

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1387 Adult Day Care Centers
SPONSOR(S): Select Committee on Health Innovation, Silvers and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Health Innovation	11 Y, 0 N, As CS	Guzzo	Calamas
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

An adult day care center is a venue providing services (such as therapeutic programs, social and health activities and services, leisure activities, self-care training, rest, nutritional services, respite care, etc.) to three or more adults. Participants may utilize a variety of services offered during any part of a day totaling less than 24 hours.

Medicaid is the health care safety net for low-income Floridians. The Medicaid program is a medical assistance program funded jointly between the state and federal governments. AHCA administers the Florida Medicaid program authorized under Title XIX of the federal Social Security Act and Ch. 409, F.S. With the federal LTC services waiver, current law requires AHCA to make payments for long-term care, including home and community-based services, using the managed care model. Medicaid LTC plans must cover adult day care services.

Medicaid LTC plans are also required to cover medically necessary non-emergency transportation services for Medicaid eligible recipients who have no other means of transportation to a Medicaid covered service. Payment for transportation services is included as part of the negotiated per-member/per-month capitated payment the plan receives from AHCA. Under current law, managed care plans may subcontract for transportation services, but are not required to contract with any specific provider. Current law does not expressly authorize specific providers to provide transportation services.

HB 1387 authorizes adult day care centers to provide transportation services, with parameters, and requires managed care plans to reimburse adult day care centers that provide transportation services to Medicaid recipients at rates negotiated between the adult day care center and the managed care plan.

The bill establishes continuing education requirements for operators of adult day care centers. Specifically, the bill requires each operator to annually complete a 8-hour continuing education course developed and offered by the Florida Adult Day Services Association and approved by the Department of Elder Affairs.

The bill has an indeterminate fiscal impact on the state Medicaid program and no fiscal impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Adult Day Care Centers

An adult day care center is a venue where the owner-operator provides basic services (e.g., therapeutic programs of social and health activities and services, leisure activities, self-care training, rest, nutritional services, respite care, etc.) to three or more persons who are at least 18 years of age. Participants may utilize a variety of services offered during any part of a day totaling less than 24 hours.¹ The owner-operator may organize the adult day care center as a for-profit or non-profit entity.²

Licensure

The Florida Agency for Health Care Administration (AHCA) regulates adult day care centers to develop, establish, and enforce basis standards to assure that therapeutic social and health activities and services are provided to adults experiencing functional impairments in a noninstitutional environment.³

To operate in Florida, an adult day care center must be licensed by AHCA according to the Health Care Licensing Procedures Act⁴ (Act).⁵ The Act provides a streamlined and consistent set of basic licensing requirements for health care providers.⁶ The Act provides minimum licensure requirements, with which applicants and licensees must comply to obtain and maintain a license.⁷ The licensure fee for adult day care centers must not exceed \$150, and county-operated or municipally operated centers are exempt from the licensure fee.⁸

In addition to the Act, current law sets additional licensure requirements specific to adult day care centers. When an applicant first applies for licensure, he or she must furnish a description of the physical and mental capacities and needs of the participants to be served and the availability, frequency, and intensity of basic services and of supportive and optional services to be provided and proof of adequately liability insurance coverage.⁹ Current law requires separate licenses for adult day care centers located on separate premises even if the centers operate under the same management.¹⁰

An adult day care center may not claim to be licensed or designated to provide specialized Alzheimer's services unless AHCA designates the adult day care center's license as a "specialized Alzheimer's services adult day care center".¹¹ To obtain and maintain this special Alzheimer's designation, the owner, operator, and staff must possess prerequisite experience and educational credentials, receive the training and supervision, and complete Level II background checks.¹² Amongst other requirements, a specialized Alzheimer's services adult day care center must care for each Alzheimer participant according to an individualized care plan that accounts for cognitive deficits and personal needs.¹³ The Department of Elderly Affairs may adopt rules specific to these designated centers.¹⁴ Notwithstanding the tightly regulated environment of specialized Alzheimer's services adult day care centers, current

¹ Ss. 429.901(1), (3), F.S.

² S. 429.901(1), F.S.

³ Ss. 429.90, 429.903 F.S.

⁴ Ch. 408, Part II, F.S.; see *also* s. 408.801(1), F.S. (providing a short title).

⁵ S. 429.907(1), F.S.

⁶ S. 408.801(2), F.S.

⁷ See *generally* s. 408.810, F.S.

⁸ S. 429.907(3)-(4), F.S.

⁹ S. 429.909, F.S.

¹⁰ S. 429.907(2), F.S.

¹¹ Ss. 429.917(2), 429.918(3), F.S.

¹² Ss. 429.918(5)-(6), 429.919, F.S.

¹³ S. 429.918(4), F.S.

