

Recommendation from Acadamamus

- 1. Establish a direct care provider licensing system and registry to include registration, application renewal, fees, liability provisions, and a state examination.**

Sec. 1. PURPOSES AND METHODS FOR ESTABLISHING A DIRECT CARE PROVIDER LICENSING SYSTEM AND REGISTRY.

In order to increase uniformity, reduce regulatory burden, enhance client protection, and reduce fraud, the department/agency is hereby encouraged to establish a Statewide Direct Care Provider Licensing and Registry that accomplishes the following objectives:

- 1) Provides uniform registration procedures and reporting requirements for direct care providers.
- 2) Provides a comprehensive registration and supervisory database.
- 3) Aggregates and improves the flow of information to and between regulators.
- 4) Provides increased accountability and tracking of direct care providers.
- 5) Streamlines the registration process and reduces the regulatory burden.
- 6) Enhances consumer protections and supports anti-fraud measures.
- 7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, direct caregivers.
- 8) Facilitates responsible behavior in the assisted living community and provides comprehensive training and examination requirements related to direct care of individuals in an assisted living environment.
- 9) Facilitates the collection and disbursement of consumer complaints on behalf of state regulators.
- 10) Provides accountability and tracking of approved training providers and allows greater capacity for oversight to ensure quality education for direct care staff.

Sec. 2. DEFINITIONS

- (1) **UNIQUE IDENTIFIER** – the term “unique identifier” means a number or other identifier that –
 - a. Permanently identifies a direct care provider;
 - b. Is assigned by protocols established by the department’s/agency’s registry to facilitate electronic tracking of direct care providers and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against direct care providers; and
 - c. Shall not be used for purposes other than those set forth under this statute.

Sec. 3. REGISTRATION REQUIRED

- (1) **DIRECT CARE PROVIDERS.**-- Subject to the existence of a statewide registry an individual may not engage in the duties of a direct caregiver without first registering with the 'Direct Care Provider Licensing System and Registry' as a direct caregiver and obtaining a unique identifier.
- (2) **TRAINING OR EDUCATION PROVIDERS.**—Subject to the existence of a statewide registry an individual may not engage in the duties of a training or education provider without first registering with the 'Direct Care Provider Licensing System and Registry' as a training or education provider.

Sec. 4. REGISTRATION APPLICATION

- (1) **BACKGROUND CHECKS.**—In connection with an application for registration as a direct care provider, the applicant shall submit the necessary documentation essential for level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.
- (2) **CORE EDUCATIONAL REQUIREMENT AND COMPETENCY TESTING FOR DIRECT CARE PROVIDERS.**—Administrators and other assisted living facility staff must meet minimum training and education requirements, as well as successfully pass a competency test with a minimum grade of 75%, established by the Department of Elderly Affairs by rule. Pursuant to s. 429.52 this training and education is intended to assist facilities to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.
- (3) **APPROVED EDUCATIONAL OR TRAINING PROVIDERS.**—For purposes of paragraph (2), core training courses shall be reviewed, and approved by the 'department/agency or a designee of the department/agency'.

Sec. 5.—STANDARDS FOR REGISTRATION RENEWAL

- (1) **IN GENERAL.**—The minimum standards for registration renewal for direct care providers shall include the following:
 - a. The direct care provider continues to meet the minimum standards for registration described in subsection b.
 - b. **CONTINUING EDUCATION OR IN-SERVICE FOR DIRECT CARE PROVIDERS.**—In order to maintain their registration, each direct care provider must fulfill the continuing education or in-service hours established by the Department of Elderly Affairs pursuant to 429.52, F.S.
- (2) **APPROVED EDUCATIONAL OR TRAINING PROVIDERS.**—For purposes of paragraph (2), core training courses shall be reviewed, and approved by the 'department/agency or a designee of the department/agency'.
- (3) **CALCULATION OF CONTINUING EDUCATION CREDITS.**—A registered direct care provider—
 - a. may only receive credit for a continuing education or in-service course in the year in which the course is taken; and
 - b. may not take the same approved course in the same or successive years to meet the annual requirements for continuing education or in-service hours.

