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# **Health & Human Services Quality Subcommittee**

**Tuesday, March 8, 2011  
1:30 PM  
306 HOB**

**Dean Cannon  
Speaker**

**John Wood  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health & Human Services Quality Subcommittee

**Start Date and Time:** Tuesday, March 08, 2011 01:30 pm

**End Date and Time:** Tuesday, March 08, 2011 03:00 pm

**Location:** 306 HOB

**Duration:** 1.50 hrs

**Consideration of the following bill(s):**

HB 445 Wellness or Health Improvement Programs by Ingram

HB 4027 Obsolete Health Care Provisions by Horner

HB 4045 Assisted Living Facilities by Hudson

HB 4047 Assisted Living Facilities by Hudson

HB 4049 Assisted Living Facilities by Hudson

HB 4051 Assisted Living Facilities by Hudson

HB 4053 Assisted Living Facilities by Hudson

HB 4123 Licensure Requirements for Home Health Agencies, Home Medical Equipment Providers, and Health Care Clinics by Smith

Pursuant to Rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, March 7, 2011.



By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 7, 2011.

**NOTICE FINALIZED on 03/04/2011 16:04 by Iseminger.Bobbye**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 445 Wellness or Health Improvement Programs  
**SPONSOR(S):** Ingram  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Poche 	Calamas 
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

**SUMMARY ANALYSIS**

House Bill 445 permits group or individual health insurers to offer a voluntary health or wellness improvement program to insureds. The bill also permits rewards and incentives to be offered for participation in the program, including, but not limited to, merchandise, premium discounts or rebates, and modifications to copayment, deductible, or coinsurance amounts.

The bill allows insurers to request verification of a member's inability to participate in a voluntary health or wellness improvement program due to a medical condition. Verification may be in the form of a statement from the member's treating physician concluding that it is difficult or inadvisable for the member to participate in a health or wellness improvement program.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapters 626 and 627, Florida Statutes, regulate health insurance and health insurers within the state of Florida. Chapter 626 governs the practices of insurance agents and the operations of insurance companies.<sup>1</sup> Chapter 627 regulates insurance rates and contracts.<sup>2</sup>

##### Incentives for Participating in Health Wellness, Maintenance or Improvement Program

Insurers are permitted to provide for a rebate of premiums paid on an individual health insurance policy when a covered individual enrolls in and maintains participation in a health wellness, maintenance or improvement program approved by the insurer.<sup>3</sup> To qualify for any rebate offered by the insurer, a covered individual must provide evidence of improvement of the individual's health status.<sup>4</sup> The measurement of improvement of the individual's health status is accomplished by assessing health status indicators, agreed upon in advance by the individual and the insurer, such as weight loss, decrease in body mass index, and smoking cessation.<sup>5</sup> The premium rebate is effective for the covered individual on an annual basis, unless the individual fails to maintain his or her health status while participating in the wellness program or evidence shows that the individual is no longer enrolled in the approved wellness program.<sup>6</sup>

For group health plans, an appropriate rebate of premiums paid during the preceding year, not to exceed 10 percent of paid premiums, is provided to members of the plan when the majority of members have enrolled in and maintained participation in any health wellness, maintenance, or improvement program offered by the group policyholder and health plan.<sup>7</sup> Evidence of maintenance or improvement of the enrollees' health status is achieved through assessment of health status indicators similar to those included for individual health policies.<sup>8</sup> The group or health insurer may contract with a third party administrator to gather the necessary information regarding enrollees' health status and provide the necessary report to the insurer.<sup>9</sup> The premium rebate is effective for an insured on an annual basis unless the number of participating members in the health wellness, maintenance or improvement program becomes less than the majority of total members eligible for participation in the program.<sup>10</sup>

##### Unfair Competition and Deceptive Acts or Practices

Unfair methods of competition and deceptive acts or practices in the sale of insurance policies and the operation of insurance companies are defined by statute.<sup>11</sup> Certain acts are prohibited, including, but are not limited to, the following:

- Unlawful rebates
- Misrepresentations and false advertising of insurance policies
- Defamation

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<sup>1</sup> See ss. 626.011, F.S., through 626.99296, F.S.

<sup>2</sup> See ss. 627.011, F.S., through 627.987, F.S.

<sup>3</sup> S. 627.6402(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> S. 627.6402(2), F.S.

<sup>7</sup> S. 627.65626(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> S. 627.65626(2), F.S.

<sup>11</sup> S. 626.9541, F.S.

- Boycott, coercion and intimidation
- Unfair claim settlement practices
- Illegal dealings in premiums, including excess or reduced charges for insurance
- Refusal to insure on the basis of race, color, creed, marital status, or sex
- Misrepresentation of agent qualifications

### **Effect of Proposed Changes**

To encourage participation in the wellness or health improvement program, the bill permits a health insurer to offer incentives or rewards, such as merchandise, premium rebates or savings, or modifications to copayment, deductible, or coinsurance amounts. The bill does not limit other forms of incentives or rewards that may be offered to health plan members by the insurer for adherence to a wellness or health improvement program that may otherwise be available by state or federal law. The bill expressly states that the incentives and rewards offered by insurers to enrollees in wellness or health improvement programs do not constitute unfair methods of competition or deceptive acts or practices and do not, therefore, violate s. 626.9541, F.S.

