

**Summary Report of the Assisted Living Facility
Negotiated Rulemaking Committee
Rule Chapter 58A-5, F.A.C.**

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I. Introduction

After the 2012 legislative session adjourned, Governor Rick Scott approved the Florida Department of Elder Affairs, led by Secretary Charles Corley, in consultation with the Agency for Health Care Administration, the Department of Children and Families, and the Department of Health, to enter into good faith, consensus-based negotiated rulemaking. The Assisted Living Facility Negotiated Rulemaking Committee (Committee) was tasked with reviewing existing rules and suggesting changes to ensure safe, quality service and care for residents of assisted living facilities (ALFs). To those ends, the Committee had to keep in mind that although safety and security are paramount, overly burdensome regulations could serve as a barrier to potential providers or drive current providers out of the market. It is important to have a variety of options to make aging-in-place available to Floridians.

A. Process

This report concludes the rule development portion of rulemaking noticed for Rule Chapter 58A-5, Florida Administrative Code. The goal of the Committee was to reach consensus by a two-thirds vote on proposed rules. The proposed rules took the form of outlines, bullet point ideas and concepts, and actual strike-through and underline draft text.

The Department of Elder Affairs will now enter into the proposed rule phase of rule promulgation. A proposed rule will be drafted based on the agreed-upon language developed by a consensus vote of the Committee. The Department has indicated that several public hearings on the proposed rule draft will be scheduled.

B. Committee Meetings and Members

The Committee had an aggressive meeting schedule and met on six different occasions. The Committee met on June 5th and 12th at the Department of Elder Affairs (DOEA) in Tallahassee, June 26th at the Agency for Health Care Administration (AHCA) in Tallahassee, July 10th at DOEA, July 26th at the Department of Children and Families (DCF) in Fort Lauderdale, and August 7th at AHCA.

The fifteen members of the Committee represented consumer advocates, providers, industry associations, and state agencies as follows:

1. Robert Anderson - Director, Adult Protective Services - DCF
2. C. Anne Avery, RN, LNC - Bureau of Field Operations - AHCA
3. Gilda Baldwin, DHSc, MMS – Chief Executive Officer - Westchester General Hospital
4. Jackie Beck - Chief, Adult Mental Health - Mental Health Program Office – DCF
5. Carol Berkowitz, Esq. - Senior Director of Regulatory and Legal Affairs - LeadingAge Florida
6. Jim Crochet - State Long-Term Care Ombudsman – DOEA
7. Alberta Granger - Director, Professional Development / Disaster Coordinator - Florida Assisted Living Association
8. Lee Ann Griffin - Director of Quality and Regulatory Services - Florida Health Care Association
9. Shad Haston, Esq. - Unit Manager, Assisted Living Unit - Bureau of Long-Term Care Services - AHCA
10. Gail Matillo - Director, Elder Housing Unit – DOEA
11. Henry Parra - Assisted Living Member Association, Inc. & Genesis Care Centers, Corp.
12. Susan Rice, Esq. – Assistant General Counsel – DOEA
13. Mary Romelfanger, RN, MSN – Vice President for Credentialing, Certification Management Group - Professional Testing, Inc.
14. Eric Thorn, Esq. - Chief Staff Executive - Florida Life Care Residents Association
15. Mary Beth Vickers, RN, MSN - Acting Division Director, Children’s Medical Services - Department of Health

The Committee was assisted by a neutral facilitator. Every member of the Committee signed a pledge to participate in the negotiated rulemaking proceedings in good faith. The facilitator believes that every member of the Committee participated in the proceedings in good faith. This report concludes the facilitator’s responsibilities to the Committee and provides a summary of the negotiated portion of the rule development activities.

II. Summary of Proposed Rule Changes (All of the vote sheets generated during meetings of the Committee and corresponding stricken-through and underlined language are attached to this report as Exhibit A. The Committee work product document may be accessed at: http://elderaffairs.state.fl.us/doea/alf_rulemaking.php) The following is a summary by topic area of the rule amendment proposals that were passed by a consensus vote of the Committee.

A. Admission and Continued Residency

- Clarified that regardless of the care arrangement a resident has with hospice while in the ALF, the ALF cannot provide services beyond the scope of its license; the services must be provided by hospice. (This was to clarify responsibilities in this aging-in-place initiative.)

- Residents requiring assistance with portable oxygen, routine colostomy care, and anti-embolism stockings may be admitted if they otherwise meet admission criteria and the facility has a licensed nurse on staff or under contract to provide such assistance or training to the resident to perform such functions. Such assistance may not be delegated to certified nursing assistants or unlicensed persons and nursing staff are prohibited from providing training to unlicensed persons to perform skilled nursing services. (This is an aging-in-place initiative).
- As part of the broad category of communicable diseases, add a specific reference on the Resident Health Assessment for Assisted Living Facilities, AHCA Form 1823, indicating that a health care provider has assessed the individual for signs or symptoms of TB (a skin test or blood test is not required except to meet Medicaid requirements).

B. Do Not Resuscitate Orders (DNROs)

- At the time of admission each resident, or his or her representative, must be provided a copy of Florida Department of Health Form 1896, Florida DNRO Form, along with the Department of Health informational pamphlet for Form 1896.
- DNRO forms must be stored in a location accessible by medical staff in the event of a medical emergency.
- The intent of these changes is to reference the specific DOH form, minimize staff confusion during medical emergencies, and ensure that residents' last wishes are honored.