¹⁴ S. 429.918(12), F.S.

law allows adult day care centers to serve persons experiencing Alzheimer's as part of the general population of participants at a non-designated center.¹⁵

Current law exempts three classes of facilities from adult day care center licensure. First, any facility, institution, or other place operated by the federal government is exempt. Second, any freestanding, Florida-licensed inpatient hospice facility that provides day care services exclusively to hospice patients is exempt.¹⁶ Third, licensed assisted living facilities, licensed hospitals, and licensed nursing homes that provide adult day care services are generally exempt; however, if a facility from this class holds itself out to the public as an adult day care center, they must be licensed by AHCA as an adult day care center.¹⁷

Enforcement Action

AHCA may deny, revoke, or suspend the licensure of an adult day care center when the owner, operator, or an employee does any of the following acts:¹⁸

- An intentional or negligent act materially affecting the health or safety of center participants.
- A violation of the standards or administrative rules governing adult day care centers.
- Failure to comply with statutory background screening standards.
- Failure to follow statutory criteria and procedures relating to the transportation, voluntary admission, and involuntary examination of center participants.
- Multiple or repeated violations.

Current law makes AHCA responsible for all investigations and inspections of adult day care centers.¹⁹ AHCA may impose an immediate moratorium or emergency suspension on an adult care day center provider when AHCA determines that a condition at the center presents a threat to the health, safety, or welfare of a participant.²⁰

AHCA may also impose an administrative fine for licensure violations.²¹ Before AHCA assesses a fine, AHCA must make a reasonable attempt to discuss with ownership each violation and may request a corrective action plan so that the owner can demonstrate a good faith effort to remedy violations by an AHCA-set deadline. Current law classifies an owner's failure to comply with a corrective action plan or to meet the deadline as a separate violation for each day the failure continues. In determining whether to assess a fine, AHCA must consider the gravity of the violation, the actions taken by the owner or operator to correct violations, any previous violations, and the financial benefit to the center of committing or continuing the violation. AHCA may assess a maximum fine of \$500 per violation, not to exceed \$5,000 in the aggregate.²²

If violations occur during the course of a licensure renewal or a change in ownership, AHCA may issue a six-month conditional license to accompany an approved corrective action plan.²³

¹⁵ S. 429.918(11), F.S.

¹⁶ S. 429.905(1), F.S.

¹⁷ S. 429.905(2), F.S. Even if a facility from this class is not licensed as an adult day care center, AHCA must monitor these facilities through regular inspections to ensure adequate space and sufficient staff.

¹⁸ S. 429.911(1)-(2), F.S.

¹⁹ S. 429.911(3), F.S.

²⁰ Ss. 429.911(1); 408.814, F.S.

²¹ S. 429.911(1), F.S.

²² S. 429.913(1), F.S.

²³ S. 429.915, F.S.

Continuing Education Requirements

Current law does not require operators of adult day care centers to complete general training, however, operators are required to complete training on Alzheimer's disease and related disorders (ADRD).

Adult day care centers are required to provide basic written information to new employees, upon beginning employment, about interacting with individuals with ADRD.²⁴ Adult day care centers are required to ensure that all employees complete one hour of initial ADRD training within 30 days of beginning employment.²⁵ Employees adult day care centers who provide direct care to individuals with ADRD are required to complete three hours of additional ADRD training within seven months of beginning employment.²⁶

Employees in adult day care centers that provide special care for individuals with ADRD, who have regular contact with residents are required to complete three hours of ADRD training within three months of beginning employment, and each employee who provides personal care must complete four hours of ADRD training within six months of beginning employment.²⁷ Thereafter each employee who provides personal care must participate in at least four hours of continuing education annually.²⁸

Florida Medicaid

Medicaid is the health care safety net for low-income Floridians. The Medicaid program is a medical assistance program funded jointly between the state and federal governments. The program provides health care coverage for over 4.8 million low-income families and individuals, the elderly, and individuals with disabilities in Florida, including 3.4 million recipients who receive their services through a managed care plan.²⁹

AHCA administers the Florida Medicaid program authorized under Title XIX of the federal Social Security Act and Ch. 409, F.S. The AHCA administers the program through the managed care model,³⁰ under contracts with managed care plans in the 11 regions across the state. The program operates under two separate federal Medicaid waivers: Section 1115 waiver for primary and acute care services called the Managed Medical Assistance (MMA) program and Long-Term Care (LTC) services waiver under Sections 1915(b) and (c) of the Social Security Act.³¹

Subject to specific appropriations, AHCA must reimburse Medicaid providers of home-based and community-based services rendered according to a federally approved waiver based on an established or negotiated rate for each service.³² With the federal LTC services waiver, current law requires AHCA to make payments for long-term care, including home and community-based services, using the managed care model.³³ Payment rates to plans participating in the long-term care managed care program must reflect historic utilization and spending for covered services projected forward and adjusted to reflect the level of care profile for enrollees in each plan. AHCA must adjust payments to incentivize the increased utilization of home and community-based services.³⁴

²⁴ Ss. 429.917(1), F.S., and 430.525(4)(a), F.S.

²⁵ Ss. 429.917(1), F.S., and 430.525(4)(b), F.S.

²⁶ Ss. 429.917(1), F.S., and 430.525(4)(d), F.S.

²⁷ Ss. 429.917(1), F.S., and 430.525(4)(e), F.S.

