construction Standards, s. 381.006, F.S., contains the Environmental Health Program administered by the Department of Health, s. 381.0072, F.S., contains food service protection requirements enforced by the Department of Health, and s. 633.206, F.S., contains the uniform fire safety standards.
[66] Agency for Health Care Administration, 2020 Legislative Bill Analysis-HB 767, December 16, 2019 (on file with Health Market Reform Subcommittee staff).

replacing the term "occupational license" with "business tax receipt". Counties and municipalities issue business tax receipts, not occupational licenses, to persons or entities that have complied with laws governing business taxes in ch. 205, F.S. Business taxes are fees charged by a county or municipality for the privilege of engaging in any business, profession, or occupation within its jurisdiction.[67]

Inspections, Surveys and Monitoring Visits

Current law requires AHCA to adopt rules on uniform standards and criteria to be used during inspections to determine compliance with facility standards and residents' rights. The bill removes this rulemaking authority. As a result, AHCA will be able to repeal the core survey inspection tasks contained in rule 59A-36.001, F.A.C. In effect, AHCA will not be confined to surveying for compliance with such a defined level of specificity. Instead, AHCA will be able to inspect facilities for a broad array of issues. The bill also requires inspections to be used to determine compliance with part I of ch. 429, F.S., in its entirety, instead of using them to determine only general compliance with facility standards and residents' rights.

The bill requires AHCA to conduct a full inspection instead of an abbreviated biennial licensure inspection to review 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.

Training and Education

Currently, there are some differences in terminology used in the training and education requirements in rule as compared to the statute. The training and education requirements in statute are also difficult to interpret as far as which requirements apply to administrators, and which requirements apply to other facility staff. The bill amends the training and education requirements for ALF administrators and staff to provide consistency between ALF statutes and rules, and to clearly illustrate which requirements apply to administrators and which requirements apply to other facility staff.

Current ALF law authorizes AHCA to establish registration requirements for trainers to train ALF staff, and AHCA has already adopted such rules. However, current law does not authorize AHCA to adopt rules on the revocation of a trainer's registration. The bill authorizes AHCA to adopt rules to establish a process for revocation of a trainer's registration.

The bill codifies to law an ALF rule to law that requires ALF staff who provide direct care to residents to participate in in-service training, which will have no practical effect because it is already required in rule. However, the bill also provides that the topics covered during the pre-service orientation are not required to be repeated during in-service training. This provision is not currently in ALF rule, so ALF staff who provide direct care to residents will no longer have to repeat topics in in-service training that they have already learned in pre-service orientation. The bill allows a single certificate of completion that covers all required in-service training topics to be issued to a participating staff member if the training is provided in a single training session.

The bill authorizes AHCA to contract with another entity to administer the core competency test. AHCA has a contract with the MacDonald Research Institute to administer the test.[68]

The bill codifies in statute a current rule requirement that staff involved with the management of medications and assisting with the self-administration of medications must complete a minimum of 2 hours of continuing education on providing assistance with self-administration of medication and safe medication practices.

[67] S. 205.022, F.S.
[68] Agency for Health Care Administration, 2020 Legislative Bill Analysis-HB 767, December 16, 2019 (on file with Health Market Reform Subcommittee staff).

Current law authorizes AHCA to adopt rules to establish specific policies and procedures on resident elopement and resident elopement drill requirements.[69] The bill requires AHCA to adopt rules on resident elopement drill requirements. AHCA has already adopted such rules, so this requirement will have no effect. The bill codifies ALF rule requirement to law that requires administrators and direct care staff to review the facility's procedures on resident elopement, and requires the facility to document staff participation in resident elopement drills. This will have no effect because these requirements are already in rule.

Admission

The bill allows an ALF to admit or retain the following residents:

- Residents that receive a health care service or treatment designed to be provided within a private residential setting if all requirements for providing the service or treatment are met by the ALF or a third party; and
- Residents that require the use of assistive devices, which the bill defines as any device designed or adapted to help a resident perform an action, task, an activity of daily living, a transfer, prevention of a fall, or recovery from a fall.

The bill allows an ALF to admit a resident that requires 24-hour nursing care, or a resident that 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. Current law only allows ALFs to retain such residents, rather than admit them.

The bill codifies a current ALF rule to law that allows an ALF to admit a bedridden resident if the resident is bedridden for no more than 7 days, or for an ALF licensed as extended congregate care, no more than 14 days. Currently, ALF statutes only allow ALFs to retain such residents, rather than admit them. This will have no practical effect because it is just codifying a current ALF rule to law.

Current law requires each resident to be examined by a physician or nurse practitioner within 60 days before admission to the ALF, if possible. If an examination has not been completed prior to admission, an examination must be made within 30 days after admission. The bill removes the "if possible" language from current law to explicitly require a resident to undergo a medical examination within 60 days before admission or within 30 days after admission. The bill provides that the medical examination form must be signed only by the practitioner, and may only be used to record the practitioner's direct observation of the patient at the time of examination and must include the patient's medical history. The form must only be used as an informative tool to assist in the determination of the appropriateness of the resident's admission to or continued residency in the facility.

