

Assisted Living Facility Reform Likely in 2014

March 27, 2014

Reform of assisted living facilities (ALFs) has returned for the 2014 Florida Regular Session. The major reforms proposed seek to improve accountability, transparency, and regulation of ALF operations. Below is a summary of the major reforms proposed, effective July 1, 2014, unless otherwise noted. These proposals may be amended as they progress through the 2014 Florida Legislature, and we recommend that you refer to the actual legislation if passed and signed into law^[1]. However, this summary provides a preview of potential changes to ALF regulation in Florida that affected stakeholders should note. **Responsibilities for Coordination of Services for Mental Health Residents Residing at an ALF**

- Medicaid managed care plans are responsible for Medicaid enrolled mental health residents, and managing entities under contract with the Department of Children and Families (DCF) are responsible for mental health residents who are not enrolled in a Medicaid health plan. A Medicaid managed care plan or a managing entity must:
 - Ensure that a mental health resident's community living support plan is completed and provided to the facility administrator within 30 days of admitting a mental health resident and is updated when there is a significant change to the resident's behavioral health status.
 - Ensure that the resident's case manager keeps a two-year record of any face-to-face interaction with the resident.
 - Ensure that the resident's case manager conducts adequate and consistent monitoring of the community living support plan and cooperative agreements.
 - Report to the appropriate regulatory oversight organization any concerns about a regulated provider's failure to provide services or otherwise act in a manner that has the potential to harm the resident.

Amends Citizen Access to State Long-Term Care Ombudsman Program

- Upon admission to a long-term care facility, each resident or representative of a resident must receive information regarding the purpose of the State Long-Term Care Ombudsman Program, the statewide toll-free telephone number for receiving complaints, information that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right, and other relevant information regarding how to contact the program.
- Each resident or his or her representative must be furnished additional copies of this information upon request.

Amends Extended Congregate Care Licensure

- Authorizes issuance of extended congregate care licenses to facilities licensed as assisted living facilities for two or more years, which provide services, directly or through contract, performed by persons licensed under part I of chapter 464, Fla. Stat., and supportive services, as defined by rule, to persons who would otherwise be disqualified from continued residence in a facility licensed under this part.
- The primary purpose of extended congregate care services is to allow residents the option to remain in a familiar setting in cases where they would otherwise be disqualified from continued residency as they become more impaired. A facility licensed to provide extended congregate care 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 extended congregate care facility.

- If an assisted living facility has been licensed for less than two years, the initial extended congregate care license must be provisional and may not exceed six months.
 - Within the first three months after the provisional license is issued, the licensee shall notify AHCA, in writing, when it has admitted at least one extended congregate care resident, after which an unannounced inspection shall be made to determine compliance with requirements of an extended congregate care license.
 - Failure to admit an extended congregate care resident within the first three months shall render the extended congregate care license void.
 - A licensee with a provisional extended congregate care license that demonstrates compliance with all the requirements of an extended congregate care license during the inspection shall be issued an extended congregate care license.
 - If violations are found during the inspection and the licensee fails to demonstrate compliance with all assisted living requirements during a follow up inspection, the licensee shall immediately suspend extended congregate care services, and the provisional extended congregate care license expires. The agency may extend the provisional license for not more than one month in order to complete a follow up visit.
- A registered nurse, or appropriate designee, representing AHCA must visit the facility at least twice a year to monitor residents who are receiving extended congregate care services and to determine facility compliance.
 - AHCA may waive one of the required yearly monitoring visits for a facility that has:
 - held an extended congregate care license for at least 24 months;
 - no Class I or Class II violations and no uncorrected class III violations; and,
 - no ombudsman council complaints that resulted in a citation for licensure.

Limited Mental Health Licensure

- An assisted living facility that serves one or more mental health residents must obtain a limited mental health license. Current law requires licensure if three or more mental health residents are served.

