

**CHAPTER 58A-5  
ASSISTED LIVING FACILITIES**

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**58A-5.013 Purpose.**

*Rulemaking Authority 400.441 FS. Law Implemented 400.401, 400.428 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.13, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.013, Repealed 10-30-95.*

**58A-5.0131 Definitions.**

In addition to the terms defined in Section 429.02, F.S., the following definitions are applicable in this rule chapter:

(1) “Advertise” means any written, printed, oral, visual, or electronic promotion, statement of availability, qualifications, services offered, or other similar communication appearing in or on television, radio, the Internet, billboards, newspapers, magazines, business cards, flyers, brochures or other medium for the purpose of attracting potential residents to an assisted living facility. A complimentary listing of a licensed facility’s name, address, and telephone number in the telephone directory shall not be considered advertising.

(2) “Agency Central Office or AHCA Central Office” means the Agency for Health Care Administration (also referred to as “Agency”), Assisted Living Unit (ALU), located at 2727 Mahan Drive, Mail Stop 30, Tallahassee, FL 32308-5403. The ALU telephone number is (850)487-2515.

(3) “Apartment” means a self-contained dwelling unit with a bathroom, kitchen area, and living and sleeping space that is contracted for use as a residence by one or more persons who maintain a common household.

(4) “Assistance with activities of daily living” means individual assistance with the following:

(a) Ambulation – Providing physical support to enable the resident to move about within or outside the facility. Physical support includes supporting or holding the resident’s hand, elbow, or arm; holding on to a support belt worn by the resident to assist in providing stability or direction while the resident ambulates; or pushing the resident’s wheelchair. The term does not include assistance with transfer.

(b) Bathing – Assembling towels, soaps, and other necessary supplies, helping the resident in and out of the bathtub or shower, turning the water on and off, adjusting water temperatures, washing and drying portions of the body which are difficult for the resident to reach, or being available while the resident is bathing.

(c) Dressing – Helping the resident to choose, and to put on and remove clothing.

(d) Eating – Helping with cutting food, pouring beverages, and feeding residents who are unable to feed themselves.

(e) Grooming – Helping the resident with shaving, with oral care, with care of the hair, and with nail care.

(f) Toileting – Assisting the resident to the bathroom, helping to undress, positioning on the commode, and helping with related personal hygiene, including assistance with changing an adult brief. Assistance with toileting includes assistance with the routine emptying of a catheter or ostomy bag.

(5) “Assistance with transfer” means providing verbal and physical cuing or physical assistance or both while the resident moves between bed and a standing position or between bed and chair or wheelchair.

(6) “Bedridden” means confined to bed because of inability to ambulate or transfer to a wheelchair even with assistance, or to sit safely in a chair or wheelchair without personal assistance or mechanical restraint.

(7) “Capacity” means the number of residents for which a facility has been licensed to provide residential care.

(8) “Case manager” means an individual employed by or under contract with any agency or organization, public, or private, who has the responsibility for assessing resident needs; planning services; coordinating and assisting residents to gain access to needed medical, mental health, social, housing, educational or other services; monitoring service delivery; and evaluating the effects of service delivery.

(9) “Certified nursing assistant (CNA)” means a person certified under Part XV of Chapter 468, F.S.

(10) “Deficiency” means an instance of non-compliance with the requirements of Part III, Chapter 400, F.S., and this rule chapter.

(11) “Direct care staff” means staff providing personal or nursing services to residents, or supervising staff providing such services.

(12) “Distinct part” means designated bedrooms or apartments, bathrooms and a living area; or a separately identified wing, floor, or building which includes bedrooms or apartments, bathrooms and a living area. The distinct part may include a separate dining area, or meals may be served in another part of the facility.

(13) “Elopement” means an occurrence in which a resident leaves a facility without following facility policy and procedures.

(14) "Food service" means the storage, preparation, serving, and cleaning up of food intended for consumption in a facility or a formal agreement that meals will be regularly catered by a third party.

(15) "Health care provider" means a physician or physician's assistant licensed under Chapter 458 or 459, F.S., or advanced registered nurse practitioner licensed under Chapter 464, F.S.

(16) "Hold itself out" means making any personal, verbal, telephone, mail contact, or other communication to a person or any announcement, solicitation, display, or advertisement to inform the general public of the services provided by the facility.

(17) "Licensed dietitian/nutritionist" means a dietitian or nutritionist licensed in accordance with Section 468.509, F.S.

(18) "Long-term care ombudsman council (LTCOC)" means the State Long-term Care Ombudsman Council or the district long-term care ombudsman councils established under Part I, Chapter 400, F.S.

(19) "Major incident" means:

- (a) Death of a resident from other than natural causes;
- (b) Determining that a resident is missing;
- (c) An assault on a resident resulting in injury;
- (d) An injury to a resident which requires assessment and treatment by a health care provider;

or

(e) Any event, such as a fire, natural disaster, or other occurrence that results in the disruption of the facility's normal activities.

(20) "Mental disorder" for the purposes of identifying a mental health resident means schizophrenic and other psychotic disorders; affective disorders; anxiety related disorders; and personality and dissociative disorders. However, mental disorder does not include residents with a primary diagnosis of Alzheimer's disease, other dementias, or mental retardation.

(21) "Mental health care provider" means:

- (a) An individual, agency, or organization under contract to the Department of Children and Family Services' district Substance Abuse and Mental Health program office to provide mental health services to clients of the department;
- (b) An individual licensed by the state to provide mental health services; or
- (c) An agency or organization employing or contracting with individuals licensed by the state to provide mental health services.

(22) "Mental health case manager" means a case manager employed by or under contract to a mental health care provider to assist mental health residents residing in a facility holding a limited mental health license. A private mental health care provider may serve as a resident's mental health case manager.

(23) "Newly licensed" means a new facility which is licensed for the first time. The term does not apply to an existing facility that has undergone a change of ownership.

(24) "Nurse" means a licensed practical nurse (LPN), registered nurse (RN), or advanced registered nurse practitioner (ARNP) licensed under Chapter 464, F.S.

(25) "Nursing assessment" means a written review of information collected from observation of and interaction with a resident, the resident's record, and any other relevant sources; the analysis of the information; and recommendations for modification of the resident's care, if warranted.

(26) "Nursing progress notes" or "progress report" means a written record of nursing services, other than medication administration or the taking of vital signs, provided to each resident who receives such services pursuant to a limited nursing or extended congregate care license. The progress notes shall be completed by the nurse who delivered the service and shall describe the date, type, scope, amount, duration, and outcome of services that are rendered; the general status of the resident's health; any deviations; any contact with the resident's physician; and shall contain the signature and credential initials of the person rendering the service.

(27) "Optional state supplementation (OSS)" means the state program providing monthly payments to eligible residents pursuant to Section 409.212, F.S., and Rule Chapter 65A-2, F.A.C.

(28) "Owner" means the person, partnership, association or corporation, which owns or leases the facility, and is licensed by the Agency. The term does not include a person, partnership, association, or corporation which contracts only to manage or operate the facility.

(29) "Physician" means an individual licensed under Chapter 458 or 459, F.S.

(30) "Registered dietitian" means an individual registered with the Commission on Dietetic Registration, the accrediting body of the American Dietetic Association.

(31) "Renovation" means additions, repairs, restorations, or other improvements to the physical plant of the facility within a 5 year period that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before the renovation.

(32) "Respite care" means facility-based supervision of an impaired adult for the purpose of relieving the primary caregiver.

(33) "Significant change" means a sudden or major shift in behavior or mood, or a deterioration in health status such as unplanned weight change, stroke, heart condition, or stage 2, 3, or 4 pressure sore. Ordinary day-to-day fluctuations in functioning and behavior, a short-term illness such as a cold, or the gradual deterioration in the ability to carry out the activities of daily living that accompanies the aging process are not considered significant changes.

(34) "Staff" means any person employed by a facility; or contracting with a facility to provide direct or indirect services to residents; or employees of firms under contract to the facility to provide direct or indirect services to residents when present in the facility. The term includes volunteers performing any service which counts toward meeting any staffing requirement of this rule chapter.

(35) "Third Party" means any person or business entity providing services to residents who is not staff of the facility.

(36) "Unscheduled service need" means a need for a personal service, nursing service, or mental health intervention which generally cannot be predicted in advance of the need for service, and which must be met promptly within a time frame which provides reasonable assurance that the resident's health, safety, and welfare and that of other residents shall be preserved.

*Rulemaking Authority 429.23, 429.41 FS. Law Implemented 429.02, 429.07, 429.075, 429.11, 429.14, 429.178, 429.19, 429.255, 429.23, 429.28, 429.41, 429.47, 429.52 FS. History—New 9-30-92, Formerly 10A-5.0131, Amended 10-30-95, 6-2-96, 4-20-98, 10-17-99, 1-9-02, 7-30-06, 4-15-10.*

#### **58A-5.014 License Application, Change of Ownership, and Provisional Licenses.**

(1) LICENSE APPLICATION. An applicant for a standard assisted living facility (ALF) license, or a limited mental health (LMH), extended congregate care (ECC), or limited nursing services (LNS) license may obtain a license application package from the Agency Central Office.