C. Emergency Management

- Each year facilities must submit a Comprehensive Emergency Management Plan (CEMP) to the local emergency management agency and a copy of the approval letter must be submitted to AHCA within 30 days of receipt. A facility will not receive a deficiency based on the local emergency management agency's lack of response to the submission of the CEMP as long as the facility can show the delay is not due to its own actions or lack thereof.

D. Limited Mental Health (LMH)

- Every facility with a LMH license is required to ensure that mental health residents are referred for case management and other mental health services. Residents may be referred to public or private agencies for assistance. In the event that a resident refuses such services the refusal must be documented by the facility and the facility must request that the refusal be submitted in writing.
- If a facility initiates an involuntary mental health examination pursuant to the Florida Mental Health Act, the facility must document all actions taken to avoid the involuntary mental health examination.

E. Staffing

- Defined “manager” as an individual who meets the same qualifications, training, and background screening requirements of an administrator. An individual serving as a manager may not also serve as an administrator or a manager in a separate facility.
- Clarified that independent living units within an ALF are only to count toward minimum staffing standards when residents are receiving personal, limited nursing, or extended congregate care services (ex: if the individual is only receiving meals – the resident will not be counted for minimum staffing requirements).

F. Staff Training and Core Test

The Committee determined that increased training initially will result in higher quality management, administration, and staffing of facilities, which will help ensure a safe living environment for residents.

Administrators (and managers)

- Core training is increased from 26 hours to 56 hours.
- Topics added to core training:
 - Elopement
 - Aggression control, de-escalation techniques, and behavior management
 - Proper use of the Baker Act
 - Use of and understanding advance directives
 - Do Not Resuscitate Orders
 - Infection control
 - Best practices in the administration of an ALF
 - The aging process: recognizing and providing the changing level of assistance needed.
 - Business management (including human resources management, financial management, supervision of staff, Medicaid provider agreement compliance)
- The separate rule chapter for the core curriculum, 58T-1, should be incorporated into Rule 58A-5.
- Continuing education is increased from 12 to 18 hours every two years and approved continuing education providers are defined.
- Extended Congregate Care training is increased from 4 to 8 hours.
- The Committee debated increasing the minimum passing score for the competency test (the current minimum passing score is 75%). However, the Committee decided to table changes to the minimum passing score until the new test is in effect and data on passage rates are available.

Administrators, Managers, and Staff with Direct Contact

- Limited Mental Health training will be competency-based requiring passage of each module in the training course (8 hours) with an end-of-course exam. Administrators, managers, and staff must score a minimum of 75% on the exam to earn a certificate of completion.
- Training of unlicensed staff who provide assistance with self-administered medications is increased from 4 to 6 hours.

G. Training Providers

- The separate rule chapter for registration and qualification of core trainers, 58T-1 should be incorporated into Rule 58A-5.
- Core training providers must pass the core competency test with a minimum score of 85%.
- Core training providers must submit all core training curricula and training materials to the DOEA for approval before training may be conducted using those materials.
- Continuing education is increased from 12 to 18 hours every two years.
- Provides for disqualification of core training providers who fail to meet specified professional standards.

H. Miscellaneous Provisions

- Adverse incident reports and monthly liability claims reports must be submitted online as required in Rule 59A-35.110, F.A.C.
- Lodging complaints – Telephone numbers must be posted in close proximity to a telephone, be at eye level, and must be a minimum of 14 point font.
- Records - Records must be readily available at the licensee's physical address, whether in electronic or paper form. Staff must be able to access the data upon request.
- Repeal requirement to memorialize the circumstances surrounding a "major incident." This requirement is not supported in statute and is covered under the requirement to report "adverse incidents."
- Various rule "clean-ups" were recommended to address statutory changes involving background screening and facility licensing procedures, and to address duplication of statutory language.

III. Committee Recommendations to the Assisted Living Workgroup

During the final meeting of the Committee several proposed recommendations to the Assisted Living Workgroup were discussed and voted on. Fourteen of the fifteen members of the Committee were present during the last meeting. The parenthetical number following each

recommendation indicates the number of Committee members who voted in favor of the recommendation.

Clarify statutory authority in the following areas:

1. Limited Mental Health: 429.52 (12) Propose to add statutory authority for DOEA to work in consultation with DCF in establishing trainer credentials and requirements for limited mental health training as follows: The department in consultation with the Department of Children and Families may adopt rules to establish limited mental health trainer credentials, trainer registration procedures, training curriculum, reporting requirements, and fees. (14 – Unanimous)
2. Limited Mental Health: 429.075 (1) Omit “within 6 months after” and substitute “prior to”. This provision should not go into effect before July 1, 2013, and must be contingent on the course being provided online by DCF. (14 – Unanimous)

429.075 Limited mental health license.—An assisted living facility that serves three or more mental health residents must obtain a limited mental health license.

(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility, must not have any current uncorrected deficiencies or violations, and must ensure that, ~~prior to within 6 months after~~ receiving a limited mental health license, the facility administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. Such designation may be made at the time of initial licensure or relicensure or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with this part, part II of chapter 408, and applicable rules. This training will be provided by or approved by the Department of Children and Family Services.

3. Recommendation that ALF administrators be licensed or credentialed. (10)
4. 429.52 (11) Grant sanctioning authority to DOEA for core training providers based on regulatory non-compliance as established by rule. (14 – Unanimous)
5. 429.52 Grant authority to DOEA to establish the requirements for continuing education providers by rule. (14 – Unanimous)
6. 429.52 Grant statutory authority to DOEA to establish continuing education reporting requirements by rule. (12)