A health insurer may request documentation from a health plan member to verify that the member has a medical condition that makes it difficult or inadvisable for the member to participate in a voluntary wellness or health improvement program. Documentation may be in the form of a statement from the member's treating physician.

Health insurers are not required by the bill to offer wellness or health improvement programs. The decision to do so is voluntary. Participation in a wellness or health improvement program by a health plan member is also voluntary. The bill does not penalize a health plan member for non-participation in a wellness or health improvement program.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 626.9541(4), F.S., related to wellness or health improvement programs.

**Section 2:** Provides an effective date of July 1, 2011.

## **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 bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to wellness or health improvement  
 3           programs; amending s. 626.9541, F.S.; authorizing insurers  
 4           to offer rewards or incentives to health benefit plan  
 5           members to encourage or reward participation in wellness  
 6           or health improvement programs; authorizing insurers to  
 7           require plan members not participating in programs to  
 8           provide verification that their medical condition warrants  
 9           nonparticipation; providing application; providing an  
 10          effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

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 14           Section 1. Subsection (4) is added to section 626.9541,  
 15   Florida Statutes, to read:

16           626.9541 Unfair methods of competition and unfair or  
 17   deceptive acts or practices defined.—

18           (4) WELLNESS OR HEALTH IMPROVEMENT PROGRAMS.—

19           (a) Authorization to offer rewards or incentives for  
 20   participation.—An insurer issuing a group or individual health  
 21   benefit plan may offer a voluntary wellness or health  
 22   improvement program and may encourage or reward participation in  
 23   the program by authorizing rewards or incentives, including, but  
 24   not limited to, merchandise, gift cards, debit cards, premium  
 25   discounts or rebates, contributions to a member's health savings  
 26   account, or modifications to copayment, deductible, or  
 27   coinsurance amounts.



28           (b) Verification of medical condition by nonparticipants.-  
 29    An insurer may require a health benefit plan member to provide  
 30    verification, such as an affirming statement from the member's  
 31    physician, that the member's medical condition makes it  
 32    unreasonably difficult or inadvisable to participate in the  
 33    wellness or health improvement program.

34  
 35    A reward or incentive offered under this subsection is not an  
 36    insurance benefit or violation of this section if it is  
 37    disclosed in the policy or certificate. This subsection does not  
 38    prohibit insurers from offering other incentives or rewards for  
 39    adherence to a wellness or health improvement program if  
 40    otherwise authorized by state or federal law.

41           Section 2. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 445 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

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1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Quality Subcommittee  
3 Representative(s) Ingram offered the following:  
4

5 **Amendment**

6 Remove lines 35-41 and insert:

7 A reward or incentive offered under this subsection is not a  
8 violation of this section if it is disclosed in the policy or  
9 certificate. This subsection does not prohibit insurers from  
10 offering other incentives or rewards for adherence to a wellness  
11 or health improvement program if otherwise authorized by state  
12 or federal law.

13 Section 2. This act shall take effect immediately upon  
14 becoming law.

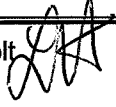



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4027 Obsolete Health Care Provisions

SPONSOR(S): Horner

TIED BILLS: IDEN./SIM. BILLS: SB 548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Holt 	Calamas 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill deletes the following outdated or obsolete provisions:

- Separate restrooms and separate dressing rooms for males and females;
- Florida Healthy People 2010 Program; and
- MedAccess Program

The bill will not affect the funding to any existing programs.

The bill appears to have no fiscal impact on state or local government.

The bill takes effect July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The effect of this bill is of a technical, non-substantive nature. This bill deletes outdated or obsolete language relating to various health care provisions as follows:

##### **Separate Male and Female Restrooms**

Created in 1977, section 381.0091, F.S., authorizes private businesses to designate separate restrooms and separate dressing rooms for males and females, and to prohibit any female from using a restroom or dressing room designated for males and vice versa. In addition, if more than one restroom is provided that has occupant capacity for more than one person in any building or facility operated by the state, the restrooms must be separate for males and females and designated as such by appropriate signage. In 1991, this section was amended to transfer and renumber s. 381.523, F.S., to s. 381.0091, F.S., when the Department of Health and Rehabilitative Services was created.

The provision related to private businesses is merely permissive and appears to have little effect. The provision related to government buildings and facilities is outdated and no longer appears to be necessary. In addition, the section does not provide any enforcement provision nor inspection requirements for the Department of Health ("department"). Currently, the department does not inspect entities for compliance with this provision.<sup>1</sup>

The bill repeals s. 381.0091, F.S. The repeal will have no impact on the ability of private businesses and government buildings to designate separate male and female restrooms or dressing rooms.

##### **Florida Healthy People 2010 Program**

Section 381.736, F.S., requires the department, within existing resources, to monitor and report Florida's status on the Healthy People 2010 goals and objectives currently tracked and available to the Department of Health. The department is required to submit an annual report to the Legislature on the status of health disparities among minorities and non-minorities, using health indicators consistent with those identified by Healthy People 2010. Furthermore, the provision directs the department to work with minority physician networks<sup>2</sup> to develop programs to educate health care professionals about the importance of culture in health status.<sup>3</sup> Moreover, the provision directs the department to promote research on methods to reduce disparities by encouraging local minority students enrolled at colleges and universities<sup>4</sup> to pursue professions in health care.