(a) The completed application shall be signed, under oath, by an owner (or corporate officer if the owner is a corporation), the administrator, or an individual designated in writing by an owner or corporate officer, who is at least 18 years old. The application shall include the following:

1. The Assisted Living Facilities (ALF) License Application, AHCA Form 3110-1008, January 2006, and the Assisted Living Facility Licensure Application Addendum, AHCA Form 3110-1016, January 2006, which are incorporated by reference and can be obtained from the Agency Central Office, with all requested information provided as specified in Section 429.11(3), F.S.

2. An assets and liabilities statement, or AHCA Form 3180-1003, January 1998, which is incorporated by reference. The assets and liabilities statement shall include information about the assets available to cover claims against the owner and administrator and to demonstrate that the applicant has the financial ability to operate.

3. A statement of operations, or AHCA Form 3180-1002, July 1995, which is incorporated by reference. The statement of operations shall include projected revenues, expenses, taxes, extraordinary items, and other credits or charges for the first 12 months of operation.

4. If the proposed facility will be part of a continuing care retirement community, a copy of the Certificate of Authority to offer continuing care agreements issued pursuant to Chapter 651, F.S. The certificate may be used in lieu of fiscal documentation specified in subparagraphs 2. and 3.

5. Proof of liability insurance as required by Rule 58A-5.021, F.A.C.

6. For applicants anticipating a licensed capacity of 14 or fewer residents and located in an area zoned single-family or multi-family, documentation of compliance with the community residential home requirements specified in Chapter 419, F.S., obtained from the Department of Children and Family Services' district community residential home coordinator. If not located in an area zoned single-family or multi-family, Local Zoning Form, AHCA Form 3180-1021, September 1996, which is incorporated by reference, or a letter from the local zoning authority, signed by the county zoning official, which states that the applicant is in compliance with local zoning ordinances.

7. Proof of legal right to occupy the property which may include copies of recorded deeds, or copies of lease or rental agreements, contracts for deeds, quitclaim deeds, or other such documentation.

8. Documentation of a satisfactory fire safety inspection conducted by the local authority having jurisdiction over fire safety or by the State Fire Marshal.

9. Documentation of a satisfactory sanitation inspection by the county health department.

10. For each person specified in Section 429.174(1), F.S.:

a. A set of fingerprints obtained from the nearest available local law enforcement agency on the fingerprint card provided by the Agency; and

b. A check or money order to cover the cost of screening.

11. In lieu of the requirements of subparagraph 10., the following may be substituted: proof of compliance with the Level 2 background screening requirements of Section 435.04, F.S., conducted within the last five (5) years pursuant to a facility or professional license requirement of the Agency or the Department of Health, a copy of the professional or facility license, and an affidavit of current compliance with Level 2 background screening standards. For owners, administrators, and financial officers of continuing care retirement communities, proof of compliance with the background screening requirements of Rule 69O-193.060, F.A.C., conducted within the last five (5) years, may be substituted.

12. A copy of any surety bond required pursuant to Rule 58A-5.021, F.A.C.

13. A copy of the proposed facility's floor plan indicating those areas to be licensed as an assisted living facility and, if applicable, the distinct part to be licensed as an extended congregate care facility if the entire assisted living facility is not to be so licensed.

14. Certificates of Occupancy shall be required from authorities charged with seeing that new buildings or renovations to existing buildings comply with state and local building codes. This must be provided at the time of the agency survey.

(b) If the Agency Central Office delivers a letter notifying the applicant of apparent errors or omissions in the application, then the applicant must respond with the required information no later than twenty-one (21) days from the date of the Agency's one omission letter. If the required information is not received by the Agency within the twenty-one (21) day timeframe, the Agency shall deem the application incomplete and shall issue a notice of intent to deny the application.

(c) An applicant for a limited mental health, extended congregate care, or limited nursing services license must concurrently apply for, or hold, a standard license and comply, in addition, with the applicable requirements of Rules 58A-5.029, 58A-5.030, and 58A-5.031, F.A.C., respectively. These specialty licenses shall only be issued to a facility holding a standard license.

(d) The application shall be submitted to the Agency Central Office and be accompanied by a license fee in the form of a check or money order payable to the State of Florida. The license fee shall be in accordance with Section 429.07, F.S.

1. The fee for any special license shall be in addition to the standard license fee required by statute. When a special license is requested during a facility's standard license period, the fee will be prorated so that the special license will expire at the same time as the facility's standard license.

2. One check or money order can be submitted to cover all license fees and background screening costs.

3. For checks returned from the applicant's bank for whatever reason, the agency shall add to the amount due a service fee of \$20 or 5 percent of the face amount of the check, whichever is greater, up to a maximum charge of \$200.

(e) Upon submission of all documentation required under this subsection and fees, and notification to the Agency Field Office that the applicant is ready for survey, the Field Office shall conduct a survey of the facility in accordance with Section 429.28(3), F.S.

**(2) CHANGE OF OWNERSHIP (CHOW).**

(a) Pursuant to Section 429.12, F.S., the transferor shall notify the agency in writing, at least 60 days prior to the date of transfer of ownership.

(b) Completed applications shall be filed with the Agency by the transferee at least 60 days before the date of transfer of ownership as required by Section 429.12, F.S., and must include the information and fees required under subsection (1) of this rule. An application package for a change of ownership of a currently licensed facility is available from the Agency Central Office.

(c) At the time of transfer of ownership, all resident funds on deposit, advance payments of resident rents, resident security deposits and resident trust funds held by the current licensee shall be transferred to the applicant. Proof of such transfer shall be provided to the agency at the time of the agency survey and prior to the issuance of a standard license. This provision does not apply to entrance fees paid to a continuing care facility subject to the acquisition provisions in Section 651.024, F.S.

1. The transferor shall provide to each resident a statement detailing the amount and type of funds credited to the resident for whom funds are held by the facility.

2. The transferee shall notify each resident in writing of the manner in which the transferee is holding the resident's funds and state the name and address of the depository where the funds are being held, the amount held, and type of funds credited.

(d) The current resident contract on file with the facility shall be considered valid until such time as the transferee is licensed and negotiates a new contract with the resident.

(e) Failure to apply for a change of ownership of a licensed facility as required by Section 429.12, F.S., shall result in a fine levied by the Agency pursuant to Section 429.19, F.S.

(f) During a change of ownership, the owner of record is responsible for ensuring that the needs of all residents are met at all times in accordance with Part III of Chapter 400, F.S., and this rule chapter.

(g) If applicable, the transferor shall comply with Section 408.831(2), F.S., prior to Agency approval of the change of ownership application.

**(3) PROVISIONAL LICENSE.**

(a) The agency shall issue a provisional license to an applicant making an initial application for a standard license or who has filed a completed application for a change of ownership, if the applicant has met all other licensing requirements and is:

1. Waiting for the receipt of Federal Bureau of Investigation background screening results; or

2. Waiting for a response to a request for an exemption from the background screening standards listed in Section 435.03 or 435.05, F.S., as applicable, provided that the exemption from disqualification request is for: felonies committed more than 10 years ago; misdemeanors, including offenses that were felonies when committed but are now misdemeanors; findings of delinquency; and acts of domestic violence committed more than 5 years ago.

(b) A provisional license issued pursuant to an initial application for license shall not be considered equivalent to a standard license for the purposes of issuing a limited mental health, extended congregate care, or limited nursing services license.

(c) A provisional license issued pursuant to a change of ownership application shall be considered equivalent to a standard license for the purpose of issuing a limited mental health, extended congregate care, or limited nursing services license.

(d) A provisional license shall be issued for a specific period of time as determined by the agency provided such time is not less than 1 month nor for more than 6 months.

(4) LICENSE DENIAL. Owners denied a license shall be notified by the agency of their right to appeal the denial, the remedies available, and the time limit for requesting such remedies as provided under Part II of Rule Chapter 59-1, F.A.C. and Chapter 120, F.S.

*Rulemaking Authority 429.07, 429.41 FS. Law Implemented 429.02, 429.04, 429.07, 429.08, 429.11, 429.12, 429.174, 429.27, 429.275, 429.41, 429.44, 429.445, 429.47 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.14, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.014, Amended 10-30-95, 4-20-98, 10-17-99, 7-30-06.*

#### **58A-5.015 License Renewal and Conditional Licenses.**

(1) LICENSE RENEWAL. Every two years, the Agency Central Office shall provide applications for license renewal, either electronically or my mail, to licensees no less than 120 days prior to the expiration of the current license. Applications shall be postmarked or hand delivered to the Agency a minimum of 90 days prior to the expiration date appearing on the currently held license. Failure to file a timely application shall result in a late fee charged to the facility as described in Section 429.17, F.S.

