

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill provides residents of assisted living facilities with relocation and residency termination protections similar to those provided to nursing home residents. By specifying allowable reasons pertaining to resident relocation and residency termination, and providing notice to and intervention through the local ombudsman council, the Department of Children and Family Services and the Agency for Health Care Administration, residents and their families are afforded additional resident protection.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Assisted Living Facilities

There are 2,583 licensed ALFs in Florida, housing a total of 76,834 beds.¹ Potential residents of an ALF must first undergo a health assessment 60 days prior to admission. The assessment is designed to address the physical and mental status of the individual, the individual's potential need for supervision or assistance, and the individual's dietary needs.² Potential residents of an ALF must meet the admission criteria established in rule.³ These criteria include that a person:

- Be at least 18 years of age and able to perform activities of daily living with supervision or assistance if necessary;
- Be capable of taking medication with supervision or assistance from staff;
- Not be a danger to self or others, require licensed professional mental health treatment on a 24-hour basis, or be bedridden; and
- Not have any stage three or four pressure sores or require 24-hour supervision.

ALF residents are provided housing, meals, and personal services. These personal services may vary depending on the resident and his or her service needs.

Licenses

A standard license is issued to an ALF that provides one or more personal services.⁴ A facility operating under a standard license may also employ or contract with an individual licensed to administer medications and perform other tasks as specified in s. 429.255, F.S., relating to the use of personnel. Once an ALF receives a standard license, the ALF may apply for specialty licenses including:

- Limited Nursing Services (LNS):⁵ An ALF with an LNS license allows the licensee to provide the basic services of an ALF and specific nursing services including nursing assessments, wound dressing care, care of casts, braces and splints, administration of portable oxygen, care of catheters and colostomies, and other specific nursing services.⁶

¹ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, on file with the committee.

² Chapter 58A-5.0181, F.A.C.

³ *Id.*

⁴ S.429.02(16),F.S., defines the term "personal services" as direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the DOEA may define by rule. The term "personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

⁵ S.429.07(3)(c), F.S.

⁶ Agency for Health Care Administration, 2008 bill Analysis & Economic Impact Statement, on file with the committee.

- Extended Congregate Care (ECC):⁷ An ALF with an ECC license allows a resident to age in place by providing the basic services of an ALF and other services including limited nursing services and assessments, total help with activities of daily living, measurement and recording of vital signs, dietary management, and supervision of residents with dementia or cognitive impairments.⁸
- Limited Mental Health (LMH):⁹ An ALF with an LMH license is required to serve more than two mental health residents. An LMH facility consults with residents' mental health care managers and develops community supported living plans for residents.¹⁰

Inspections

The agency conducts regulatory inspections every two years for assisted living facilities with a standard license. Quarterly monitoring visits are required for those facilities with a standard ECC license. Facilities with a standard LNS license are monitored at least twice a year. Complaint investigations are conducted as received and prioritized by the AHCA.

Resident Bill of Rights

Section 429.28, F.S., provides for an ALF resident's rights within the facility. Among these rights are the resident's right to at least 45 days' notice of relocation or termination of residency. This notice is not required for relocation or termination for medical reasons, emergency reasons, or if a resident engages in conduct deemed harmful or offensive. In non-emergency situations, a resident's guardian is given 45 days' notice in cases where the resident has been determined mentally incapacitated.¹¹

According to the Office of the State Long-Term Care Ombudsman Program's statewide complaint data, involuntary discharge investigations surfaced last year as one of the top ten complaints in assisted living facilities.¹²

The ALF resident bill of rights also requires that each resident be able to present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility is required to establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

According to the agency, regulations do not specify how grievances are presented, so each facility may develop its own policy. The agency reports that some ALFs require residents to submit his or her grievance in writing. Some facilities reportedly have "open door" grievance policies that are not in writing.

Assisted living facilities are not required to implement risk management programs; however, they must report adverse incidents to the agency within one business day by email, facsimile, or U.S. mail. The ALF must include information regarding the identity of the affected resident, the type of incident, and the status of the ALF's investigation of the incident.

⁷ S. 429.07(3)(b), F.S.

⁸ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, on file with the committee.

⁹ S. 419.075, F.S.

¹⁰ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, on file with the committee.

¹¹ *Id*

¹² 2008 Department of Elder Affairs, Florida's Long-Care Ombudsman Program *Annual Report 2005-2006*, on file with the committee

The Long Term Care Ombudsman Program

The Long-Term Care Ombudsman Program was created under the Older Americans Act, which was originally passed in 1965 and subsequently amended. The act directs states to create, among other provisions, an Office of the State Ombudsman. In 1993, the Florida Legislature created the Office of State Long-Term Care Ombudsman in the Department of Elderly Affairs.¹³ Among other duties and responsibilities, the Office of State Long-Term Care Ombudsman is directed by law to identify, investigate and resolve complaints made by or on behalf of residents of long term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.¹⁴ The program, through its network of statewide volunteers, provides assistance to adults residing in long-term care facilities in an effort to secure and maintain the resident's quality of life.

