

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 Health Regulation Committee

BILL: SPB 7018

INTRODUCER: For consideration by Health Regulation Committee

SUBJECT: Assisted living facilities

DATE: January 4, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson		Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The proposed committee bill repeals the requirement for an assisted living facility (ALF) to obtain and maintain a specialty license to provide limited nursing services (LNS). The proposed committee bill authorizes LNS to be provided by an ALF with a standard license, as needed, with payment of a monitoring fee for each calendar quarter in which LNS are provided to at least one resident. It also repeals the requirement for a specified number of monitoring visits annually for an ALF licensed to provide LNS or extended congregate care (ECC) services. Instead, the proposed committee bill requires the frequency of monitoring visits for an ALF that actually provides a limited nursing service or ECC service to be specified in rule based on certain risk factors. The proposed committee bill requires each ALF to report aggregate data concerning the residents in the ALF, beginning with the calendar quarter January 1 through March 31, 2011.

The proposed committee bill provides an effective date of July 1, 2010 for rulemaking to implement the bill prior to repeal of the LNS specialty license, which is effective April 1, 2011.

This proposed committee bill substantially amends the following sections of the Florida Statutes: 429.07, 429.17, 429.41, and 429.54.

II. Present Situation:

General Description

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, 2} A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.³ Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

The ALFs are licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., relating to assisted care communities, 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 Rule Chapter 58A-5, Florida Administrative Code (F.A.C.). These rules are adopted by the Department of Elder Affairs (DOEA) in consultation with the AHCA, the Department of Children and Family Services (DCF), and the Department of Health (DOH).⁴ An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in Rule Chapter 69A-40, F.A.C., and standards enforced by the DOH concerning food hygiene; physical plant sanitation; biomedical waste; and well, pool, or septic systems.⁵

As of September, 2009, there were 2808 ALFs licensed with a standard license by the AHCA in this state.⁶ In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide LNS, limited mental health services,⁷ and ECC services. As of September 2009, there were 475 ALFs licensed with a standard license only, for a total of 32,356 beds.⁸

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility. Generally, the care and services include at a minimum:

- Supervising the resident in order to monitor the resident's diet; being aware of the general health, safety, and physical and emotional well-being of the resident; and recording significant changes, illnesses, incidents, and other changes which resulted in the provision of additional services;
- Contacting appropriate persons upon a significant change in the resident or if the resident is discharged or moves out;
- Providing and coordinating social and leisure activities in keeping with each resident's needs, abilities, and interests;
- Arranging for health care by assisting in making appointments, reminding residents about scheduled appointments, and providing or arranging for transportation as needed; and

¹ s. 429.02(5), Florida Statutes (F.S.).

² An ALF does not include an adult family-care home or a nontransient establishment. An adult family-care home is regulated under ss. 429.60 – 429.87, F.S., and is defined as a full-time, family-type living arrangement in a private home where the person who owns or rents the home, lives in the home. An adult family-care home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders, who are not relatives. A nontransient establishment (a.k.a. boarding house) is regulated under part I of ch. 509, F.S., and is defined as any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

³ s. 429.02(16), F.S.

⁴ s. 429.41(1), F.S.

⁵ See Rule ch. 64E-12, ch. 64E-11, and 64E-16, F.A.C.

⁶ Source: The AHCA in an email to committee professional staff dated September 21, 2009.

⁷ An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives optional state supplementation (OSS).

⁸ Source: The AHCA in an email to committee professional staff dated September 23, 2009.

- Providing to the resident a copy of, and adhering to, the Resident Bill of Rights.

An unlicensed person who has received the appropriate training may assist a resident in an ALF with the self-administration of medication. Persons under contract to the ALF, employees, or volunteers, who are licensed under the nurse practice act⁹ and uncompensated family members or friends may:¹⁰

- Administer medications to residents;
- Take a resident's vital signs;
- Manage individual weekly pill organizers for residents who self-administer medication;
- Give prepackaged enemas ordered by a physician; and
- Observe residents, document observations on the appropriate resident's record, and report observations to the resident's physician.

Additionally, in an emergency situation, persons licensed under the nurse practice act may carry out their professional duties until emergency medical personnel assume responsibility for care. A resident may independently arrange, contract, and pay for additional services provided by a third party of the resident's choice.

The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on an assessment of the strengths, needs, and preferences of the individual; the health assessment; the preliminary service plan; the facility's residency criteria; services offered or arranged for by the facility to meet resident needs; and the ability of the facility to meet the uniform fire safety standards.¹¹

A resident who requires 24-hour nursing supervision¹² may not reside in an ALF, unless the resident is enrolled as a hospice patient. Continued residency of a hospice patient is conditioned upon a mutual agreement between the resident and the facility, additional care being rendered through a licensed hospice, and the resident being under the care of a physician who agrees that the physical needs of the resident are being met.

If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.¹³

⁹ Part I of ch. 464, F.S.