Healthy People 2010 is a set of federal core public health indicators used for priority-setting and decision-making that reflect major health concerns and that provide guidance to help states, local governments, and private organizations improve the health of their communities. The Florida Healthy People 2010 program has two major program goals: increase quality and years of healthy life; and

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<sup>1</sup> Per telephone conversation with Department of Health staff on February 22, 2010.

<sup>2</sup> A "minority physician network" is a network of primary care physicians with experience managing Medicaid or Medicare recipients that is predominantly owned by minorities as defined in s. 288.703, F.S., which may have a collaborative partnership with a public college or university and a tax-exempt charitable corporation. See s. 409.901, F.S.

<sup>3</sup> Minority physician networks will not be impacted by repealing this section of law. The Agency for Health Care Administration oversees services provided by the minority physician networks. Effective January 1, 2010, minority physician networks were transitioned to health maintenance organizations, thus minority physician networks will no longer be included in the Florida Healthy People 2010 Program report. See Florida Healthy People 2010 Program Report: 2009 Office of Minority Health, Executive Summary, available at: <http://www.doh.state.fl.us/Minority/HealthyPeople.htm> (last viewed January 28, 2011).

<sup>4</sup> The statute references colleges and universities that have historically large minority enrollments to include centers of excellence that are identified by the National Center on Minority Health and Disparities.

eliminate health disparities.<sup>5</sup> There are 28 different focus areas in the federal Healthy People 2010 program.<sup>6</sup>

1. Access to Quality Health Services
2. Arthritis, Osteoporosis, and Chronic Back Conditions
3. Cancer
4. Chronic Kidney Disease
5. Diabetes
6. Disability and Secondary Conditions
7. Educational and Community-Based Programs
8. Environmental Health
9. Family Planning
10. Food Safety
11. Health Communication
12. Heart Disease and Stroke
13. HIV
14. Immunization and Infectious Diseases
15. Injury and Violence Prevention
16. Maternal, Infant, and Child Health
17. Medical Product Safety
18. Mental Health and Mental Disorders
19. Nutrition and Overweight
20. Occupational Safety and Health
21. Oral Health
22. Physical Activity and Fitness
23. Public Health Infrastructure
24. Respiratory Diseases
25. Sexually Transmitted Diseases
26. Substance Abuse
27. Tobacco Use
28. Vision and Hearing

The federal Healthy People program goals and objectives are updated every 10 years, thus the existing 2010 goals are obsolete. In December 2010, the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention unveiled Healthy People 2020 program and objectives.<sup>7</sup>

Currently, the Florida Healthy People 2010 program duplicates other department programs and is not treated as a separate program. Therefore, the intent is being achieved through other statutory directives. This program is not specifically funded. Section 381.736, F.S., requires that the annual report be submitted to the Legislature by December 31 of each year. The last annual report was published in December 2009.<sup>8</sup> The department complies with the reporting requirements of this section by reporting on other programs that receive funding.<sup>9</sup>

The bill repeals s. 381.736, F.S., the Florida Healthy People 2010 goals and reporting requirements. Repealing this provision will only affect the requirement for submitting the annual report to the Legislature, and information available in the annual report will still be collected by the department and made available thru other programs. No funding to any existing programs will be affected.

### **MedAccess Program**

Sections 408.90-408.908, F.S., create the MedAccess program.<sup>10</sup> MedAccess was intended to be a state-subsidized program to provide certain health care services to low-income uninsured Floridians who are ineligible for Medicaid or Medicare. The program excludes coverage for preexisting conditions under certain circumstances. The Agency for Health Care Administration ("agency") is the fiscal agent for the program, and is required to develop the provider network, collect premiums and deductibles from enrollees, and make claims payments at Medicaid rates to providers. The program is not subject to state insurance regulation.

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<sup>5</sup> Section 381.736(1), F.S.

<sup>6</sup> In addition, these focus areas are broken down into 467 specific objectives.

<sup>7</sup> U.S. Health and Human Services, About Healthy People 2020, *available at*: <http://www.healthypeople.gov/2020/about/default.aspx> (last viewed January 28, 2011).

<sup>8</sup> Department of Health, Office of Minority Health, Florida Healthy People 2010, Reports, *available at*: <http://www.doh.state.fl.us/Minority/HealthyPeople.htm> (last viewed January 28, 2011).

<sup>9</sup> Per telephone call with Department of Health staff on February 22, 2010.

<sup>10</sup> Chapter. 1993-129, L.O.F.

The program was created in 1993 and only the benefits provision<sup>11</sup> was amended since adoption. In 2000, the amount of hospital outpatient services provided to a member was increased from \$1000 to \$1,500 per calendar year per member and an obsolete cross-reference to licensed abuse treatment centers was deleted.<sup>12</sup> The MedAccess program encompasses nine statutory provisions that provide: Legislative findings and intent; definitions; program creation and title; eligibility; benefits; limitations and exclusions; collection of premiums; and administration.

According to the agency, the program was never funded or implemented. The bill repeals ss. 408.90-408.908, F.S., the MedAccess Program.