(a) All applicants for renewal of a license shall submit the following:

1. An Assisted Living Facilities (ALF) License Application, AHCA Form 3110-1008, January 2006 and the Assisted Living Facility Licensure Application Addendum, AHCA Form 3110-1016, January 2006, completed as required under Rule 58A-5.014, F.A.C.

2. Proof of liability insurance as required by Rule 58A-5.021, F.A.C.

3. A copy of the annual fire safety inspection conducted by the local authority having jurisdiction over fire safety or the State Fire Marshal. Documentation of a satisfactory fire safety inspection shall be provided at the time of the agency's biennial survey.

4. A copy of the annual sanitation inspection by the county health department. Documentation of a satisfactory sanitation inspection shall be provided at the time of the agency's biennial survey.

5. An affidavit of current compliance with level 1 and 2 background screening conducted pursuant to Section 429.174, F.S.

6. A copy of any surety bond or continuation bond required by Rule 58A-5.021, F.A.C.

7. A copy of the facility's floor plan if different from the previous application.

(b) If the Agency Central Office delivers a letter notifying the applicant of apparent errors or omissions in the application, then the applicant must respond with the required information no later than twenty-one (21) days from the date of the Agency's one omission letter. If the required information is not received by the Agency within the twenty-one (21) day time frame, the Agency shall deem the application incomplete and shall issue a notice of intent to deny the application.

(c) Applicants for renewal of a license shall not be required to provide proof of financial ability to operate unless the facility or any other facility owned or operated in whole or part by the same owner or business entity has demonstrated financial instability as described in Rule 58A-5.021, F.A.C.

(d) Applicants for renewal of licenses shall remit license fees as required by Section 429.07, F.S., and Rule 58A-5.014, F.A.C. With respect to the fee per bed required for a standard license, the number of OSS recipients claimed shall be the average number per month residing in the facility during the previous license period. An additional per bed charge shall be added to the bed fee for facilities whose average number of OSS residents per month was less than the number of beds designated for OSS recipients during the previous license period.

(2) **CONDITIONAL LICENSE.** Except as provided under Section 429.14, F.S., the agency shall issue a conditional license to a facility if, at the time of license renewal the facility is found to have uncorrected violations which the facility has had an opportunity to correct.

(a) The issuance of a conditional license shall be contingent upon agency approval of a written plan of correction which includes corrective steps that will be taken to eliminate the deficiencies and a timetable for correction of the deficiencies by the expiration date of the conditional license.

(b) A conditional license shall be issued by the agency only for that time period necessary to comply with applicable licensing standards and complete license renewal procedures, but not to exceed 6 months.

(c) A conditional license shall be revoked if subsequent follow-up surveys by the agency indicate that necessary progress has not been made toward compliance with applicable licensing standards.

(d) The issuance of a conditional license does not change the biennial license expiration date.

**(3) LICENSE DENIAL.**

(a) Applicants denied a license shall be notified by the agency of their right to appeal the denial, the remedies available, and the time limit for requesting such remedies as provided under Part II of Rule Chapter 59-1, F.A.C. and Chapter 120, F.S.

(b) Pursuant to Section 429.14, F.S., agency notice of license denial following a renewal application shall be posted and visible to the public at the facility.

*Rulemaking Authority 429.41 FS. Law Implemented 429.02, 429.04, 429.07, 429.11, 429.14, 429.17, 429.174, 429.27, 429.275, 429.41, 429.47 FS. History-New 10-17-99, Amended 7-30-06.*

**58A-5.016 License Requirements.**

(1) **SERVICE PROHIBITION.** An ALF may not hold itself out to the public as providing any service other than a service for which it is licensed to provide.

(2) **LICENSE TRANSFER PROHIBITION.** Licenses are not transferable. Whenever a facility is sold or ownership is transferred, including leasing, the transferor and transferee must comply with the provisions of Section 429.41, F.S., and the transferee must submit a change of ownership license application pursuant to Rule 58A-5.014, F.A.C.

(3) **CHANGE IN USE OF SPACE REQUIRING CENTRAL OFFICE APPROVAL.** A change in the use of space that increases or decreases a facility's capacity shall not be made without prior approval from the Agency Central Office. Approval shall be based on the compliance with the physical plant standards provided in Rule 58A-5.023, F.A.C., as well as documentation of compliance with applicable fire safety and sanitation requirements as referenced in Rule 58A-5.0161, F.A.C.

(4) **CHANGE IN USE OF SPACE REQUIRING FIELD OFFICE APPROVAL.** A change in the use of space that involves converting an area to resident use, which has not previously been inspected for such use, shall not be made without prior approval from the Agency Field Office. Approval shall be based on the compliance with the physical plant standards provided in Rule 58A-5.023, F.A.C., as well as documentation of compliance with applicable fire safety and sanitation standards as referenced in Rule 58A-5.0161, F.A.C.

(5) **CONTIGUOUS PROPERTY.** If a facility consists of more than one building, all buildings included under a single license must be on contiguous property. "Contiguous property" means property under the same ownership separated by no more than a two-lane street that traverses the property. A licensed location may be expanded to include additional contiguous property with the approval of the agency to ensure continued compliance with the requirements and standards of Part I, Chapter 429, F.S., and this rule chapter.

(6) **PROOF OF INSPECTIONS.** A copy of the annual fire safety and sanitation inspections described in Rule 58A-5.0161, F.A.C., shall be submitted annually to the Agency Central Office. The annual inspections shall be submitted no later than 30 calendar days after the inspections.

Failure to comply with this requirement may result in administrative action pursuant to Section 429.14, F.S., and Rule 58A-5.033, F.A.C.

(7) **MEDICAID WAIVER RESIDENTS.** Upon request, the facility administrator or designee must identify Medicaid waiver residents to the agency and the department for monitoring purposes authorized by state and federal laws.

(8) **THIRD PARTY SERVICES.**

(a) In instances when residents require services from a third party provider, the facility administrator or designee must take action to assist in facilitating the provision of those services and coordinate with the provider to meet the specific service goals, unless residents or their representatives decline the assistance. The declination of assistance must be reviewed at least annually. These actions must be documented in the resident's record.

(b) In instances when residents or their representatives arrange for third party services, the facility administrator or designee, when requested by residents or representatives, must take action to assist in facilitating the provision of those services and coordinate with the provider to meet the specific service goals. These actions must be documented in the resident's record.

(c) The facility's facilitation and coordination as described under this subsection does not represent a guarantee that residents will receive third party services. If the facility's efforts at facilitation and coordination are unsuccessful, the facility should include this documentation in the resident's record, explaining the reason or reasons its efforts were unsuccessful, which will serve to demonstrate its compliance with this subsection.

*Rulemaking Authority 429.41 FS. Law Implemented 429.12, 429.41, 429.44, 429.445 FS. History—New 5-15-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.16, Amended 6-21-88, 9-30-92, Formerly 10A-5.016, Amended 10-30-95, 10-17-99, 7-30-06, 4-15-10.*

#### **58A-5.0161 Inspection Responsibilities.**

(1) County health departments shall be responsible for inspecting all license applicants and licensed facilities in matters regulated by:

(a) Rule 64E-12.004, F.A.C., and Rule Chapter 64E-11, F.A.C., relating to food hygiene.

(b) Chapter 64E-12, F.A.C., relating to sanitary practices in community-based residential facilities.

(c) Chapter 64E-16, F.A.C., relating to biomedical waste.

(2) The local authority having jurisdiction over fire safety or State Fire Marshall shall be responsible for inspecting all license applicants and licensed facilities in matters regulated by Section 429.41, F.S., relating to uniform fire safety standards and Chapter 69A-40, F.A.C., Uniform Fire Safety Standards for Assisted Living Facilities.

(3) The agency shall be responsible for inspecting all license applicants and licensed facilities in all other matters regulated by this rule chapter.

*Rulemaking Authority 429.41 FS. Law Implemented 429.41 FS. History—New 8-15-90, Formerly 10A-5.0161, Amended 10-30-95, 10-17-99.*

#### **58A-5.0181 Admission Procedures, Appropriateness of Placement and Continued Residency Criteria.**

(1) **ADMISSION CRITERIA.** An individual must meet the following minimum criteria in order to be admitted to a facility holding a standard, limited nursing or limited mental health license:

(a) Be at least 18 years of age.

(b) Be free from signs and symptoms of any communicable disease which is likely to be transmitted to other residents or staff; however, a person who has human immunodeficiency virus (HIV) infection may be admitted to a facility, provided that he would otherwise be eligible for admission according to this rule.

(c) Be able to perform the activities of daily living, with supervision or assistance if necessary.

