

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 2008

INTRODUCER: Health Regulation Committee and Senator Fasano

SUBJECT: Automated External Defibrillators

DATE: March 18, 2010

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stovall	Wilson	HR	Fav/CS
2. _____	_____	CF	_____
3. _____	_____	JU	_____
4. _____	_____	HA	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This bill requires an assisted living facility (ALF) that has 17 or more licensed beds to have an automated external defibrillator (AED) at the facility. Immunity from civil liability is extended to the facility and facility staff for the use of the AED under the provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act. Facility staff are authorized to withhold or withdraw the use of an AED if presented with an order not to resuscitate (DNRO).

The Department of Elderly Affairs (DOEA) is authorized to adopt rules to implement this law relating to the use of an AED.

This bill substantially amends s. 429.255, Florida Statutes.

II. Present Situation:

Assisted Living Facilities

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or

more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

An ALF may have additional specialty licenses that allow certain medical services to be provided to residents. These additional specialty licenses include the Limited Nursing Services Specialty License and the Extended Congregate Care Specialty License. Licensed health care professionals must provide these services.

The ALFs are licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S., relating to the general licensing provisions for health care facilities. The ALFs are also subject to regulation under Rule Chapter 58A-5, Florida Administrative Code (F.A.C.). These rules are adopted by the Department of Elderly Affairs (DOEA) in consultation with the AHCA, the Department of Children and Family Services, and the DOH.³

Current rules related to ALFs require a staff member who has completed courses in First Aid and cardiopulmonary resuscitation to be in the ALF at all times⁴ and require a statement of the facility's policy concerning Do Not Resuscitate Orders (DNROs).⁵

Florida currently has 2,851 licensed ALFs. There are 909 ALFs with 17 or more licensed beds.

Training for AEDs

An AED is a lifesaving defibrillator device that:

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed; and
- Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.⁶

Section 401.2915, F.S., provides the Legislature's intent that an AED may be used by any person for the purpose of saving the life of another person in cardiac arrest. In order to achieve that goal, the Legislature intends to encourage training in lifesaving first aid and set standards for and encourage the use of AEDs. In order to promote public health and safety, all persons who use an AED are encouraged to obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED.

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

² s. 429.02(16), F.S.

³ s. 429.41(1), F.S. An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in Rule Chapter 69A-40, F.A.C., and standards enforced by the DOH concerning food hygiene; physical plant sanitation; biomedical waste; and well, pool, or septic systems. See Rule ch. 64E-12, ch. 64E-11, and 64E-16, F.A.C.

⁴ See Rule 58A-5.0191(4), F.A.C.

⁵ See Rule 58A-5.0181(3), F.A.C.

⁶ s. 768.1325(2)(b), F.S.

Cardiac Arrest Survival Act

The Cardiac Arrest Survival Act is found in s. 768.1325, F.S. This act provides for immunity from civil liability for a person who uses or attempts to use an AED on a victim in a perceived medical emergency, without objection of the victim, for any harm resulting from the use or attempted use of the AED. In addition, the person who acquired the device and makes it available for use is immune from civil liability if the harm was not due to the failure of this person to properly maintain and test the device or provide training in the use of the AED if training is required for that type of AED. The requirement for training does not apply if the AED has audible, visual, or written instructions on its use; the person who uses the AED is not one who would have been reasonably expected to use the AED; or there was not a reasonably sufficient period in which to provide the training.

Immunity from civil liability does not apply to a person if:

- The harm was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the AED while acting within the scope of the employment or agency;
- The person is an acquirer of the AED who leased or otherwise provided the AED to a health care entity for compensation without selling it, and the harm was caused by an employee or agent of the health care entity who used the device while acting within the scope of the employment or agency; or
- The person is the manufacturer of the AED.

Good Samaritan Act

The Good Samaritan Act is found in s. 768.13, F.S. Relevant provisions of the Good Samaritan Act provide immunity from civil liability for any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment ... at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim. The person is not to be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

III. Effect of Proposed Changes:

This bill amends s. 429.255, F.S., to require an ALF that has 17 or more licensed beds to have, on the premises at all times, a functioning AED. Immunity from civil liability is extended to the facility and facility staff for the use of the AED under the provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act. (See comment under Related Issues.)

The ALF is encouraged to register the location of each AED with the local emergency medical services medical director. Facility staff are authorized to withhold or withdraw the use of an

AED if presented with an order not to resuscitate. The immunity from criminal prosecution or civil liability that is granted to facility staff and facilities for withholding or withdrawing cardiopulmonary resuscitation is extended to the withholding or withdrawing of the use of an AED.

The DOEA is authorized to adopt rules to implement the provisions in this bill relating to the use of an AED.

The act is to take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill impacts ALFs with 17 or more licensed beds (currently 909) by requiring them to purchase an AED, if they don't already have one, and train staff on the use of an AED. Residents who have an emergency condition that can be mitigated with prompt assistance from an AED will benefit.

C. Government Sector Impact:

The AHCA is concerned that this bill will lead to an increase in the number of complaints received due to the inappropriate use of AEDs and thereby increase the workload of AHCA staff. The AHCA surveyors will add compliance with the requirements of this bill to the biennial survey.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 30 – 31. The immunity from civil liability under the Good Samaritan Act and the Cardiac Arrest Survival Act might not protect all ALF staff. The Cardiac Arrest Survival Act has an exception for a person who is a licensed or certified health professional who uses the AED while acting within the scope of the license or certification and within the scope of employment. The Good Samaritan Act applies when any person, who *gratuitously* ... renders emergency care or treatment ... outside of a place having proper medical equipment.

VIII. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on March 18, 2010:

Eliminates the requirement for the ALF staff to be trained on the use of an AED prior to using one; encourages, rather than requires, the facility to register the location of each AED with a local emergency medical services medical director; and substitutes the DOEA instead of DOH as the agency responsible for rulemaking to implement the act.

- B. Amendments:

None.