¹⁰ s. 429.255, F.S.

¹¹ s. 429.255, F.S., s. 429.26, F.S., and Rule 58A-5.030, F.A.C.

¹² Twenty-four-hour nursing supervision means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services must be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or disease state or stage. Definition found at s. 429.02(26), F.S.

¹³ s. 429.28, F.S.

LNS Specialty License

An LNS license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license. As of September 2009, there were 966 ALFs licensed with an LNS specialty license.¹⁴

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,¹⁵ may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.¹⁶

The biennial fee for an LNS license is \$296 per license with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility.¹⁷ Ostensibly this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

ECC Specialty License

An ECC specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services¹⁸ to persons who otherwise would be

¹⁴ Ibid, 6. The AHCA does not track the number of LNS beds.

¹⁵ Rule 58A-5.031, F.A.C. The additional nursing services that might be performed pursuant to the LNS license include: conducting passive range of motion exercises; applying ice caps or collars; applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks; cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained; performing ear and eye irrigations; conducting a urine dipstick test; replacing an established self-maintained indwelling urinary catheter, or performing an intermittent urinary catheterization; performing digital stool removal therapies; applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds; caring for stage 2 pressure sores, (care for stage 3 or 4 pressure sores are not permitted); caring for casts, braces and splints, (care for head braces, such as a halo, is not permitted); assisting, applying, caring for, and monitoring the application of anti-embolism stockings or hosiery; administering and regulating portable oxygen; applying, caring for, and monitoring a transcutaneous electric nerve stimulator (TENS); performing catheter, colostomy, and ileostomy care and maintenance; conducting nursing assessments; and, for hospice patients, providing any nursing service permitted within the scope of the nurse's license, including 24-hour nursing supervision.

¹⁶ s. 429.07(3)(c), F.S.

¹⁷ s. 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

¹⁸ Supportive services include social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. See Rule 58A-5.030(8), F.A.C.

disqualified from continued residence in an ALF.¹⁹ As of September 2009, there were 307 ALFs licensed with an ECC specialty license and a total of 16,962 ECC-designated beds.²⁰

The primary purpose of ECC services is to allow residents, as they become more impaired with physical or mental limitations, to remain in a familiar setting. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. Facilities licensed to provide ECC services may adopt their own criteria and requirements for admission and continued residency in addition to the minimum criteria specified in law.

An ECC program may provide additional services, such as:

- Total help with bathing, dressing, grooming, and toileting;
- Nursing assessments conducted more frequently than monthly;
- Measuring and recording basic vital functions and weight;
- Dietary management, including providing special diets, monitoring nutrition, and observing the resident's food and fluid intake and output;
- Administering medications and treatments pursuant to a health care provider's order;
- Supervising residents with dementia and cognitive impairments;
- Health education, counseling, and implementing health-promoting programs;
- Rehabilitative services; and
- Escort services to health-related appointments.

An individual must undergo a medical examination before admission to an ALF with the intention of receiving ECC services or upon transfer within the same facility to that portion of the facility licensed to provide ECC services. The ALF must develop a service plan²¹ that sets forth how the facility will meet the resident's needs and must maintain a written progress report on each resident who receives ECC services.

A supervisor, who may also be the administrator, must be designated to be responsible for the day-to-day management of the ECC program and ECC resident service planning. A nurse, provided as staff or by contract, must be available to provide nursing services as needed by ECC residents, participate in the development of resident service plans, and perform the monthly nursing assessment for each resident receiving ECC services. The ECC licensed ALF must provide awake staff to meet resident scheduled and unscheduled night needs.²²

Persons under contract to the ECC, employees, or volunteers, who are licensed under the nurse practice act,²³ including certified nursing assistants, may perform all duties within the scope of their license or certification, as approved by the facility administrator.²⁴ These nursing services must be authorized by a health care provider's order and pursuant to a plan of care; medically necessary and appropriate treatment for the condition; in accordance with the prevailing standard

¹⁹ s. 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C.

²⁰ Ibid 6.

²¹ s. 429.02(21), F.S.

²² Rule 58A-5.030, F.A.C.

²³ Part I of ch. 464, F.S.

²⁴ s. 429.255(2), F.S.

of practice in the nursing community and the resident's service plan; a service that can be safely, effectively, and efficiently provided in the facility; and recorded in nursing progress notes.²⁵

An ECC licensee is subject to quarterly monitoring inspections by the AHCA or its agents. At least one registered nurse must be included in the inspection team. The AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately and there are no serious violations or substantiated complaints about the quality of service or care.

Inspections and Resident Attributes

There is no mechanism for identifying resident population and characteristics in ALFs. The AHCA is authorized to use an abbreviated biennial standard licensure inspection that consists of a review of key quality-of-care standards in lieu of a full inspection in facilities that have a good record of past performance.²⁶ The AHCA has not implemented this abbreviated licensure process due to quality-of-care concerns. Primarily, the AHCA is concerned that the inspection process is currently the only mechanism for identifying the mental and physical attributes of the residents and the ability of the ALF to provide the services needed by those residents.