#### B. SECTION DIRECTORY:

Section 1. Repeals the following: s. 381.0091, relating to relating to separate restrooms and separate dressing rooms for males and females; s. 381.736, F.S., relating to the Florida Healthy People 2010 Program; s. 408.90, F.S., relating to legislative findings and intent; s. 408.901, F.S., relating to definitions; s. 408.902, F.S., relating to MedAccess program creation and title; s. 408.903, F.S., relating to eligibility; s. 408.904, F.S., relating to benefits; s. 408.905, F.S., relating to limitations and exclusions; s. 408.906, F.S., relating to payment of claims; s. 408.907, F.S., relating to collection of premiums; and s. 408.908, F.S., relating to administration.

Section 2. Provides an effective date of July 1, 2011.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
Not applicable.
2. Expenditures:  
Not applicable.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
Not applicable.
2. Expenditures:  
Not applicable.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not applicable.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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<sup>11</sup> Section 408.904, F.S.

<sup>12</sup> Chapter 2000-256, L.O.F. and 2000-153, L.O.F.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rule-making authority is provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



HB 4027

2011

1                   A bill to be entitled  
2           An act relating to obsolete health care provisions;  
3           repealing s. 381.0091, F.S., relating to the designation  
4           of separate restrooms and separate dressing rooms for  
5           males and females; repealing s. 381.736, F.S., relating to  
6           the Florida Healthy People 2010 Program; repealing ss.  
7           408.90-408.908, F.S., relating to the MedAccess program  
8           within the Agency for Health Care Administration;  
9           providing an effective date.

10  
11   Be It Enacted by the Legislature of the State of Florida:

12  
13           Section 1. Sections 381.0091, 381.736, 408.90, 408.901,  
14 408.902, 408.903, 408.904, 408.905, 408.906, 408.907, and  
15 408.908, Florida Statutes, are repealed.

16           Section 2. This act shall take effect July 1, 2011.



HB 4045

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4045 Assisted Living Facilities

**SPONSOR(S):** Hudson

**TIED BILLS:** IDEN./SIM. BILLS: SB 688

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Poche 	Calamas 
2) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 4045 repeals s. 429.54, F.S., which authorizes the Department of Elder Affairs (DOEA) to conduct field visits and audits of assisted living facilities (ALFs) to collect information regarding the cost of room, board and personal care in ALFs. The bill would also repeal the requirement in the section which requires facility owners to provide reports, audits and accountings of cost as required by DOEA rules to assist in gathering information.

The bill repeals a provision that allows local governments or organizations to subsidize the amount of money provided to ALFs by the state by contributing a local subsidy, upon approval of DOEA. The bill repeals a provision that prevents the state from adjusting the amount of money provided to ALFs due to receipt of local subsidies.

The bill appears to have no fiscal impact.

The bill has an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapter 408, F.S., and part I of chapter 429, F.S., govern the licensure and operation ALFs in the state of Florida.<sup>1</sup> The Agency for Health Care Administration must conduct research and studies relating to, among many other areas of health care, health care costs.<sup>2</sup> The results of these research efforts and studies are to be reported to the Legislature and the Governor, with analysis as to, among other areas, cost of care.<sup>3</sup>

Section 429.54(1), F.S., authorizes DOEA to conduct field visits and audits of ALFs as necessary to gather information regarding the actual cost of providing room, board, and personal care in ALFs and report said information to the Legislature. ALFs are required to cooperate with DOEA and provide all necessary reports, audits, and accountings to show cost of operation of the ALFs.

Section 429.54(2), F.S., allows local governments or organizations to subsidize the rate of state-authorized payment to ALFs for cost of care of residents, upon approval of DOEA. Currently, the Department of Children and Families (DCF) administers the Optional State Supplementation (OSS) Program, which provides cash assistance to individuals to help defray the costs of residing in an ALF, mental health residential treatment facility, and adult family care home.<sup>4</sup> The OSS Program is completely state funded and is not associated with Medicare or Medicaid. Eligibility for OSS funds and the amount of funds received by an individual are determined by DCF.<sup>5</sup> In addition to the amount of OSS funds, a person may receive additional financial assistance from third parties to help defray the cost of care, pursuant to additional statutory authority found outside this section.<sup>6</sup>

Subsidies provided by local governments or organizations do not impact the amount of money which a resident of an ALF receives from the state. The statute prohibits the state from reducing the amount of assistance it provides to the resident of an ALF by any amount of any local subsidy received from a local government or organization. According to the DOEA, local governments or organizations are not providing local subsidies to residents of ALFs under this statute.<sup>7</sup>

##### **Effect of Proposed Changes**

The bill repeals the authorization for DOEA to conduct field visits and audits to gather information regarding the cost of providing room, board and personal care to residents of ALFs. ALFs would no longer need to compile information and produce reports, audits or accountings of cost to assist DOEA in creating its report to the Legislature.

Local governments or organizations may provide local subsidies to residents of ALFs through other statutory authority.<sup>8</sup> The local subsidy would not need to be approved by DOEA. However, the prohibition against reducing state supplements to ALFs based on the amount of local subsidy received by ALFs is removed by repeal of this statute. Therefore, it is possible that the state could survey all

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<sup>1</sup> S. 408.802(14), F.S.

<sup>2</sup> S. 408.062(1), F.S.