Grounds for Denial, Revocation, Suspension, or Fine of an ALF

- Amends the circumstances under which the agency may deny, revoke, or suspend the license of an ALF to include:
 - issuance of two moratoria within a two-year period, which are imposed by final order;
 - citation for two or more Class I violations arising from unrelated circumstances during the same survey or investigation; or,
 - citation for two or more Class I violations arising from separate surveys or investigations within a two-year period.
- Authorizes AHCA to impose an immediate moratorium on an ALF that fails to provide AHCA with access to the ALF or prohibits AHCA from conducting a regulatory inspection. The licensee may not restrict AHCA staff from accessing and copying records or from conducting confidential interviews with ALF staff or any individual who receives services from the ALF.
- Deletes a provision requiring AHCA to provide a list of facilities with denied, suspended, or revoked licenses to the Department of Business and Professional Regulation.
- Exempts an ALF from the 45-days' notice requirement imposed under section 429.28(1)(k), Fla. Stat., if the facility is required to relocate some or all of its residents due to agency action.
- Amends amount of fines AHCA may impose on an ALF based on the number of beds the ALF is licensed for at the time of the violation:

Class I Violations

| Number of ALF Beds Time of Violation | Fine Amount for Each Cited Class II Violation | Fine Amount if ALF Previously Cited for Class I Violation During Last Inspection |
|--------------------------------------|---|--|
| Less than 100 | \$7,500 | \$15,000 |
| 100 or more | \$11,250 | \$22,500 |

If the agency has knowledge of a Class I violation, which occurred within 12 months before an inspection, a fine must be levied for that violation, regardless of whether the noncompliance is corrected before the inspection. **Class II Violations**

| Number of ALF Beds Time of Violation | Fine Amount for Each Cited Class II Violation | Fine Amount if ALF Previously Cited for Class II Violation During Last Inspection |
|--------------------------------------|---|---|
| Less than 100 | \$3,000 | \$6,000 |
| 100 or more | \$4,500 | \$9,000 |

Class III Violations

| Number of ALF Beds Time of Violation | Fine Amount for Each Cited Class III Violation |
|--------------------------------------|--|
| 6 or fewer beds | \$500 |
| 7 to 24 beds | \$750 |
| 25 to 99 beds | \$1,000 |
| 100 or more beds | \$1,125 |

If a facility is cited for 10 or more Class III violations during an inspection or survey, the agency shall impose a fine for each violation. **Class IV Violations**

| Number of ALF Beds Time of Violation | Fine Amount for Each Cited Class IV Violation |
|--------------------------------------|---|
| 6 or fewer beds | \$100 |
| 7 to 24 beds | \$150 |
| 25 to 99 beds | \$200 |
| 100 or more beds | \$225 |

- Imposes an administrative fine of \$500 on an ALF if it is not in compliance with the background screening requirements provided in section 408.809, Fla. Stat.
- Clarifies that each day of continuing violation after the date established by AHCA for correction of the violation constitutes an additional, separate, and distinct violation.

Assistance with Self-Administration of Medication

- Amends definition of “assistance with self-administration of medication” to include the following:
 - Using an insulin syringe that is prefilled with the proper dosage by a pharmacist and an insulin pen that is prefilled by the manufacturer.
 - Assisting with the use of a nebulizer, including removing its cap, opening the unit dose of nebulizer solution, and pouring the prescribed premeasured dose of medication into the dispensing cup of the nebulizer.
 - Using a glucometer to perform blood-glucose level checks.
 - Assisting with putting on and taking off antiembolism stockings.
 - Assisting with applying and removing an oxygen cannula, but not with titrating the prescribed oxygen settings.
 - Assisting with the use of a continuous positive airway pressure device, but not with titrating the prescribed setting of the device.
 - Assisting with measuring vital signs.
 - Assisting with colostomy bags.

Property and Personal Affairs of Residents

- Increases the amount of cash for which a facility may provide safekeeping for a resident from \$200 to \$500.