(d) Be able to transfer, with assistance if necessary. The assistance of more than one person is permitted.

(e) Be capable of taking his/her own medication with assistance from staff if necessary.

1. If the individual needs assistance with self-administration the facility must inform the resident of the professional qualifications of facility staff who will be providing this assistance, and if unlicensed staff will be providing such assistance, obtain the resident's or the resident's surrogate, guardian, or attorney-in-fact's written informed consent to provide such assistance as required under Section 429.256, F.S.

2. The facility may accept a resident who requires the administration of medication, if the facility has a nurse to provide this service, or the resident or the resident's legal representative, designee, surrogate, guardian, or attorney-in-fact contracts with a licensed third party to provide this service to the resident.

(f) Any special dietary needs can be met by the facility.

(g) Not be a danger to self or others as determined by a physician, or mental health practitioner licensed under Chapters 490 or 491, F.S.

(h) Not require licensed professional mental health treatment on a 24-hour a day basis.

(i) Not be bedridden.

(j) Not have any stage 3 or 4 pressure sores. A resident requiring care of a stage 2 pressure sore may be admitted provided that:

1. The facility has a LNS license and services are provided pursuant to a plan of care issued by a physician, or the resident contracts directly with a licensed home health agency or a nurse to provide care;

2. The condition is documented in the resident's record; and

3. If the resident's condition fails to improve within 30 days, as documented by a licensed nurse or physician, the resident shall be discharged from the facility.

(k) Not require any of the following nursing services:

1. Oral, nasopharyngeal, or tracheotomy suctioning;

2. Assistance with tube feeding;

3. Monitoring of blood gases;

4. Intermittent positive pressure breathing therapy; or

5. Treatment of surgical incisions or wounds, unless the surgical incision or wound and the condition which caused it have been stabilized and a plan of care developed.

(l) Not require 24-hour nursing supervision.

(m) Not require skilled rehabilitative services as described in Rule 59G-4.290, F.A.C.

(n) Have been determined by the facility administrator to be appropriate for admission to the facility. The administrator shall base the decision on:

1. An assessment of the strengths, needs, and preferences of the individual, and the medical examination report required by Section 429.26, F.S., and subsection (2) of this rule;

2. The facility's admission policy, and the services the facility is prepared to provide or arrange for to meet resident needs; and

3. The ability of the facility to meet the uniform fire safety standards for assisted living facilities established under Section 429.41, F.S., and Rule Chapter 69A-40, F.A.C.

(o) Resident admission criteria for facilities holding an extended congregate care license are described in Rule 58A-5.030, F.A.C.

(2) **HEALTH ASSESSMENT.** As part of the admission criteria, an individual must undergo a face-to-face medical examination completed by a licensed health care provider, as specified in either paragraph (a) or (b) of this subsection.

(a) A medical examination completed within 60 calendar days prior to the individual's admission to a facility pursuant to Section 429.26(4), F.S. The examination must address the following:

1. The physical and mental status of the resident, including the identification of any health-related problems and functional limitations;
2. An evaluation of whether the individual will require supervision or assistance with the activities of daily living;
3. Any nursing or therapy services required by the individual;
4. Any special diet required by the individual;
5. A list of current medications prescribed, and whether the individual will require any assistance with the administration of medication;
6. Whether the individual has signs or symptoms of a communicable disease which is likely to be transmitted to other residents or staff;
7. A statement on the day of the examination that, in the opinion of the examining licensed health care provider, the individual's needs can be met in an assisted living facility; and
8. The date of the examination, and the name, signature, address, phone number, and license number of the examining licensed health care provider. The medical examination may be conducted by a currently licensed health care provider from another state.

(b) A medical examination completed after the resident's admission to the facility within 30 calendar days of the admission date. The examination must be recorded on AHCA Form 1823, Resident Health Assessment for Assisted Living Facilities, October 2010. The form is hereby incorporated by reference. A faxed copy of the completed form is acceptable. A copy of AHCA Form 1823 may be obtained from the Agency Central Office or its website at [www.fdhc.state.fl.us/MCHQ/Long\\_Term\\_Care/Assisted\\_living/pdf/AHCA\\_Form\\_1823%.pdf](http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/Assisted_living/pdf/AHCA_Form_1823%.pdf). The form must be completed as follows:

1. The resident's licensed health care provider must complete all of the required information in Sections 1, Health Assessment, and 2, Self-Care and General Oversight Assessment.
  - a. Items on the form that may have been omitted by the licensed health care provider during the examination do not necessarily require an additional face-to-face examination for completion.
  - b. The facility may obtain the omitted information either verbally or in writing from the licensed health care provider.
  - c. Omitted information received verbally must be documented in the resident's record, including the name of the licensed health care provider, the name of the facility staff recording the information and the date the information was provided.
2. The facility administrator, or designee, must complete Section 3 of the form, Services Offered or Arranged by the Facility, or may use electronic documentation, which at a minimum includes the elements in Section 3. This requirement does not apply for residents receiving:
  - a. Extended congregate care (ECC) services in facilities holding an ECC license;
  - b. Services under community living support plans in facilities holding limited mental health licenses;
  - c. Medicaid assistive care services; and
  - d. Medicaid waiver services.

(c) Any information required by paragraph (a) that is not contained in the medical examination report conducted prior to the individual's admission to the facility must be obtained by the administrator within 30 days after admission using AHCA Form 1823.

(d) Medical examinations of residents placed by the department, by the Department of Children and Family Services, or by an agency under contract with either department must be conducted within 30 days before placement in the facility and recorded on AHCA Form 1823 described in paragraph (b).

(e) An assessment that has been conducted through the Comprehensive, Assessment, Review and Evaluation for Long-Term Care Services (CARES) program may be substituted for the medical examination requirements of Section 429.426, F.S., and this rule.

(f) Any orders for medications, nursing, therapeutic diets, or other services to be provided or supervised by the facility issued by the licensed health care provider conducting the medical

examination may be attached to the health assessment. A licensed health care provider may attach a do-not-resuscitate order for residents who do not wish cardiopulmonary resuscitation to be administered in the case of cardiac or respiratory arrest.

(g) A resident placed on a temporary emergency basis by the Department of Children and Family Services pursuant to Section 415.105 or 415.1051, F.S., shall be exempt from the examination requirements of this subsection for up to 30 days. However, a resident accepted for temporary emergency placement shall be entered on the facility's admission and discharge log and counted in the facility census; a facility may not exceed its licensed capacity in order to accept a such a resident. A medical examination must be conducted on any temporary emergency placement resident accepted for regular admission.

(3) ADMISSION PACKAGE.

(a) The facility shall make available to potential residents a written statement(s) which includes the following information listed below. A copy of the facility resident contract or facility brochure containing all the required information shall meet this requirement.

1. The facility's residency criteria;
2. The daily, weekly or monthly charge to reside in the facility and the services, supplies, and accommodations provide by the facility for that rate;
3. Personal care services that the facility is prepared to provide to residents and additional costs to the resident, if any;
4. Nursing services that the facility is prepared to provide to residents and additional costs to the resident, if any;
5. Food service and the ability of the facility to accommodate special diets;
6. The availability of transportation and additional costs to the resident, if any;
7. Any other special services that are provided by the facility and additional cost if any;
8. Social and leisure activities generally offered by the facility;
9. Any services that the facility does not provide but will arrange for the resident and additional cost, if any;
10. A statement of facility rules and regulations that residents must follow as described in Rule 58A-5.0182, F.A.C.;
11. A statement of the facility policy concerning Do Not Resuscitate Orders pursuant to Section 429.255, F.S. and Rule 58A-5.0186, F.A.C., and Advance Directives pursuant to Chapter 765, F.S.
12. If the facility also has an extended congregate care program, the ECC program's residency criteria; and a description of the additional personal, supportive, and nursing services provided by the program; additional costs; and any limitations, if any, on where ECC residents must reside based on the policies and procedures described in Rule 58A-5.030, F.A.C.;
13. If the facility advertises that it provides special care for persons with Alzheimer's disease and related disorders, a written description of those special services as required under Section 429.177, F.S.; and
14. A copy of the facility's resident elopement response policies and procedures.

(b) Prior to or at the time of admission, the resident, responsible party, guardian, or attorney in fact, if applicable, shall be provided with the following:

1. A copy of the resident's contract which meets the requirements of Rule 58A-5.025, F.A.C.;
2. A copy of the facility statement described in paragraph (a) of this subsection if one has not already been provided;
3. A copy of the resident's bill of rights as required by Rule 58A-5.0182, F.A.C.; and
4. A Long-Term Care Ombudsman Council brochure which includes the telephone number and address of the district council.

(c) Documents required by this subsection shall be in English. If the resident is not able to read, or does not understand English and translated documents are not available, the facility must explain

its policies to a family member or friend of the resident or another individual who can communicate the information to the resident.

