

II. Present Situation:

Assisted Living Facilities

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

An ALF may have additional specialty licenses that allow certain medical services to be provided to residents. These additional specialty licenses include the Limited Nursing Services Specialty License and the Extended Congregate Care Specialty License. Licensed health care professionals must provide these services.

The ALFs are licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S., relating to the general licensing provisions for health care facilities. The ALFs are also subject to regulation under ch. 58A-5, Florida Administrative Code. These rules are adopted by the Department of Elderly Affairs (DOEA) in consultation with the AHCA, the Department of Children and Family Services, and the Department of Health.³

Current rules related to ALFs require a staff member who has completed courses in first aid and cardiopulmonary resuscitation to be in the ALF at all times⁴ and require a statement of the facility's policy concerning do not resuscitate orders (DNROs).⁵

Prevalence of Assisted Living Facilities in Florida

Florida currently has 2,851 licensed ALFs. There are 909 ALFs with 17 or more licensed beds. There has been a 25-percent increase in the number of ALFs over the past six years (2,266 in 2003 and 2,842 in 2009). Miami-Dade and Pinellas counties have 1,200 ALFs, which accounts for 42 percent of the total number of ALFs in Florida.⁶

Training for AEDs

An automated external defibrillator (AED) is a lifesaving defibrillator device that:

¹ Section 429.02(5), F.S.

² Section 429.02(16), F.S.

³ Section 429.41(1), F.S. An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in ch. 69A-40, F.A.C., and standards enforced by the Department of Health concerning food hygiene; physical plant sanitation; biomedical waste; and well, pool, or septic systems. *See* chs. 64E-12, 64E-11, and 64E-16, F.A.C.

⁴ Rule 58A-5.0191(4), F.A.C.

⁵ Rule 58A-5.0181(3), F.A.C.

⁶ Agency for Health Care Administration, *2010 Bill Analysis & Economic Impact Statement*, 1 and 3 (2010) (on file with the Committee on Judiciary).

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed; and
- Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.⁷

It is the intent of the Legislature that an AED may be used by any person for the purpose of saving the life of another person in cardiac arrest.⁸ In order to achieve that goal, the Legislature intends to encourage training in lifesaving first aid and set standards for and encourage the use of AEDs. In order to promote public health and safety, all persons who use an AED are encouraged to obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED.

Cardiac Arrest Survival Act

The Cardiac Arrest Survival Act provides for immunity from civil liability for a person who uses or attempts to use an AED on a victim in a perceived medical emergency, without objection of the victim, for any harm resulting from the use or attempted use of the AED.⁹ In addition, the person who acquired the device and makes it available for use is immune from civil liability if the harm was not due to the failure of this person to properly maintain and test the device or provide training in the use of the AED if training is required for that type of AED. The requirement for training does not apply if:

- The AED has audible, visual, or written instructions on its use;
- The person who uses the AED is not one who would have been reasonably expected to use the AED; or
- There was not a reasonably sufficient period in which to provide the training.¹⁰

Immunity from civil liability does not apply to a person if:

- The harm was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the AED while acting within the scope of the employment or agency;
- The person is an acquirer of the AED who leased or otherwise provided the AED to a health care entity for compensation without selling it, and the harm was caused by an

⁷ Section 768.1325(2)(b), F.S.

⁸ Section 401.2915, F.S.

⁹ Section 768.1325, F.S.

¹⁰ Section 768.1325(3)(b), F.S.

- employee or agency of the health care entity who used the device while acting within the scope of the employment or agency; or
- The person is the manufacturer of the AED.¹¹

Good Samaritan Act

The Good Samaritan Act provides immunity from civil liability for any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim. The person is not to be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.¹²

III. Effect of Proposed Changes:

This bill amends s. 429.255, F.S., to require an assisted living facility (ALF) that has 17 or more licensed beds to have, on the premises at all times, a functioning automated external defibrillator (AED). The provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act are extended to the use of an AED within an ALF.¹³

The ALF is encouraged to register the location of each AED with the local emergency medical services medical director. Facility staff are authorized to withhold or withdraw the use of an AED if presented with an order not to resuscitate. The immunity from criminal prosecution or civil liability that is granted to facility staff and facilities for withholding or withdrawing cardiopulmonary resuscitation is extended to the withholding or withdrawing of the use of an AED.

The Department of Elderly Affairs is authorized to adopt rules to implement the provisions in this bill relating to the use of an AED.

The act is to take effect July 1, 2011, in order to allow sufficient time for ALFs to comply with the requirements of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹¹ Section 768.1325(4), F.S.

¹² Section 768.13, F.S.

¹³ See comment under "Related Issues" section in this bill analysis.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill requires assisted living facilities with 17 or more licensed beds – there are currently 909 in Florida – to purchase an automated external defibrillator (AED), if the facilities do not already have one, and train staff on the use of an AED. Residents who have an emergency condition that can be mitigated with prompt assistance from an AED will benefit.

C. Government Sector Impact:

The Agency for Health Care administration (AHCA or agency) is concerned that this bill will lead to an increase in the number of complaints received due to the inappropriate use of AEDs and thereby increase the workload of AHCA staff.¹⁴ The AHCA surveyors will add compliance with the requirements of this bill to the biennial survey. AHCA reports that it will need 2 FTEs (two Health Facility Evaluator IIs), with a total cost of \$124,230 in the first year, and \$113,030 in each recurring year.

The agency also reports that the bill may increase the number of administrative actions against assisted living facilities, and may increase or generate additional litigation relating to lack of training required prior to the use of AEDs.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

On lines 30-31, the bill specifies that the provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act apply to the use of an AED within an ALF. However, the immunity from civil liability under the Good Samaritan Act and the Cardiac Arrest Survival Act might not protect all ALF staff. The Cardiac Arrest Survival Act has an exception for a person who is a licensed or certified health professional who uses the AED while acting within the scope of the license or certification and within the scope of employment. The Good Samaritan Act applies when any person, who *gratuitously* renders emergency care or treatment outside of a place having proper medical equipment. If it is the intent of the Legislature to grant immunity to employees at assisted living facilities, the Legislature could consider amending both the Good

¹⁴ Agency for Health Care Administration, *supra* note 6, at 3.

¹⁵ *Id.* at 8.

Samaritan Act and the Cardiac Arrest Survival Act to clarify that employees of assisted living facilities who use AEDs are immune from liability.

VIII. Additional Information:

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

CS/CS by Children, Families, and Elder Affairs on March 26, 2010:

The committee substitute changed the effective date to July 1, 2011, to allow sufficient time for ALFs to come into compliance with the requirements of the bill.

CS by Health Regulation on March 18, 2010:

The committee substitute eliminates the requirement for the ALF staff to be trained on the use of an AED prior to using one; encourages, rather than requires, the facility to register the location of each AED with a local emergency medical services medical director; and substitutes DOEA instead of DOH as the agency responsible for rulemaking to implement the act.

- B. **Amendments:**

None.