The LNS license and the ECC license require additional monitoring inspections, even if the facility does not have residents who require or are receiving the additional LNS or ECC services. The AHCA has explained that frequently this results in unnecessary additional site visits that could be avoided if the AHCA had information concerning the resident population before conducting the inspection.

Senate Interim Project Report 2010-118

During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the licensure structure for ALFs. The recommendations in the resulting report are to repeal the LNS specialty license and authorize a standard-licensed ALF to provide the nursing services currently authorized under the LNS license; require an additional inspection fee, adjusted for inflation, for a facility that indicates that it intends to provide LNS; require each ALF to periodically report electronically information, as determined by rule, related to resident population, characteristics, and attributes; authorize the AHCA to determine the number of additional monitoring inspections required for an ALF that provides LNS based on the type of nursing services provided and the number of residents who received LNS as reported by the ALF; and repeal the requirement for the AHCA to inspect *all* the ECC licensees quarterly, instead targeting monitoring inspections for those facilities with residents receiving ECC services. This proposed committee bill implements the committee's instruction to draft a proposed committee bill in accordance with the professional staff's recommendations.

²⁵ Rule 58A-5.030(8)(c), F.A.C.

²⁶ s. 429.41(5), F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 429.07, F.S., to repeal the requirement for an ALF to obtain and maintain a specialty license to provide limited nursing services by authorizing such services to be provided in an ALF with a standard license, effective April 1, 2011. Requirements and provisions associated with an ALF providing LNS are retained except that the frequency of monitoring visits is to be determined by rule rather than requiring a monitoring visit biennially for an ALF licensed to provide LNS. The frequency of monitoring visits for facilities providing ECC services is to be determined by rule also, rather than requiring quarterly monitoring visits for an ALF licensed to provide ECC services.

The proposed committee bill requires an ALF that provides LNS to pay a monitoring fee of \$75 plus \$10 for each resident who received LNS for each quarter in which the ALF provided LNS. This monitoring fee must be adjusted in accordance with the change in the Consumer Price Index based on the 12 months immediately preceding the increase.

Section 2. Amends s. 429.17, F.S., to conform provisions related to the ALF licenses to the repeal of the LNS specialty license, effective April 1, 2011.

Section 3. Amends s. 429.41, F.S., to require rules addressing the frequency of monitoring visits to an ALF providing LNS or ECC services. The frequency of monitoring visits must be based on factors such as, but not limited to: the number and health status of residents receiving the services, the type of services provided, the quality of the ALF's past performance, and complaints. Rules are also required to address collecting monitoring fees from an ALF that provides LNS and submitting quarterly aggregate data concerning the resident population in each ALF.

Section 4. Amends s. 429.54, F.S., to require an ALF to report quarterly to the AHCA aggregated data on characteristics, attributes, and health status of the residents in the ALF and services provided to residents. The first data submission must cover data for the calendar quarter January 1 through March 31, 2011.

Section 5. Provides an effective date of July 1, 2010, except for sections 1 and 2 of the proposed committee bill which become effective on April 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no adverse impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Currently, an LNS specialty license, obtained upon submission of an application and biennial fee of \$296 plus \$10 per licensed bed, is required prior to providing any LNS. Some of the ALFs elect to obtain this specialty license despite not providing any LNS. This proposed committee bill provides for a pro-rated monitoring fee for calendar quarters in which the ALF actually provided LNS and the \$10 per bed fee is payable for the number of residents actually receiving LNS rather than the entire licensed facility. The AHCA indicated that the revenue associated with the license fee is necessary to continue monitoring inspections and regulatory oversight.

B. Private Sector Impact:

The proposed committee bill requires each ALF to report electronically certain information about the ALF's residents. The information is to be reported quarterly on an aggregated basis. The specific data elements within the proposed committee bill's parameters are to be identified in rule. The ALFs that do not have residents receiving LNS or ECC services may be subject to less frequent monitoring visits. See the comment below under Government Sector Impact for additional information about the frequency of monitoring visits.

C. Government Sector Impact:

The DOEA, in consultation with the AHCA, the DOH, and the DCF, is required to adopt rules related to the frequency of monitoring visits to the ALFs that provide LNS or ECC services, the process for collecting monitoring fees from the ALFs that provide LNS, and the submission of aggregate data concerning the resident population in each ALF.

The frequency of monitoring visits is to be based on several factors directly related to the LNS or the ECC services actually provided by the ALF and not simply whether an ALF maintains a specialty license. Since many of the ALFs currently have one or more specialty licenses and do not provide any LNS or ECC services to residents, or do not do so regularly, greater efficiencies in monitoring visits should be achieved.

In addition, the collection and maintenance of data about the resident population in all the ALFs will assist in long-range planning and assessing resident needs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