<sup>3</sup> S. 408.062(4)(a), F.S.

<sup>4</sup> S. 409.212, F.S.

<sup>5</sup> *Id.*, see also Rule 65A-1.205, F.A.C. and Rule 65A-2.032, F.A.C.

<sup>6</sup> S. 409.212(4), F.S.

<sup>7</sup> Telephone conversation with DOEA staff, February 18, 2011.

<sup>8</sup> S. 409.212(4), F.S.

ALFs to determine the amount local subsidy being received and reduce the OSS payment to residents accordingly.

**B. SECTION DIRECTORY:**

**Section 1:** Repeals s. 429.54, F.S., relating to collection of information; local subsidy.

**Section 2:** Provides an effective date of July 1, 2011.

**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:**

ALFs will be positively impacted through the repeal of s. 429.54, F.S. because facilities will no longer be required to gather data and produce reports, audits or accountings of cost to assist DOEA in gathering information to complete its report to the Legislature. The cost savings would come in the form of staff hours saved by not gathering information or creating the specified documents. Also, staff would not be required to assist DOEA representatives during the field visit and/or audit, and possible post-visit or audit discussions regarding the need for additional information from the facility.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 4045

2011

1                   A bill to be entitled  
2           An act relating to assisted living facilities; repealing  
3           s. 429.54, F.S.; repealing a provision authorizing the  
4           Department of Elderly Affairs to collect information  
5           regarding the cost of providing certain services in  
6           facilities and to conduct field visits and audits;  
7           repealing a provision authorizing a local subsidy;  
8           providing an effective date.

9

10   Be It Enacted by the Legislature of the State of Florida:

11

12           Section 1.   Section 429.54, Florida Statutes, is repealed.

13           Section 2.   This act shall take effect July 1, 2011.







**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 4047 Assisted Living Facilities

**SPONSOR(S):** Hudson

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Poche 	Calamas 
2) Health & Human Services Committee			

**SUMMARY ANALYSIS**

House Bill 4047 repeals s. 429.41(3), F.S., requiring the Department of Elder Affairs (DOEA) to submit its proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees, prior to promulgation, for review and comment. The bill also repeals a provision that the rules of DOEA encourage the development of homelike facilities that promote the individuality of residents.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Chapter 408, F.S., and part I of Chapter 429, F.S., govern the licensure and operation of ALFs in Florida.

Section 429.41, F.S., requires DOEA, with input from the Agency for Health Care Administration (AHCA), the Department of Children and Family Services (DCF), and the Department of Health (DOH), to adopt rules, policies and procedures relating to the operation and administration of ALFs, establishing fair and reasonable minimum standards to ensure safe and sanitary facilities and the highest quality of resident care, while accommodating the needs and preferences of residents.<sup>1</sup> The minimum standards must be related to:

- Requirements for and maintenance of facilities to ensure the health, safety and comfort of residents
- Fire alarm, fire protection and fire safety standards
- Resident elopement prevention and response procedures
- Preparing and annual updating of a comprehensive emergency management plan
- Training and qualifications of personnel responsible for caring for residents
- Maintaining sanitary conditions within the facility and throughout the grounds of the facility
- Licensure and ownership requirements
- Inspections, investigations, impositions of fines and penalties, and distribution of funds received from fines and penalties
- Enforcing the resident bill of rights found in s. 429.28, F.S.
- Care and maintenance of residents<sup>2</sup>

The statute requires that the rules developed by DOEA distinguish between facilities with 16 and fewer beds and facilities with 17 or more beds.<sup>3</sup> DOEA is required to submit all proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees for review and comment prior to promulgation.<sup>4</sup> The statute also states that DOEA is to draft rules that encourage the development of homelike facilities that promote dignity, individuality, strengths, and decision-making of the residents.<sup>5</sup>

The requirement that DOEA submit all proposed rules to the Speaker, the President and appropriate committees differs from the rulemaking procedure contained in HB 1565 (2010).<sup>6</sup> The statutory section

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<sup>1</sup> S. 429.41(1), F.S.

<sup>2</sup> S. 429.41(1) through (3), F.S.

<sup>3</sup> S. 429.41(2), F.S.

<sup>4</sup> S. 429.41(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> HB 1565 was passed by the Legislature, notwithstanding the veto of Governor Crist, during the 2011 Special Session "A". It can be found in Chapter 2010-279, Laws of Florida. The law requires state agencies to determine the impact of proposed agency rules on small businesses. If the rules will have an adverse impact on small businesses or increase regulatory costs in the aggregate in the amount of \$200,000.00 in the first year of enactment, an agency must prepare a statement of estimated regulatory cost (SERC). The SERC must determine whether the rules will financially impact small businesses by \$1,000,000.00 or more over the first five years of enactment. If the economic analysis concludes that the rules meet or exceed the threshold, the rules must be presented to the Speaker of the House of Representatives and the President of the Senate and cannot be enacted until ratified by the Legislature.

requires that all rules proposed by DOEA with regard to establishing criteria and standards for assisted care communities be submitted to the specified parties and entities. However, the rulemaking process outlined in HB 1565 limits extensive legislative review and ratification to those rules that have an impact of \$200,000.00 on small businesses within the first year of enactment and an impact of \$1,000,000.00 within the first five years of enactment. DOEA would be required to comply with the rulemaking procedure outlined in HB 1565 whether or not the rule submission requirement in s. 429.54(3), F.S., existed.