(4) CONTINUED RESIDENCY. Except as follows in paragraphs (a) through (e) of this subsection, criteria for continued residency in any licensed facility shall be the same as the criteria for admission. As part of the continued residency criteria, a resident must have a face-to-face medical examination by a licensed health care provider at least every 3 years after the initial assessment, or after a significant change, whichever comes first. A significant change is defined in Rule 58A-5.0131, F.A.C. The results of the examination must be recorded on AHCA Form 1823, which is incorporated by reference in paragraph (2)(b) of this rule. The form must be completed in accordance with that paragraph. After the effective date of this rule, providers shall have up to 12 months to comply with this requirement.

(a) The resident may be bedridden for up to 7 consecutive days.

(b) A resident requiring care of a stage 2 pressure sore may be retained provided that:

1. The facility has a LNS license and services are provided pursuant to a plan of care issued by a licensed health care provider, or the resident contracts directly with a licensed home health agency or a nurse to provide care;

2. The condition is documented in the resident's record; and

3. If the resident's condition fails to improve within 30 days, as documented by a licensed health care provider, the resident shall be discharged from the facility.

(c) A terminally ill resident who no longer meets the criteria for continued residency may continue to reside in the facility if the following conditions are met:

1. The resident qualifies for, is admitted to, and consents to the services of a licensed hospice which coordinates and ensures the provision of any additional care and services that may be needed;

2. Continued residency is agreeable to the resident and the facility;

3. An interdisciplinary care plan is developed and implemented by a licensed hospice in consultation with the facility. Facility staff may provide any nursing service permitted under the facility's license and total help with the activities of daily living; and

4. Documentation of the requirements of this paragraph is maintained in the resident's file.

(d) The administrator is responsible for monitoring the continued appropriateness of placement of a resident in the facility.

(e) Continued residency criteria for facilities holding an extended congregate care license are described in Rule 58A-5.030, F.A.C.

(5) DISCHARGE. If the resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or licensed health care provider, the resident shall be discharged in accordance with Section 429.28(1), F.S.

*Rulemaking Authority 429.07, 429.41 FS. Law Implemented 429.07, 429.26, 429.41 FS. History—New 9-17-84, Formerly 10A-5.181, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0181, Amended 10-30-95, 6-2-96, 10-17-99, 7-30-06, 10-9-06, 4-15-10, 10-14-10.*

#### **58A-5.0182 Resident Care Standards.**

An assisted living facility shall provide care and services appropriate to the needs of residents accepted for admission to the facility.

(1) SUPERVISION. Facilities shall offer personal supervision, as appropriate for each resident, including the following:

(a) Monitor the quantity and quality of resident diets in accordance with Rule 58A-5.020, F.A.C.

(b) Daily observation by designated staff of the activities of the resident while on the premises, and awareness of the general health, safety, and physical and emotional well-being of the individual.

(c) General awareness of the resident's whereabouts. The resident may travel independently in the community.

(d) Contacting the resident's health care provider and other appropriate party such as the resident's family, guardian, health care surrogate, or case manager if the resident exhibits a significant change; contacting the resident's family, guardian, health care surrogate, or case manager if the resident is discharged or moves out.

(e) A written record, updated as needed, of any significant changes as defined in subsection 58A-5.0131(33), F.A.C., any illnesses which resulted in medical attention, major incidents, changes in the method of medication administration, or other changes which resulted in the provision of additional services.

(2) **SOCIAL AND LEISURE ACTIVITIES.** Residents shall be encouraged to participate in social, recreational, educational and other activities within the facility and the community.

(a) The facility shall provide an ongoing activities program. The program shall provide diversified individual and group activities in keeping with each resident's needs, abilities, and interests.

(b) The facility shall consult with the residents in selecting, planning, and scheduling activities. The facility shall demonstrate residents' participation through one or more of the following methods: resident meetings, committees, a resident council, suggestion box, group discussions, questionnaires, or any other form of communication appropriate to the size of the facility.

(c) Scheduled activities shall be available at least six (6) days a week for a total of not less than twelve (12) hours per week. Watching television shall not be considered an activity for the purpose of meeting the twelve (12) hours per week of scheduled activities unless the television program is a special one-time event of special interest to residents of the facility. A facility whose residents choose to attend day programs conducted at adult day care centers, senior centers, mental health centers, or other day programs may count those attendance hours towards the required twelve (12) hours per week of scheduled activities. An activities calendar shall be posted in common areas where residents normally congregate.

(d) If residents assist in planning a special activity such as an outing, seasonal festivity, or an excursion, up to three (3) hours may be counted toward the required activity time.

(3) **ARRANGEMENT FOR HEALTH CARE.** In order to facilitate resident access to needed health care, the facility shall, as needed by each resident:

(a) Assist residents in making appointments and remind residents about scheduled appointments for medical, dental, nursing, or mental health services.

(b) Provide transportation to needed medical, dental, nursing or mental health services, or arrange for transportation through family and friends, volunteers, taxi cabs, public buses, and agencies providing transportation for persons with disabilities.

(c) The facility may not require residents to see a particular health care provider.

(4) **ACTIVITIES OF DAILY LIVING.** Facilities shall offer supervision of or assistance with activities of daily living as needed by each resident. Residents shall be encouraged to be as independent as possible in performing ADLs.

(5) **NURSING SERVICES.**

(a) Pursuant to Section 429.255, F.S., the facility may employ or contract with a nurse to:

1. Take or supervise the taking of vital signs;
2. Manage pill-organizers and administer medications as described under Rule 58A-5.0185, F.A.C.;
3. Give prepackaged enemas pursuant to a physician's order; and
4. Maintain nursing progress notes.

(b) Pursuant to Section 464.022, F.S., the nursing services listed in paragraph (a) may also be delivered in the facility by family members or friends of the resident provided the family member or friend does not receive compensation for such services.

(6) RESIDENT RIGHTS AND FACILITY PROCEDURES.

(a) A copy of the Resident Bill of Rights as described in Section 429.28, F.S., or a summary provided by the Long-Term Care Ombudsman Council shall be posted in full view in a freely accessible resident area, and included in the admission package provided pursuant to Rule 58A-5.0181, F.A.C.

(b) In accordance with Section 429.28, F.S., the facility shall have a written grievance procedure for receiving and responding to resident complaints, and for residents to recommend changes to facility policies and procedures. The facility must be able to demonstrate that such procedure is implemented upon receipt of a complaint.

(c) The address and telephone number for lodging complaints against a facility or facility staff shall be posted in full view in a common area accessible to all residents. The addresses and telephone numbers are: the District Long-Term Care Ombudsman Council, 1(888)831-0404; the Advocacy Center for Persons with Disabilities, 1(800)342-0823; the Florida Local Advocacy Council, 1(800)342-0825; and the Agency Consumer Hotline 1(888)419-3456.

(d) The statewide toll-free telephone number of the Florida Abuse Hotline “1(800)96-ABUSE or 1(800)962-2873” shall be posted in full view in a common area accessible to all residents.

(e) The facility shall have a written statement of its house rules and procedures which shall be included in the admission package provided pursuant to Rule 58A-5.0181, F.A.C. The rules and procedures shall address the facility’s policies with respect to such issues, for example, as resident responsibilities, the facility’s alcohol and tobacco policy, medication storage, the delivery of services to residents by third party providers, resident elopement, and other administrative and housekeeping practices, schedules, and requirements.

(f) Residents may not be required to perform any work in the facility without compensation, except that facility rules or the facility contract may include a requirement that residents be responsible for cleaning their own sleeping areas or apartments. If a resident is employed by the facility, the resident shall be compensated, at a minimum, at an hourly wage consistent with the federal minimum wage law.

(g) The facility shall provide residents with convenient access to a telephone to facilitate the resident’s right to unrestricted and private communication, pursuant to Section 429.28(1)(d), F.S. The facility shall not prohibit unidentified telephone calls to residents. For facilities with a licensed capacity of 17 or more residents in which residents do not have private telephones, there shall be, at a minimum, an accessible telephone on each floor of each building where residents reside.

(h) Pursuant to Section 429.41, F.S., the use of physical restraints shall be limited to half-bed rails, and only upon the written order of the resident’s physician, who shall review the order biannually, and the consent of the resident or the resident’s representative. Any device, including half-bed rails, which the resident chooses to use and can remove or avoid without assistance shall not be considered a physical restraint.

(7) THIRD PARTY SERVICES. Nothing in this rule chapter is intended to prohibit a resident or the resident’s representative from independently arranging, contracting, and paying for services provided by a third party of the resident’s choice, including a licensed home health agency or private nurse, or receiving services through an out-patient clinic, provided the resident meets the criteria for continued residency and the resident complies with the facility’s policy relating to the delivery of services in the facility by third parties. The facility’s policies may require the third party to coordinate with the facility regarding the resident’s condition and the services being provided pursuant to subsection 58A-5.016(8), F.A.C. Pursuant to subsection (6) of this rule, the facility shall provide the resident with the facility’s policy regarding the provision of services to residents by non-facility staff.