Department of Children and Family Services Adult Protective Services Investigations and Proceedings¹⁵

Section 415.101, F.S., relating to the Adult Protective Services Act, provides legislative intent for comprehensive protective services for Florida's elderly and abused adults. The DCF identified several methods to improve those services.

Reports alleging child abuse, abandonment, or neglect by a person who is not a family member, household member, or caregiver are required to be immediately transferred to the appropriate County Sheriff's office¹⁶--there is no such requirement for reports of adult abuse, neglect, or exploitation. Currently, the Florida Abuse Hotline accepts reports related to a vulnerable adult who is a resident of Florida or currently located in Florida, and is:¹⁷

- Believed to have been neglected or abused by a caregiver in Florida;
- Suffering from the ill effects of neglect by self and is in need of services; or
- Being exploited by any person who stands in a position of trust or confidence, or any person who knows or should know that a vulnerable adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use their funds, assets or property.

The DCF reports that during some adult services investigations the subject of the investigation denies his or her identify, eluding the investigators. Section 22.142(4), F.S., currently provides for access to this information by the Department of State, Department of Revenue, and the Department of Financial Services. Current law does not permit the DCF with access to this database system.

The DCF's current rule-making authority relating to adult protective services is limited to pre-service and in-service training for adult protective investigators and general authority granted in s. 415.112, F.S. The DCF does not have specific authority to adopt rules relating to background screenings and drug testing for adult protective investigators and components affecting the activities of adult protective services investigations and interventions.

¹³ Ch.93-177, Laws of Florida

¹⁴ S. 400.0065, F.S.

¹⁵ Senate analysis dated March 31, 2008, on file with the committee.

¹⁶ Section 39.201(2)9b), F.S.

¹⁷ Department of Children and Families, *Reporting Abuse of Children and Vulnerable Adults*, found at http://www.dcf.state.fl.us/abuse/publications/mandated_reporters.pdf, (2007) (last visited April 12, 2008).

Effect of Proposed Changes

CS/HB 1401 amends several sections of law effectively providing relocation and residency termination protections to residents of assisted living facilities (ALFs) similar to those provided to residents of nursing homes, and provides improved adult protection measures. Specifically, the bill addresses four primary issues relating to ALF residents: permissible reasons for resident relocation and residency termination; specific notice procedures related to a resident relocation and residency termination; grievance incident data collection; and improvements related to protecting vulnerable adults..

The cumulative effect of these provisions should provide greater resident protection mechanisms, increased coordination of care and notice of change in resident care, and improved oversight of facilities and resident care.

The bill:

Permissible Reasons for Resident Transfer or Residency Termination

- Revises the resident bill of rights to reflect that an ALF resident must receive at least 45 day written notice prior to a proposed relocation or residency termination, unless such relocation or residency termination is initiated by the resident or resident's designee, or, for medical reasons, the resident is certified by a physician to require an emergency relocation.
- Requires ALFs to establish a written grievance procedure, and directs each licensee to maintain a written log of grievance that is available for inspection and maintained for at least two years.
- Provides that ALFs licensed under Chapter 429, F.S., are required to permit facility residents to remain in the facility, and specifies that residents may not be relocated or have his or her residency terminated except where:
 - a) such relocation or residency termination is necessary for the resident's welfare;
 - b) such relocation or residency termination is appropriate because the resident's health has sufficiently improved;
 - c) the health or safety of other residents or facility employees would be endangered;
 - d) the resident has failed to provide payment for his or her stay following at least 30 days notice;
 - e) the facility ceases to operate;
 - f) there is a documented pattern of harmful and offensive behavior by the resident; or,
 - g) the contract provided for under s. 429.24(1), F.S., between the licensee and the resident expires on its own terms.

Notice of Relocation or Residency Termination and Incident Data Collection

- Requires the licensee to provide 45 day written notice to a resident prior to a proposed relocation or residency termination. Such notice is required to be signed by the facility administrator or a designee, and any notice indicating a medical reason for relocation or residency termination must be signed by the resident's physician or include the physician's written order. The written notice must be sent by certified mail to a resident's family member or legal guardian or representative, where known.
- Requires that the notice include all information required by state law, rules and regulations, and provides that a copy of the notice be placed in the resident's file.

- Directs the AHCA to develop a standard notice document and specifies that the document must include the means for a resident to request the assistance of the local long-term care ombudsman council in reviewing the notice of proposed relocation or residency termination.
- Provides that the notice must also specify the reason for the relocation or residency termination --with an explanation to support the action—the effective date of the relocation or residency termination, the location of any relocation and information regarding the right to request the local long-term care ombudsman council to review the notice.
- Requires the licensee to report to the Office of State Long-Term Care Ombudsman by mail, electronic mail, or facsimile within 5 business days of a resident's receipt of a notice to relocate or terminate residency.
- Directs the State Long-Term Care Ombudsman to compile and publish information relating to resident relocation and residency terminations initiated by the licensee in the Long-Term Care Ombudsman Program's annual report.
- Provides that, in the event a resident requests that the local long-term care ombudsman council's assist in reviewing a notice of relocation or residency termination, that the local long-term care ombudsman council must do so within 5 business days of receiving the resident's request.
- Specifies that a notice of emergency relocation or residency termination must be provided to the resident, the resident's legal guardian or representative and the local long-term care ombudsman council by telephone or in person. Written notice of an emergency relocation or residency termination must be given before the relocation or residency termination if possible, but in no event later than 5 business days after the relocation or residency termination.
- Requires the local long-term care ombudsman council to conduct a review regarding an emergency relocation or residency termination within 2 business days of receipt of a resident's request. Documentation must be maintained in the resident's file.
- Provides that the local long-term care ombudsman council may request a private, informal conversation with a resident following that resident's receipt of a notice of proposed relocation of termination of residency, and may request similar conversations with a resident's family member or legal guardian or representative, if known.