(4) INSTRUCTOR CREDIT.—

- a. An ALF Administrator who is either participating as a lecturer of the offering or as author of the course materials may earn a maximum nine (9) contact hours of continuing education credit per biennium. Each ALF Administrator who is either participating as a lecturer of a continuing education course or an author of a continuing education program may receive credit for the portion of the offering he/she presented or authored to the total hours awarded for the offering.
- b. Continuing education credit may be awarded to a lecturer or author for the initial presentation of each program only; repeat presentations of the same continuing education course shall not be granted credit.
- c. In order for a continuing education credit to be awarded to each ALF Administrator participating as faculty, the continuing education program must conform with all applicable sections of this rule chapter regarding trainer qualifications, subject matter of the program, and documentation requirements.

Sec. 6. SYSTEM OF REGISTRATION ADMINISTRATION BY REGULATING AGENCIES.

(a) DEVELOPMENT.—

1. IN GENERAL.—The ‘department/agency’ shall contract with a third-party provider to develop and maintain a system for registering direct care providers who deliver care within the state of Florida.
2. REGISTRATION REQUIREMENTS.-- In connection with the registration of any direct care provider under this subsection, the ‘department/agency’ shall, at a minimum, furnish or cause to be furnished to the registry information concerning the direct care provider’s identity, including—
 - (A) Fingerprints for the purposes of a state and national criminal history background check; and
 - (B) Personal history and experience, including authorization for the registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) COORDINATION.—

1. Unique identifier.-- The ‘department/agency’ shall coordinate with the registry to establish protocols for assigning a unique identifier to each direct care provider that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against direct care providers.
2. REGISTRY.-- To facilitate the transfer of information required by subsection (a)(2), the registry shall coordinate with the ‘department/agency’ concerning the development and operation, by such registry, of the registration functionality and data requirements for direct care providers.
3. CONSIDERATION OF FACTORS AND PROCEDURES.-- In establishing the registration procedures under this statute and the protocols for assigning a unique identifier to a direct care provider, the ‘department/agency’ shall make reasonable efforts to utilize existing information to minimize the burden of registering direct

care providers, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this statute.

Sec. 7. BACKUP AUTHORITY TO ESTABLISH A DIRECT CARE PROVIDER LICENSING SYSTEM AND REGISTRY.

If at any time the ‘department/agency’ determines that the provider is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for direct care providers, the ‘department/agency’ shall establish and maintain such a system to carry out the purposes of this title and the effective registration and regulation of direct care providers.

Sec. 8. FEES.

The ‘department/agency and the registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the registry, to the extent that such fees are not charged to ALS clients for access to such system and registry.

Sec. 9. CONFIDENTIALITY OF INFORMATION.

(a) **SYSTEM CONFIDENTIALITY.**—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the registry or a system established by the ‘department/agency’ under section 5, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all regulatory officials with direct care provider oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) **NONAPPLICABILITY OF CERTAIN REQUIREMENTS.**—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—
(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or
(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the registry or the ‘department/agency’ with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) **COORDINATION WITH OTHER LAW.**—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) **PUBLIC ACCESS TO INFORMATION.**—This section shall not apply with respect to the information or material relating to the employment history of, and publicly

adjudicated disciplinary and enforcement actions against, direct care providers that is included in registry for access by the public.

SEC. 10. LIABILITY PROVISIONS.

The 'department/agency' or any organization serving as the administrator of registry shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are direct care providers or are applying for employment as a direct care provider.

SEC. 11. STATE EXAMINATION AUTHORITY.

In addition to any authority allowed under State law the 'department/agency' shall have the authority to conduct investigations and examinations as follows:

- (1) For the purposes of investigating violations or complaints arising under this statute, or for the purposes of examination, the 'department/agency' may review, investigate, or examine any direct care provider registered or required to be registered under this statute, as often as necessary in order to carry out the purposes of this title.
- (2) Each assisted living facility shall make available upon request to the department/agency the books and records relating to the employment of such direct care provider. The department/ agency may have access to such books and records and interview administrators, employees, and clients of the assisted living facility.
- (3) The authority of this section shall remain in effect, whether such a direct care provider acts or claims to act under any registration law of such State, or claims to act without such authority.
- (4) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

SEC. 12. REPORTS AND RECOMMENDATIONS TO THE FLORIDA LEGISLATURE.

ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the 'department/agency' shall submit a report to the Florida Legislature on the effectiveness of the provisions of this statute, including legislative recommendations, if any, for strengthening consumer protections, enhancing education standards, and streamlining communication between all regulating entities.