(8) ELOPEMENT STANDARDS.

(a) Residents Assessed at Risk for Elopement. All residents assessed at risk for elopement or with any history of elopement shall be identified so staff can be alerted to their needs for support and supervision.

1. As part of its resident elopement response policies and procedures, the facility shall make, at a minimum, a daily effort to determine that at risk residents have identification on their persons that includes their name and the facility's name, address, and telephone number. Staff attention shall be directed towards residents assessed at high risk for elopement, with special attention given to those with Alzheimer's disease and related disorders assessed at high risk.

2. At a minimum, the facility shall have a photo identification of at risk residents on file that is accessible to all facility staff and law enforcement as necessary. The photo identification shall be made available for the file within 10 calendar days of admission. In the event a resident is assessed at risk for elopement subsequent to admission, photo identification shall be made available for the file within 10 calendar days after a determination is made that the resident is at risk for elopement. The photo identification may be taken by the facility or provided by the resident or resident's family/caregiver.

(b) Facility Resident Elopement Response Policies and Procedures. The facility shall develop detailed written policies and procedures for responding to a resident elopement. At a minimum, the policies and procedures shall include:

1. An immediate staff search of the facility and premises;
2. The identification of staff responsible for implementing each part of the elopement response policies and procedures, including specific duties and responsibilities;
3. The identification of staff responsible for contacting law enforcement, the resident's family, guardian, health care surrogate, and case manager if the resident is not located pursuant to subparagraph (8)(b)1.; and
4. The continued care of all residents within the facility in the event of an elopement.

(c) Facility Resident Elopement Drills. The facility shall conduct resident elopement drills pursuant to Sections 429.41(1)(a)3. and 429.41(1)(l), F.S.

(9) OTHER STANDARDS. Additional care standards for residents residing in a facility holding a limited mental health, extended congregate care or limited nursing services license are provided in Rules 58A-5.029, 58A-5.030 and 58A-5.031, F.A.C., respectively.

*Rulemaking Authority 429.41 FS. Law Implemented 429.02, 429.255, 429.256, 429.26, 429.28, 429.41 FS. History—New 9-17-84, Formerly 10A-5.182, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0182, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, 7-30-06, 10-9-06, 4-15-10.*

#### **58A-5.0183 Reports of Abuse in Facilities.**

*Rulemaking Authority 400.441 FS. Law Implemented 400.4174 FS. History—New 8-15-90, Formerly 10A-5.0183, Repealed 10-30-95.*

#### **58A-5.0184 Marketing; Rebates Prohibited.**

*Rulemaking Authority 400.441 FS. Law Implemented 400.4195, 400.441, 400.447 FS. History—New 8-15-90, Amended 9-30-92, Formerly 10A-5.0184, Amended 10-30-95, 6-2-96, Repealed 10-17-99.*

#### **58A-5.0185 Medication Practices.**

Pursuant to Sections 429.255 and 429.256, F.S., and this rule, licensed facilities may assist with the self-administration or administration of medications to residents in a facility. A resident may not be compelled to take medications but may be counseled in accordance with this rule.

##### **(1) SELF ADMINISTERED MEDICATIONS.**

(a) Residents who are capable of self-administering their medications without assistance shall be encouraged and allowed to do so.

(b) If facility staff note deviations which could reasonably be attributed to the improper self-administration of medication, staff shall consult with the resident concerning any problems the

resident may be experiencing with the medications; the need to permit the facility to aid the resident through the use of a pill organizer, provide assistance with self-administration of medications, or administer medications if such services are offered by the facility. The facility shall contact the resident's health care provider when observable health care changes occur that may be attributed to the resident's medications. The facility shall document such contacts in the resident's records.

**(2) PILL ORGANIZERS.**

(a) A "pill organizer" means a container which is designed to hold solid doses of medication and is divided according to day and time increments.

(b) A resident who self-administers medications may use a pill organizer.

(c) A nurse may manage a pill organizer to be used only by residents who self-administer medications. The nurse is responsible for instructing the resident in the proper use of the pill organizer. The nurse shall manage the pill organizer in the following manner:

1. Obtain the labeled medication container from the storage area or the resident;
2. Transfer the medication from the original container into a pill organizer, labeled with the resident's name, according to the day and time increments as prescribed;
3. Return the medication container to the storage area or resident; and
4. Document the date and time the pill organizer was filled in the resident's record.

(d) If there is a determination that the resident is not taking medications as prescribed after the medicinal benefits are explained, it shall be noted in the resident's record and the facility shall consult with the resident concerning providing assistance with self-administration or the administration of medications if such services are offered by the facility. The facility shall contact the resident's health care provider regarding questions, concerns, or observations relating to the resident's medications. Such communication shall be documented in the resident's record.

**(3) ASSISTANCE WITH SELF-ADMINISTRATION.**

(a) For facilities which provide assistance with self-administered medication, either: a nurse; or an unlicensed staff member, who is at least 18 years old, trained to assist with self-administered medication in accordance with Rule 58A-5.0191, F.A.C., and able to demonstrate to the administrator the ability to accurately read and interpret a prescription label, must be available to assist residents with self-administered medications in accordance with procedures described in Section 429.256, F.S.

(b) Assistance with self-administration of medication includes verbally prompting a resident to take medications as prescribed, retrieving and opening a properly labeled medication container, and providing assistance as specified in Section 429.256(3), F.S. In order to facilitate assistance with self-administration, staff may prepare and make available such items as water, juice, cups, and spoons. Staff may also return unused doses to the medication container. Medication, which appears to have been contaminated, shall not be returned to the container.

(c) Staff shall observe the resident take the medication. Any concerns about the resident's reaction to the medication shall be reported to the resident's health care provider and documented in the resident's record.

(d) When a resident who receives assistance with medication is away from the facility and from facility staff, the following options are available to enable the resident to take medication as prescribed:

1. The health care provider may prescribe a medication schedule which coincides with the resident's presence in the facility;
2. The medication container may be given to the resident or a friend or family member upon leaving the facility, with this fact noted in the resident's medication record;
3. The medication may be transferred to a pill organizer pursuant to the requirements of subsection (2), and given to the resident, a friend, or family member upon leaving the facility, with this fact noted in the resident's medication record; or

4. Medications may be separately prescribed and dispensed in an easier to use form, such as unit dose packaging;

(e) Pursuant to Section 429.256(4)(h), F.S., the term “competent resident” means that the resident is cognizant of when a medication is required and understands the purpose for taking the medication.

(f) Pursuant to Section 429.256(4)(i), F.S., the terms “judgment” and “discretion” mean interpreting vital signs and evaluating or assessing a resident’s condition.

(4) MEDICATION ADMINISTRATION.

(a) For facilities which provide medication administration a staff member, who is licensed to administer medications, must be available to administer medications in accordance with a health care provider’s order or prescription label.

(b) Unusual reactions or a significant change in the resident’s health or behavior shall be documented in the resident’s record and reported immediately to the resident’s health care provider. The contact with the health care provider shall also be documented in the resident’s record.

(c) Medication administration includes the conducting of any examination or testing such as blood glucose testing or other procedure necessary for the proper administration of medication that the resident cannot conduct himself and that can be performed by licensed staff.

(d) A facility which performs clinical laboratory tests for residents, including blood glucose testing, must be in compliance with the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) and Part I of Chapter 483, F.S. A valid copy of the State Clinical Laboratory License and the CLIA Certificate must be maintained in the facility. A state license or CLIA certificate is not required if residents perform the test themselves or if a third party assists residents in performing the test. The facility is not required to maintain a State Clinical Laboratory License or a CLIA Certificate if facility staff assist residents in performing clinical laboratory testing with the residents’ own equipment. Information about the State Clinical Laboratory License and CLIA Certificate is available from the Clinical Laboratory Licensure Unit, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 32, Tallahassee, FL 32308; telephone (850)487-3109.

(5) MEDICATION RECORDS.

(a) For residents who use a pill organizer managed under subsection (2), the facility shall keep either the original labeled medication container; or a medication listing with the prescription number, the name and address of the issuing pharmacy, the health care provider’s name, the resident’s name, the date dispensed, the name and strength of the drug, and the directions for use.

(b) The facility shall maintain a daily medication observation record (MOR) for each resident who receives assistance with self-administration of medications or medication administration. A MOR must include the name of the resident and any known allergies the resident may have; the name of the resident’s health care provider, the health care provider’s telephone number; the name, strength, and directions for use of each medication; and a chart for recording each time the medication is taken, any missed dosages, refusals to take medication as prescribed, or medication errors. The MOR must be immediately updated each time the medication is offered or administered.