Vulnerable Adult Protection

- Provides the DCF with access to digital image and signature information of licensees maintained in the Department of Highway Safety and Motor Vehicles' Driver and Vehicle Information Database system to conduct protective investigations. Access to this system would assist investigators in the positive identification of victims and responsible persons who are subjects in investigations of abuse, neglect or exploitation and quick access to the location of such persons, including disabled or vulnerable adults.
- Clarifies that the Central Abuse Hotline is to transfer abuse reports, where the alleged responsible party is not a caregiver, household member, or family member. This will ensure increased law enforcement notification.
- Authorizes the DCF, upon a good faith belief that a vulnerable adult lacks capacity, to file a petition to determine capacity in emergency and nonemergency adult protection proceedings, under Chapter 744, F. S., and further prohibits the department from serving as a guardian or

providing legal counsel to the guardian once such a petition has been filed. This will allow the DCF to initiate guardianship petitions to better protect vulnerable adults.

- Requires the DCF to adopt certain rules pertaining to adult protective investigations.

C. SECTION DIRECTORY:

Section 1. Amends s. 322.142(4), F.S., relating to color photographic or digital imaged licenses.

Section 2. Amends s. 415.103(2)(a)(b)(c), F.S., relating to the central abuse hotline.

Section 3. Amends s. 415.105(1)(e)(2)(g), F.S., relating to protective services interventions.

Section 4. Amends s. 415.112, F.S., relating to rules regarding the Department of Children and Family Services.

Section 5. Amends s. 429.28(1)(k), F.S., relating to resident bill of rights; specifying reasons for transfer or discharge from an assisted living facility.

Section 6. Creates s. 429.285, F.S., relating to resident relocation or termination of residency; requirements and procedures.

Section 7. Amends s. 429.07(3)(b)(c), F.S., correcting a statutory cross-reference.

Section 8. Amends s. 429.31(1), F.S., correcting a statutory cross-reference.

Section 9. Provides an effective date of October 1, 2008.

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:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Provides rule making authority for the Department of Children and Family Services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18 2008, the Committee on Healthy Seniors recommended a strike-all amendment to HB 1401. In addition to reconciling several of the inconsistencies created by patterning certain portions of the legislation after similar provisions contained in Part II of Chapter 400, relating to nursing homes, the strike-all also:

- Removed references to a resident's ability to institute a fair hearing to challenge a proposed relocation or termination of residency by a facility;
- Clarified within the resident bill of rights that a resident must receive at least 45 days written notice in advance of a proposed relocation or termination of residency, and directs facilities to maintain a written log of resident grievances to be available for inspection and maintained for at least two years;
- Specified that relocation or termination of residency may occur where there is either a documented pattern of harmful and offensive behavior by a resident, or where the contract provided for under s. 429.24(1), F.S., between a licensee and resident expires on its own terms;
- Clarified that relocation or termination of residency is appropriate where a resident has failed to provide payment for his or her stay in a facility following at least 30 days notice;
- Deleted the requirement for facilities to notify the Agency for Health Care Administration regarding any proposed relocation or termination of residency necessitated by changes in the physical plant of the facility that make the facility unsafe for such resident;

- Directed the Office of State Long-Term Care Ombudsman to compile and publish information relating to resident relocation and termination in its Long-Term Care Ombudsman annual report;
- Clarified that, when requested by a resident, the local long-term care ombudsman council is responsible for reviewing a notice of proposed relocation or termination of residency within 5 business days of receipt of such request, or within 2 business days of receipt of such request in the event of an emergency relocation or transfer;
- Provided the Department of Children and Family Services with access to information maintained in the Department of Highway Safety and Motor Vehicles' Driver and Vehicle Database system for the purpose of conducting adult protective investigations;
- Clarified that the Central Abuse Hotline is to transfer reports alleging the abuse of vulnerable adults by parties other than relatives, caregivers, or other household members to the appropriate County Sheriff's office, as they do pursuant to child protective investigations;
- Authorized the Department of Children and Family Services, upon a good faith belief that a vulnerable adult lacks capacity, to file a petition to determine capacity in both emergency and nonemergency Adult Protection proceedings; and,
- Directed the Department of Children and Family Services to adopt certain rules necessary to administer chapter 415, F.S.

The committee reported the bill favorably with a strike-all amendment.

On April 8, 2008, the Healthcare Council adopted the strike-all amendment recommended by the Healthy Seniors Committee as a Council Substitute. The analysis reflects the Council Substitute.