AHCA may waive certain rules to explore and evaluate innovative or cost-effective alternatives in congregate care that allow residents to age in place.<sup>7</sup> The statute provides the procedure for applying for a waiver of the rules by a facility, for reporting of findings within 12 months of receiving the waiver, and for the renewal or revoking of the waiver by AHCA after the 12 month period has expired.<sup>8</sup> Lastly, the statute permits an abbreviated licensing inspection schedule for ALFs that have a good inspection record and requires full inspections for facilities with certain past violations.<sup>9</sup>

### **Effect of Proposed Changes**

The bill repeals the section of the statute that requires DOEA to submit its proposed rules to the Speaker, the President and appropriate committees prior to promulgation for review and comment. The bill also repeals the requirement that DOEA rules encourage the development of homelike facilities that promote the individuality, decision-making and other aspects of residents.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 429.41, F.S., relating to rules establishing standards.

**Section 2:** Provides an effective date of July 1, 2011.

## **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.

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<sup>7</sup> S. 429.41(3), F.S.

<sup>8</sup> S. 429.41(4), F.S.

<sup>9</sup> S. 429.41(5), F.S.

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 bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 4047

2011

1                   A bill to be entitled  
 2           An act relating to assisted living facilities; amending s.  
 3           429.41, F.S.; removing an obsolete provision requiring the  
 4           Department of Elderly Affairs to submit to the Legislature  
 5           for review and comment a copy of proposed department rules  
 6           establishing standards for resident care; providing an  
 7           effective date.

8

9   Be It Enacted by the Legislature of the State of Florida:

10

11           Section 1. Subsections (4) and (5) of section 429.41,  
 12           Florida Statutes, are renumbered as subsections (3) and (4),  
 13           respectively, and present subsection (3) of that section is  
 14           amended to read:

15           429.41 Rules establishing standards.—

16           ~~(3) The department shall submit a copy of proposed rules~~  
 17           ~~to the Speaker of the House of Representatives, the President of~~  
 18           ~~the Senate, and appropriate committees of substance for review~~  
 19           ~~and comment prior to the promulgation thereof. Rules promulgated~~  
 20           ~~by the department shall encourage the development of homelike~~  
 21           ~~facilities which promote the dignity, individuality, personal~~  
 22           ~~strengths, and decisionmaking ability of residents.~~

23           Section 2. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4049 Assisted Living Facilities  
SPONSOR(S): Hudson  
TIED BILLS: IDEN./SIM. BILLS: SB 692

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Guzzo <i>GG</i>	Calamas <i>CC</i>
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends s. 429.35, F.S., to remove a requirement to distribute assisted living facility (ALF) inspection reports.

The bill deletes the requirement in section 429.35(2), F.S., for the Agency for Health Care Administration (AHCA) within 60 days after biennial inspection and 30 days of any interim visit to forward the results of biennial and interim inspection visits of ALFs to:

- The local ombudsman council in the appropriate planning and service area of the Department of Elder Affairs (DOEA).
- Public Library.
- The district adult services and mental health program offices of the Department of Children and Families (DCF).

The bill does not appear to have a fiscal impact on state or local governments.

House Bill 4049 provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Inspection Reports**

Chapters 408, Part II and 429, Part I, F.S., and Chapters 58A-5 and 59A-35, F.A.C., regulate the licensure of assisted living facilities (ALFs). As of February 2011, 2,926 ALFs are licensed statewide. Between January, 2010, and February, 2011, 2,366 biennial inspection visits were conducted.

Section 429.35(2), F.S., requires the Agency for Health Care Administration (AHCA) within 60 days after biennial inspection and 30 days of any interim visit to forward the results of biennial and interim inspection visits of ALFs to:

- The local ombudsman council in the appropriate planning and service area of the Department of Elder Affairs (DOEA).
- Public Library.
- The district adult services and mental health program offices of the Department of Children and Families (DCF)

Section 408.806(8), F.S., allows AHCA to provide electronic access to information or documents, such as inspection report results, as an alternative to sending documents as required by authorizing statutes.<sup>1</sup> The Agency produces written reports of all inspections to the provider. Compliance and noncompliance with regulations are cited in the report. Upon review by the Agency, the reports are posted on the inspections reports website<sup>2</sup> and a monthly email is sent to the Office of State Long-Term Care Ombudsman (Office) of all inspections completed. The Office distributes this information to the local ombudsman councils.

##### Effect of Proposed Changes

The bill removes the requirement to distribute ALF biennial and interim inspection reports to local ombudsman councils, public libraries, and the district adult services and mental health program offices of DCF.

According to AHCA, the current distribution process is obsolete because access to these inspection results can be viewed electronically. The Office of State Long-Term Care Ombudsman currently receives a monthly email containing detailed results of all inspections completed. This information is then distributed to the local ombudsman councils. The purpose of the reports being sent to local public libraries is to make the information available to the public. However, the reports can be viewed by the public via AHCA's website.<sup>3</sup>

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 429.35, F.S., relating to maintenance of records inspection reports of assisted living facilities.

**Section 2:** Provides an effective date of July 1, 2011.

<sup>1</sup> S. 408.806(8), F.S.