²⁸ *Id.*

²⁹ Agency for Health Care Administration, *Comprehensive Medicaid Managed Care Enrollment Reports (December 31, 2023)* available at <https://ahca.myflorida.com/medicaid/medicaid-finance-and-analytics/medicaid-data-analytics/medicaid-monthly-enrollment-report> (last visited January 31, 2024).

³⁰ The vast majority of Medicaid enrollees receive services through the managed care model; those with limited benefits (such as the family planning program) are not, and some populations (such as enrollees in the home and community-based waiver for persons with developmental disabilities) may choose managed care or the fee-for-services model. S. 409.965, F.S.

³¹ S. 409.964, F.S.

³² S. 409.908(8), F.S.

³³ S. 409.978(2), F.S.

³⁴ S. 409.983(3), F.S.

Medicaid LTC plans must cover adult day care services.³⁵

Transportation Services

Long-term care plans are also required to cover both emergency and non-emergency transportation services.³⁶ Medicaid covers medically necessary non-emergency transportation services for Medicaid eligible recipients who have no other means of transportation to a Medicaid covered service.³⁷ Payment for transportation services is included as part of the negotiated per-member/per-month capitated payment the plan receives from AHCA. Under current law, managed care plans may subcontract for transportation services, but are not required to contract with any specific provider. Current law does not expressly authorize specific providers to provide transportation services.

Effect of the Bill

Medicaid Transportation Services

HB 1387 authorizes adult day care centers to provide transportation services in the Medicaid managed care program, with parameters. Adult day care centers may only provide transportation services to enrollees receiving services at the adult day care center. Such transportation services are limited to transporting clients of an adult day care facility to and from the adult day care center. The bill requires managed care plans to reimburse adult day care centers that provide transportation services to Medicaid recipients at rates negotiated between the adult day care center and the managed care plan.

Adult Day Care Center Licensure

The bill also establishes continuing education requirements for operators of adult day care centers. Specifically, the bill requires each operator to annually complete a 8-hour continuing education course developed and offered by the Florida Adult Day Services Association and approved by the Department of Elder Affairs (DOEA), or any other educational provider approved by DOEA.

The course must include training in the following subject areas:

- One hour on compliance with the Agency for Health Care Administration;
- One hour on Alzheimer's disease and related disorders;
- One hour on the state comprehensive emergency management plan;
- One hour on anti-fraud, abuse, and neglect;
- One hour on nonemergency medical transportation;
- One hour on daily management;
- One hour on staff compliance with participant care standards; and
- One hour on the Health Insurance Portability and Accountability Act.

The continuing education course may be offered in person or online. Upon completion of the online course, an operator must pass a department-approved online examination with a minimum score of 80 percent. An operator attending an in-person course is exempt from the examination requirement. A person who teaches an approved course of instruction, or lectures at any approved course, and who attends the entire course shall qualify for the same number of classroom hours as a person who takes and successfully completes such course. Credit is limited to the number of hours actually taught or lectured unless the person attends the entire course.

Each person or entity providing a course for continuing education credit must furnish, within 30 days after completion of the course, in a form satisfactory to the department or its designee a roster showing the adult day care center license numbers and the names of the operators who have successfully completed the continuing education course and who request the continuing education credits.

³⁵ S. 409.98(4), F.S.

³⁶ S. 409.98(18), F.S.

³⁷ S. 409.905(12), F.S.

An operator's compliance with the continuing education requirements of this section is a condition precedent to the issuance, continuation, reinstatement, or renewal of an adult day care center license. The department may, for good cause shown, grant an operator an extension of time during which the continuing education requirements must be completed, except that any such extension may not exceed 1 year.

Unless the DOEA has granted an operator a waiver or an extension, DOEA may not issue a renewal license to an adult day care center whose operator fails to complete continuing education until the operator successfully completes the continuing education course.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amending s. 409.982, F.S., relating to long-term care managed care plan accountability.

Section 2: Creating s. 429.924, F.S., relating to continuing education requirements for operators.

Section 3: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to AHCA, as the determination to authorize adult day care centers to provide non-emergent medical transportation (NEMT) services will be made by the managed care plans, as well as not knowing the rates negotiated with each plan's contracted NEMT broker, the Agency is not able to determine what the utilization or cost for providing direct reimbursement to the adult day care centers will be. As such, the Agency is unable to establish whether there will be a fiscal impact to the managed care plan rates.³⁸

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:

³⁸ Agency for Health Care Administration, Agency Analysis of 2024 HB 1387 (Nov. 20, 2023).
STORAGE NAME: h1387a.SHI
DATE: 2/2/2024

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rule-making authority to DOEA to implement the continuing education requirements, however, rule-making may not be necessary for implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2024, the Select Committee on Health Innovation adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes provisions setting Medicaid managed care payment rates for ADC services and rates for transportation services provided by ADCs.
- Authorizes ADCs to provide transportation for their clients to and from the centers and requires managed care plans to pay rates negotiated with the ADCs.

The analysis is drafted to the committee substitute as passed by the Select Committee on Health Innovation.