(c) For medications which serve as chemical restraints, the facility shall, pursuant to Section 429.41, F.S., maintain a record of the prescribing physician’s annual evaluation of the use of the medication.

(6) MEDICATION STORAGE AND DISPOSAL.

(a) In order to accommodate the needs and preferences of residents and to encourage residents to remain as independent as possible, residents may keep their medications, both prescription and over-the-counter, in their possession both on or off the facility premises; or in their rooms or apartments, which must be kept locked when residents are absent, unless the medication is in a secure place within the rooms or apartments or in some other secure place which is out of sight of

other residents. However, both prescription and over-the-counter medications for residents shall be centrally stored if:

1. The facility administers the medication;
2. The resident requests central storage. The facility shall maintain a list of all medications being stored pursuant to such a request;
3. The medication is determined and documented by the health care provider to be hazardous if kept in the personal possession of the person for whom it is prescribed;
4. The resident fails to maintain the medication in a safe manner as described in this paragraph;
5. The facility determines that because of physical arrangements and the conditions or habits of residents, the personal possession of medication by a resident poses a safety hazard to other residents; or
6. The facility's rules and regulations require central storage of medication and that policy has been provided to the resident prior to admission as required under Rule 58A-5.0181, F.A.C.

(b) Centrally stored medications must be:

1. Kept in a locked cabinet, locked cart, or other locked storage receptacle, room, or area at all times;
2. Located in an area free of dampness and abnormal temperature, except that a medication requiring refrigeration shall be refrigerated. Refrigerated medications shall be secured by being kept in a locked container within the refrigerator, by keeping the refrigerator locked, or by keeping the area in which refrigerator is located locked;
3. Accessible to staff responsible for filling pill-organizers, assisting with self-administration, or administering medication. Such staff must have ready access to keys to the medication storage areas at all times; and
4. Kept separately from the medications of other residents and properly closed or sealed.

(c) Medication which has been discontinued but which has not expired shall be returned to the resident or the resident's representative, as appropriate, or may be centrally stored by the facility for future resident use by the resident at the resident's request. If centrally stored by the facility, it shall be stored separately from medication in current use, and the area in which it is stored shall be marked "discontinued medication." Such medication may be reused if re-prescribed by the resident's health care provider.

(d) When a resident's stay in the facility has ended, the administrator shall return all medications to the resident, the resident's family, or the resident's guardian unless otherwise prohibited by law. If, after notification and waiting at least 15 days, the resident's medications are still at the facility, the medications shall be considered abandoned and may be disposed of in accordance with paragraph (e).

(e) Medications which have been abandoned or which have expired must be disposed of within 30 days of being determined abandoned or expired and disposition shall be documented in the resident's record. The medication may be taken to a pharmacist for disposal or may be destroyed by the administrator or designee with one witness.

(f) Facilities that hold a Special-ALF permit issued by the Board of Pharmacy may return dispensed medicinal drugs to the dispensing pharmacy pursuant to Rule 64B16-28.870, F.A.C.

**(7) MEDICATION LABELING AND ORDERS.**

(a) No prescription drug shall be kept or administered by the facility, including assistance with self-administration of medication, unless it is properly labeled and dispensed in accordance with Chapters 465 and 499, F.S., and Rule 64B16-28.108, F.A.C. If a customized patient medication package is prepared for a resident, and separated into individual medicinal drug containers, then the following information must be recorded on each individual container:

1. The resident's name; and
2. Identification of each medicinal drug product in the container.

(b) Except with respect to the use of pill organizers as described in subsection (2), no person other than a pharmacist may transfer medications from one storage container to another.

(c) If the directions for use are “as needed” or “as directed,” the health care provider shall be contacted and requested to provide revised instructions. For an “as needed” prescription, the circumstances under which it would be appropriate for the resident to request the medication and any limitations shall be specified; for example, “as needed for pain, not to exceed 4 tablets per day.” The revised instructions, including the date they were obtained from the health care provider and the signature of the staff who obtained them, shall be noted in the medication record, or a revised label shall be obtained from the pharmacist.

(d) Any change in directions for use of a medication for which the facility is providing assistance with self-administration or administering medication must be accompanied by a written medication order issued and signed by the resident’s health care provider, or a faxed copy of such order. The new directions shall promptly be recorded in the resident’s medication observation record. The facility may then place an “alert” label on the medication container which directs staff to examine the revised directions for use in the MOR, or obtain a revised label from the pharmacist.

(e) A nurse may take a medication order by telephone. Such order must be promptly documented in the resident’s medication observation record. The facility must obtain a written medication order from the health care provider within 10 working days. A faxed copy of a signed order is acceptable.

(f) The facility shall make every reasonable effort to ensure that prescriptions for residents who receive assistance with self-administration of medication or medication administration are filled or refilled in a timely manner.

(g) Pursuant to Section 465.0276(5), F.S., and Rule 64F-12.006, F.A.C., sample or complimentary prescription drugs that are dispensed by a health care provider, must be kept in their original manufacturer’s packaging, which shall also include the practitioner’s name, the resident’s name for whom they were dispensed, and the date they were dispensed. If the sample or complimentary prescription drugs are not dispensed in the manufacturer’s labeled package, they shall be kept in a container that bears a label containing the following:

1. Practitioner’s name;
2. Resident’s name;
3. Date dispensed;
4. Name and strength of the drug;
5. Directions for use; and
6. Expiration date.

(h) Pursuant to Section 465.0276(2)(c), F.S., before dispensing any sample or complimentary prescription drug, the resident’s health care provider shall provide the resident with a written prescription, or a fax copy of such order.

(8) **OVER THE COUNTER (OTC) PRODUCTS.** For purposes of this subsection, the term OTC includes, but is not limited to, OTC medications, vitamins, nutritional supplements and nutraceuticals, hereafter referred to as OTC products, which can be sold without a prescription.

(a) A stock supply of OTC products for multiple resident use is not permitted in any facility.

(b) OTC products, including those prescribed by a licensed health care provider, must be labeled with the resident’s name and the manufacturer’s label with directions for use, or the licensed health care provider’s directions for use. No other labeling requirements are necessary nor should be required.

(c) Residents or their representatives may purchase OTC products from an establishment of their choice.

(d) A facility cannot require a licensed health care provider’s order for all OTC products when a resident self-administers his or her own medications, or when staff provides assistance with self-administration of medications pursuant to Section 429.256, F.S. A licensed health care provider’s order is required when a licensed nurse provides assistance with self-administration or administration of medications, which includes OTC products. When such an order for an OTC product exists, only the requirements of paragraphs (b) and (c) of this subsection are required.

*Rulemaking Authority 429.256, 429.41 FS. Law Implemented 429.255, 429.256, 429.41 FS. History—New 10-17-99, Amended 7-30-06, 4-15-10, 10-14-10.*

**58A-5.0186 Do Not Resuscitate Orders (DNROs).**

(1) POLICIES AND PROCEDURES.

(a) Each assisted living facility (ALF) must have written policies and procedures, which delineate its position with respect to state laws and rules relative to DNROs. The policies and procedures shall not condition treatment or admission upon whether or not the individual has executed or waived a DNRO. The ALF must provide the following to each resident, or resident's representative, at the time of admission:

1. A copy of Form SCHS-4-2006, "Health Care Advance Directives – The Patient's Right to Decide," April 2006, or with a copy of some other substantially similar document, which incorporates information regarding advance directives included in Chapter 765, F.S. Form SCHS-4-2006 is available from the Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 34, Tallahassee, FL 32308, or the agency's Web site at:

[http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/HC\\_Advance\\_Directives/docs/adv\\_dir.pdf](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/HC_Advance_Directives/docs/adv_dir.pdf); and

2. Written information concerning the ALF's policies regarding DNROs; and

3. Information about how to obtain DH Form 1896, Florida Do Not Resuscitate Order Form, incorporated by reference in Rule 64J-2.018, F.A.C.

(b) There must be documentation in the resident's record indicating whether or not he or she has executed a DNRO. If a DNRO has been executed, a copy of that document must be made a part of the resident's record. If the ALF does not receive a copy of a resident's executed DNRO, the ALF must document in the resident's record that it has requested a copy.

(2) LICENSE REVOCATION. An ALF shall be subject to revocation of its license pursuant to Section 408.815, F.S., if, as a condition of treatment or admission, it requires an individual to execute or waive a DNRO.

(3) DNRO PROCEDURES. Pursuant to Section 429.255, F.S., an ALF must honor a properly executed DNRO as follows:

(a) In the event a resident experiences cardiopulmonary arrest, staff trained in cardiopulmonary resuscitation (CPR), or a licensed health care provider present in the facility, may withhold cardiopulmonary resuscitation.

(b) In the event a resident is receiving hospice services and experiences cardiopulmonary arrest, facility staff must immediately contact the hospice. The hospice procedures shall take precedence over those of the assisted living facility.