Resident Bill of Rights

- Provides notice requirements to inform facility residents that the identity of the resident and complainant in any complaint made to the State Long-Term Care Ombudsman Program or a local long-term care ombudsman council is confidential and that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right.
- Requires that a facility that terminates an individual's residency after the filing of a complaint be fined \$2,500 if good cause is not shown for the termination.

Right of Entry and ALF Inspections

- Specifies that any persons designated as officers or employees of the Department of Children and Families, Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal; or as members of the state or local long-term care ombudsman council, who know or have reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited immediately report such knowledge or suspicion to the Central Abuse Hotline.
- Requires AHCA to inspect each licensed ALF at least once every 24 months.
- Requires AHCA to conduct an additional licensure inspection within six months if an ALF is cited for one or more Class I violations or two or more Class II violations arising from separate surveys within a 60-day period or due to unrelated circumstances during the same survey.
- Requires the licensee to pay a fee for the cost of additional inspection and requires AHCA to annually adjust the fee.

Staffing Standards

- Specifies that if a continuing care facility licensed under chapter 651, or a retirement community offering multiple levels of care, licenses a building or part of a building designated for independent living for assisted living, AHCA staffing requirements established in the rule apply only to residents who receive personal, limited nursing, or extended congregate care services.
 - Such facility must retain a log listing the names and unit number for residents receiving these services.
 - The log must be available to surveyors upon request.

Staff Training and Educational Requirements/Core Requirements

- Effective October 1, 2014, each new ALF employee that has not previously completed core training must attend a pre-service orientation provided by the ALF before interacting with residents.
 - The pre-service orientation must be at least two hours in duration and cover topics that help the employee provide responsible care and respond to the needs of facility residents.
 - Upon completion, the employee and the facility administrator must sign a statement indicating that the employee completed the required pre-service orientation.
 - The facility must keep the signed statement in the employee's personnel record.
- Requires two additional hours of training for staff involved with the management of medications and assisting with the self-administration of medications under section 429.256, Fla. Stat.

AHCA Website – Searchable Content for Consumers

- Requires AHCA to create searchable content on AHCA's website that makes available to consumers information regarding licensed ALFs in Florida. Requires AHCA to implement an ALF rating system by March 1, 2015.

- Requires AHCA web page content to include:
 - The name and address of the facility.
 - The number and type of licensed beds in the facility.
 - The types of licenses held by the facility.
 - The facility's license expiration date and status.
 - Proprietary or nonproprietary status of the licensee.
 - Any affiliation with a company or other organization owning or managing more than one assisted living facility in this state.
 - The total number of clients that the facility is licensed to serve, and the most recently available occupancy levels.
 - The number of private and semiprivate rooms offered.
 - The bed-hold policy.
 - The religious affiliation, if any, of the ALF.
 - The languages spoken by the staff at the facility.
 - The availability of nurses at the facility.
 - Forms of payment accepted, including, but not limited to, Medicaid, Medicaid long-term managed care, private insurance, health management organization, United States Department of Veterans Affairs, CHAMPUS program, or workers' compensation coverage.
 - Indication if the licensee is operating under bankruptcy protection.
 - Recreational and other programs available.
 - Special care units or programs offered.
 - Whether the facility provides mental health services to residents with mental illness and the number of mental health residents.
 - Whether the facility is part of a retirement community that offers nursing home services, home health care services, or continuing care residential facility services.
 - Links to the State Long-Term Care Ombudsman Program website and the program's statewide toll-free telephone number.
 - Links to the Internet websites of the providers or their affiliates.

- Other relevant information that AHCA currently collects.
- Survey and violation information for the facility, including a list of the facility's violations committed during the previous 60 months, which on July 1, 2014, may include violations committed on or after July 1, 2009. The list must be updated monthly and include for each violation a summary of the violation, any sanctions imposed by final order, and date corrective action confirmed by AHCA.
- Links to inspection reports AHCA has on file.

[1] Committee Substitute for Committee Substitute Senate Bill 248 (CS/CS/SB 248) and Committee Substitute for Committee Substitute House Bill 573 (CS/CS HB 573).

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