<sup>2</sup> [http://apps.ahca.myflorida.com/dm\\_web/\(S\(n3dnev45xakyh155qllelimg\)\)/Default.aspx](http://apps.ahca.myflorida.com/dm_web/(S(n3dnev45xakyh155qllelimg))/Default.aspx)

<sup>3</sup> Id.



## 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:

The bill 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:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4049

2011

1                                   A bill to be entitled  
 2           An act relating to assisted living facilities; amending s.  
 3           429.35, F.S.; removing an obsolete reporting requirement;  
 4           providing an effective date.

5  
 6   Be It Enacted by the Legislature of the State of Florida:

7  
 8           Section 1. Subsection (3) of section 429.35, Florida  
 9   Statutes, is renumbered as subsection (2), and present  
 10   subsection (2) of that section is amended to read:

11           429.35 Maintenance of records; reports.-  
 12           ~~(2) Within 60 days after the date of the biennial~~  
 13   ~~inspection visit required under s. 408.811 or within 30 days~~  
 14   ~~after the date of any interim visit, the agency shall forward~~  
 15   ~~the results of the inspection to the local ombudsman council in~~  
 16   ~~whose planning and service area, as defined in part II of~~  
 17   ~~chapter 400, the facility is located; to at least one public~~  
 18   ~~library or, in the absence of a public library, the county seat~~  
 19   ~~in the county in which the inspected assisted living facility is~~  
 20   ~~located; and, when appropriate, to the district Adult Services~~  
 21   ~~and Mental Health Program Offices.~~

22           Section 2. This act shall take effect July 1, 2011.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4051 Assisted Living Facilities

SPONSOR(S): Hudson and others

TIED BILLS: IDEN./SIM. BILLS: SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Prater 	Calamas 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill repeals s. 429.23(5), F.S., removing the requirement for Assisted Living Facilities (ALFs) to submit a monthly report to the Agency for Health care Administration (AHCA) listing any liability claims that have been made against the facility.

ALFs are required to maintain liability insurance coverage at all times. A liability claim is a claim made by a resident, or a representative of the resident against the facility and the facility's insurer for damages resulting from an alleged adverse incident occurring at the facility.

This bill appears to have no fiscal impact.

The bill has an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

ALFs are residential establishments for adults that provide housing, meals, and one or more personal services relating to the activities of daily living.<sup>1</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks<sup>2</sup>. They are licensed by AHCA and are subject to certain regulations and reporting requirements.<sup>3</sup> Currently, there are 2,947 ALFs licensed in Florida<sup>4</sup>.

##### **Present Situation:**

Currently, ALFs are required to submit a monthly report to AHCA including any liability claim filed against it. The report must include the name of the resident, the dates of the incident leading to the claim, and the type of injury or violation of rights alleged. The report is not discoverable in any civil or administrative action except in actions brought against the facility by AHCA<sup>5</sup>. In FY 01-02, there were 80 liability claims reported to AHCA, and for FY 09-10, there were 16 reported.

ALFs are required to maintain liability insurance coverage at all times<sup>6</sup>. A liability claim is a claim made by a resident, or a representative of the resident against the facility and the facility's insurer for damages resulting from an alleged adverse incident occurring at the facility.

An adverse incident is an event over which facility personnel could exercise control (rather than as a result of the resident's condition) and results in:

- death,
- brain or spinal damage,
- permanent disfigurement,
- fracture or dislocation of bones or joints,
- any condition requiring the transfer of the resident to another facility to provide more acute care,
- an event that is reported to law enforcement for investigation,
- or resident elopement which places the resident at risk for harm or injury<sup>7</sup>

Liability claims can also be made for alleged violation of rights. There are 11 specific rights granted for residents of ALFs and they are outlined in statute. Examples include the right to unrestricted private communication including letters and telephone calls, sharing a room with his or her spouse if both are residents of the facility, and the right to present grievances and recommend changes.<sup>8</sup>

Information from the liability claims report is not used in any regulatory manner by AHCA<sup>9</sup>.

ALFs are required to report adverse incidents that occur in their facilities, to perform an internal investigation, and transmit an investigation report to AHCA. The agency reviews these reports and may investigate and prescribe measures to be taken in response to the incident<sup>10</sup>. AHCA surveys ALFs once every two years and is authorized to make inspections as it deems necessary<sup>11</sup>.

<sup>1</sup> Section 429.02 (5), Florida Statutes.

<sup>2</sup> Section 429.02 (1), Florida Statutes.

<sup>3</sup> Chapter 429, Part I, Florida Statutes.

<sup>4</sup> Agency for Health Care Administration 2011 Bill Analysis & Economic Impact Statement, HB 4051.

<sup>5</sup> Section 429.23 (5), Florida Statutes.

<sup>6</sup> Section 429.275, Florida Statutes.

<sup>7</sup> Section 429.23 (2) (a), Florida Statutes.

<sup>8</sup> Section 429.28, Florida Statutes.

<sup>9</sup> Agency for Health Care Administration 2011 Bill Analysis & Economic Impact Statement, HB 4051.

<sup>10</sup> Section 429.23 (3), (4), & (7), Florida Statutes.

<sup>11</sup> Section 408.811, Florida Statutes.