Resident Rights and Safety

Current law limits the use of physical restraints by an ALF to half-bed rails as prescribed by the resident's physician with consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact. The bill authorizes the use of full-bed rails, geriatric chairs, and any device the resident chooses to use and is able to remove or avoid independently, as prescribed by the resident's physician, and with consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact. Current ALF rule requires the prescribing physician to assess the need of the resident for physical restraints annually, but does not specify requirements for care planning or staff monitoring. The bill authorizes AHCA to adopt rules to specify requirements for care planning and staff monitoring.

Current law requires an ALF to provide notification of a non-emergency relocation to a resident's legal guardian, but only for a resident who has been adjudicated mentally incapacitated. The bill requires an ALF to provide notice of a non-emergency relocation for any resident. The bill also requires the notice

[69] S. 429.41(1)(l), F.S.

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 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 AHCA of its plans to discontinue facility operation. Further, the bill requires 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.

Assistance to Residents

The bill removes the requirement that an ALF make arrangements with a health care provider for services to treat an underlying condition that contributes to a resident's dementia or cognitive impairment. Instead, the bill requires ALFs to assist in making appointments for the necessary care and services to treat the condition, and to notify the resident's representative or designee in of the need for health care services. If the resident does not have a representative or designee or if the resident's representative or designee cannot be located or is unresponsive, the facility must arrange with the appropriate health care provider for the necessary care and services to treat the condition.

The bill 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 purpose. The bill also provides the resident with the ability to opt out of being orally advised of the medication name and dosage by signing a waiver. The waiver must identify all of the medications intended for the resident, including names and dosages of such medications, and must immediately be updated each time the resident's medications or dosages change.

Currently, an unlicensed ALF staff member is not authorized to provide assistance to a resident with the self-administration of a transdermal patch. The bill adds transdermal patches to the list of medications to be considered self-administered medications.

Currently, unlicensed ALF staff are prohibited from assisting with the self-administration of medications, ordered by a physician, that have prescriptive authority to be given "as needed", unless, at the request of a competent resident, the order is written with specific parameters that remove independent judgement on the part of the unlicensed person. The bill allows unlicensed staff to assist with the self-administration of medication, under the same circumstances, but requires the resident requesting assistance to be aware of their need for the medication and understand the purpose for taking it, instead of requiring them to be competent.

Adverse Incident Reporting Requirements

The bill 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.

Emergency Management Plan

The bill codifies a current rule in law that requires new ALFs and facilities who have a change of ownership to submit a comprehensive emergency management plan to the county emergency management agency within 30 days of receiving a license. In addition, it removes current law that

requires county emergency management agencies to give volunteer organizations an opportunity to review the plan.

Uniform Fire Safety Standards

The bill also authorizes AHCA to adopt rules on locking devices, which AHCA is currently not statutorily permitted to do. The uniform fire safety standards for ALFs in Florida, adopted and enforced by the State Fire Marshal, allow the use of locking devices in ALFs. Locking devices can be used in ALFs to separate certain residents by the level of care they are receiving. For example, a locking device can be used to keep residents in a memory care unit separate from the general population of the facility. Locking devices may also be used for delayed egress on facility exit doors. For example, when someone pushes the horizontal crash bar of the locked door, a local buzzer will sound, and the door will automatically open within 15 seconds. In effect, the bill allows AHCA to monitor the use of locking devices in ALFs in accordance with the rules they see appropriate to draft. However, such rules must not be in conflict with or duplicative of the uniform fire safety standards.

The bill also moves current law requirements for fire safety standards from the section governing rulemaking to a newly created section of law because the State Fire Marshal is responsible for adopting rules to enforce the Uniform Fire Safety Standards not AHCA. This will have no practical or measurable effect.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 429.02, F.S., relating to definitions.
Section 2: Amends s. 429.07, F.S., relating to license required; fee.
Section 3: Amends s. 429.11, F.S., relating to initial application for license; provisional license.
Section 4: Amends s. 429.176, F.S., relating to notice of change of administrator.
Section 5: Amends s. 429.23, F.S., relating to internal risk management and quality assurance program; adverse incidents and reporting requirements.
Section 6: Amends s. 429.255, F.S., relating to use of personnel; emergency care.
Section 7: Amends s. 429.256, F.S., relating to assistance with self-administration of medication.
Section 8: Amends s. 429.26, F.S., relating to appropriateness of placements; examinations of residents.
Section 9: Amends s. 429.28, F.S., relating to resident bill of rights.
Section 10: Amends s. 429.31, F.S., relating to closing of facility; notice; penalty.
Section 11: Amends s. 429.41, F.S., relating to rules establishing standards.
Section 12: Creates s. 429.435, F.S., relating to uniform firesafety standards.
Section 13: Amends s. 429.52, F.S., relating to staff training and educational programs; core educational requirement.
Section 14: Provides an effective date.

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:

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 provides sufficient rule-making authority to AHCA to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Health Market Reform Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires facility inspections and surveys to determine compliance with part I of ch. 429, F.S., which includes all ALF statutes, instead of determining compliance with only s. 429.28, F.S., and
- Deletes AHCA rule-making authority for uniform standards and criteria used to determine compliance with facility standards and residents' rights.

The analysis is drafted to the committee substitute as passed by the Health Market Reform Subcommittee.