**Proposed Changes:**

This bill removes the requirement for ALFs to submit a monthly report to AHCA, listing any liability claims made against it.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 429.23(5), F.S., relating to internal risk management and quality assurance program; adverse incidents and reporting requirements.

**Section 2:** Provides an effective date of July 1, 2011.

**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 bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 4051

2011

1                                   A bill to be entitled  
 2           An act relating to assisted living facilities; amending s.  
 3           429.23, F.S.; removing reporting requirements for assisted  
 4           living facilities relating to liability claims; providing  
 5           an effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Subsections (6) through (10) of section 429.23,  
 10          Florida Statutes, are renumbered as subsections (5) through (9),  
 11          respectively, and present subsection (5) of that section is  
 12          amended to read:

13           429.23 Internal risk management and quality assurance  
 14          program; adverse incidents and reporting requirements.—

15           ~~(5) Each facility shall report monthly to the agency any~~  
 16          ~~liability claim filed against it. The report must include the~~  
 17          ~~name of the resident, the dates of the incident leading to the~~  
 18          ~~claim, if applicable, and the type of injury or violation of~~  
 19          ~~rights alleged to have occurred. This report is not discoverable~~  
 20          ~~in any civil or administrative action, except in such actions~~  
 21          ~~brought by the agency to enforce the provisions of this part.~~

22           Section 2. This act shall take effect July 1, 2011.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4053 Assisted Living Facilities

SPONSOR(S): Hudson

TIED BILLS: IDEN./SIM. BILLS: SB 696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Guzzo <i>WG</i>	Calamas <i>CC</i>
2) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 4053 deletes subsection (9) of section 429.19, F.S., which requires the Agency for Health Care Administration (AHCA) to annually develop and disseminate a list of all assisted living facilities (ALFs) sanctioned or fined for violations, the number and class of violations, the penalties imposed and the current status of the case.

Under current law, AHCA is required to develop and distribute the list to the Department of Elder Affairs (DOEA), the Department of Health (DOH), the Department of Children and Family Services (DCF), the Agency for Persons with Disabilities (APD), the area agencies on aging, the Florida Statewide Advocacy Council, and the state and local ombudsman councils. AHCA currently disseminates the list by posting the required information on their website.

The bill does not appear to have a fiscal impact on state or local government.

House Bill 4053 provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Chapter 429, Part I, F.S., and chapter 58A-5, F.A.C., regulate the licensure of assisted living facilities (ALFs). Section 429.19(9), F.S., requires the Agency for Health Care Administration (AHCA) to develop and disseminate an annual list of all facilities sanctioned or fined for violations of state standards. The list must include the number and class of violations involved, the penalties imposed, and the current status of cases. Once the list is developed, it must then be sent to the Department of Elder Affairs (DOEA), the Department of Health (DOH), the Department of Children and Family Services (DCF), the Agency for Persons with Disabilities (APD), the area agencies on aging, the Florida Statewide Advocacy Council, and the state and local ombudsman councils. The list may be provided electronically or through AHCA's website.

As of January 2011, 2,947 ALFs are licensed statewide. Based on the requirement in s. 429.19(9) F.S., AHCA publishes two annual reports on their website.

The AHCA "Administrative Fines" report shows all facilities with administrative fines imposed by final order between July, 2009, and June, 2010. The report specifies the following:<sup>1</sup>

- Provider name
- City
- County
- License status (closed or active)
- Legal case number
- Type of deficiency
- Fine amount
- Outcome of the case
- Specific survey violation and class of violation

The AHCA "Sanctions" report shows all facilities with sanctions imposed (moratorium, revocation, denial and suspension) in final order status between July, 2009, and June, 2010. The report specifies the following:<sup>2</sup>

- Provider name
- Owner
- Current license status
- City
- County
- Legal case number
- Type of case
- Outcome of the case
- Final order date
- Emergency suspension
- Moratorium status and moratorium start date

<sup>1</sup>AHCA Administrative Fines Report, available at, [http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/FDAU/docs/ALF\\_Fines.pdf](http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/ALF_Fines.pdf).

<sup>2</sup>AHCA Sanctions Report, available at, [http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/FDAU/docs/ALF\\_Sanctions.pdf](http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/ALF_Sanctions.pdf).

## **Effect of Proposed Changes**

The bill repeals subsection (9) of s. 429.19, F.S., which requires AHCA to develop and distribute an annual list of all ALFs sanctioned or fined for violations, the number and class of violations, the penalties imposed and the current status of the case.

While AHCA will no longer be required by law to post and distribute this report, online or otherwise, the law does not prohibit AHCA from doing so. The bill effectively gives AHCA discretion to affirmatively compile and publish the information, or, for example, compile and provide the information in response to a public records request. AHCA has indicated they intend to remove the information from their website and make it available through a public records request.<sup>3</sup>

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.

**Section 2:** Provides an effective date of July 1, 2011.

## **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:

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<sup>3</sup> Florida Agency for Health Care Administration, Bill Analysis and Economic Impact Statement, House Bill 4053(February 22, 2011).

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



HB 4053

2011

29 ~~requesting a copy of this list. This information may be provided~~  
30 ~~electronically or through the agency's Internet site.~~

31 Section 2. This act shall take effect July 1, 2011.