(4) LIABILITY. Pursuant to Section 429.255, F.S., ALF providers shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for following the procedures set forth in subsection (3) of this rule, which involves withholding or withdrawing cardiopulmonary resuscitation pursuant to a Do Not Resuscitate Order and rules adopted by the department.

*Rulemaking Authority 429.255 FS. Law Implemented 429.255 FS. History—New 4-15-10.*

**58A-5.019 Staffing Standards.**

(1) ADMINISTRATORS. Every facility shall be under the supervision of an administrator who is responsible for the operation and maintenance of the facility including the management of all staff and the provision of adequate care to all residents as required by Part I of Chapter 429, F.S., and this rule chapter.

(a) The administrators shall:

1. Be at least 21 years of age;

2. If employed on or after August 15, 1990, have a high school diploma or general equivalency diploma (G.E.D.), or have been an operator or administrator of a licensed assisted living facility in

the State of Florida for at least one of the past 3 years in which the facility has met minimum standards. Administrators employed on or after October 30, 1995, must have a high school diploma or G.E.D.;

3. Be in compliance with Level 2 background screening standards pursuant to Section 429.174, F.S.; and

4. Complete the core training requirement pursuant to Rule 58A-5.0191, F.A.C.

(b) Administrators may supervise a maximum of either three assisted living facilities or a combination of housing and health care facilities or agencies on a single campus. However, administrators who supervise more than one facility shall appoint in writing a separate “manager” for each facility who must:

1. Be at least 21 years old; and

2. Complete the core training requirement pursuant to Rule 58A-5.0191, F.A.C.

(c) Pursuant to Section 429.176, F.S., facility owners shall notify both the Agency Field Office and Agency Central Office within ten (10) days of a change in a facility administrator on the Notification of Change of Administrator, AHCA Form 3180-1006, January 2006, which is incorporated by reference and may be obtained from the Agency Central Office. The Agency Central Office shall conduct a background screening on the new administrator in accordance with Section 429.174, F.S., and Rule 58A-5.014, F.A.C.

(2) STAFF.

(a) Newly hired staff shall have 30 days to submit a statement from a health care provider, based on an examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis. Freedom from tuberculosis must be documented on an annual basis. A person with a positive tuberculosis test must submit a health care provider’s statement that the person does not constitute a risk of communicating tuberculosis. Newly hired staff does not include an employee transferring from one facility to another that is under the same management or ownership, without a break in service. If any staff member is later found to have, or is suspected of having, a communicable disease, he/she shall be removed from duties until the administrator determines that such condition no longer exists.

(b) All staff shall be assigned duties consistent with his/her level of education, training, preparation, and experience. Staff providing services requiring licensing or certification must be appropriately licensed or certified. All staff shall exercise their responsibilities, consistent with their qualifications, to observe residents, to document observations on the appropriate resident’s record, and to report the observations to the resident’s health care provider in accordance with this rule chapter.

(c) All staff must comply with the training requirements of Rule 58A-5.0191, F.A.C.

(d) Staff provided by a staffing agency or employed by a business entity contracting to provide direct or indirect services to residents must be qualified for the position in accordance with this rule chapter. The contract between the facility and the staffing agency or contractor shall specifically describe the services the staffing agency or contractor will be providing to residents.

(e) For facilities with a licensed capacity of 17 or more residents, the facility shall:

1. Develop a written job description for each staff position and provide a copy of the job description to each staff member; and

2. Maintain time sheets for all staff.

(3) BACKGROUND SCREENING.

(a) All staff, who are hired on or after October 1, 1998, to provide personal services to residents, must be screened in accordance with Section 429.174, F.S., and meet the screening standards of Section 435.03, F.S. A packet containing background screening forms and instructions may be obtained from the Agency Background Screening Unit, 2727 Mahan Drive, Tallahassee, FL 32308; telephone (850)410-3400. Within ten (10) days of an individual’s employment, the facility shall submit the following to the Agency Background Screening Unit:

1. A completed Level 1 Criminal History Request, AHCA Form 3110-0002, July 2005, which is incorporated by reference and may be obtained in the screening packet referenced in paragraph (3)(a) of this rule; and

2. A check to cover the cost of screening.

(b) The results of employee screening conducted by the agency shall be maintained in the employee's personnel file.

(c) Staff with the following documentation in their personnel records shall be considered to have met the required screening requirement:

1. A copy of their current professional license, proof that a criminal history screening has been conducted, and an affidavit of current compliance with Section 435.03, F.S.;

2. Proof of continuous employment in an occupation which requires Level 1 screening without a break in employment that exceeds 180 days, and proof that a criminal history screening has been conducted within the previous two (2) years; or

3. Proof of employment with a corporation or business entity or related entity that owns, operates, or manages more than one facility or agency licensed under Chapter 400, F.S., that conducted Level 1 screening as a condition of initial or continued employment.

(4) STAFFING STANDARDS.

(a) Minimum staffing:

1. Facilities shall maintain the following minimum staff hours per week:

Number of Residents	Staff Hours/Week
0-5	168
6-15	212
16- 25	253
26-35	294
36-45	335
46-55	375
56- 65	416
66-75	457
76-85	498
86-95	539

For every 20 residents over 95 add 42 staff hours per week.

2. At least one staff member who has access to facility and resident records in case of an emergency shall be within the facility at all times when residents are in the facility. Residents serving as paid or volunteer staff may not be left solely in charge of other residents while the facility administrator, manager or other staff are absent from the facility.

3. In facilities with 17 or more residents, there shall be at least one staff member awake at all hours of the day and night.

4. At least one staff member who is trained in First Aid and CPR, as provided under Rule 58A-5.0191, F.A.C., shall be within the facility at all times when residents are in the facility.

5. During periods of temporary absence of the administrator or manager when residents are on the premises, a staff member who is at least 18 years of age, must be designated in writing to be in charge of the facility.

6. Staff whose duties are exclusively building maintenance, clerical, or food preparation shall not be counted toward meeting the minimum staffing hours requirement.

7. The administrator or manager's time may be counted for the purpose of meeting the required staffing hours provided the administrator is actively involved in the day-to-day operation of the facility, including making decisions and providing supervision for all aspects of resident care, and is listed on the facility's staffing schedule.

8. Only on-the-job staff may be counted in meeting the minimum staffing hours. Vacant positions or absent staff may not be counted.

(b) Notwithstanding the minimum staffing requirements specified in paragraph (a), all facilities, including those composed of apartments, shall have enough qualified staff to provide resident supervision, and to provide or arrange for resident services in accordance with the residents scheduled and unscheduled service needs, resident contracts, and resident care standards as described in Rule 58A-5.0182, F.A.C.

(c) The facility must maintain a written work schedule which reflects its 24-hour staffing pattern for a given time period. Upon request, the facility must make the daily work schedules for direct care staff available to residents or representatives, specific to the resident's care.

(d) The facility shall be required to provide staff immediately when the Agency determines that the requirements of paragraph (a) are not met. The facility shall also be required to immediately increase staff above the minimum levels established in paragraph (a) if the Agency determines that adequate supervision and care are not being provided to residents, resident care standards described in Rule 58A-5.0182, F.A.C., are not being met, or that the facility is failing to meet the terms of residents' contracts. The Agency shall consult with the facility administrator and residents regarding any determination that additional staff is required.

1. When additional staff is required above the minimum, the agency shall require the submission, within the time specified in the notification, of a corrective action plan indicating how the increased staffing is to be achieved and resident service needs will be met. The plan shall be reviewed by the agency to determine if the plan will increase the staff to needed levels and meet resident needs.

2. When the facility can demonstrate to the agency that resident needs are being met, or that resident needs can be met without increased staffing, modifications may be made in staffing requirements for the facility and the facility shall no longer be required to maintain a plan with the agency.

3. Based on the recommendations of the local fire safety authority, the Agency may require additional staff when the facility fails to meet the fire safety standards described in Section 429.41, F.S., and Rule Chapter 69A-40, F.A.C., until such time as the local fire safety authority informs the Agency that fire safety requirements are being met.

(e) Facilities that are co-located with a nursing home may use shared staffing provided that staff hours are only counted once for the purpose of meeting either assisted living facility or nursing home minimum staffing ratios.

(f) Facilities holding a limited mental health, extended congregate care, or limited nursing services license must also comply with the staffing requirements of Rule 58A-5.029, 58A-5.030, or 58A-5.031, F.A.C., respectively.

*Rulemaking Authority 429.41, 429.52, 429.275 FS. Law Implemented 429.02, 429.174, 429.24, 429.275, 429.41, 429.52 FS. History—New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.19, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.019, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, 7-30-06, 4-15-10.*

#### **58A-5.0191 Staff Training Requirements and Competency Test.**

##### **(1) ASSISTED LIVING FACILITY CORE TRAINING REQUIREMENTS AND COMPETENCY TEST.**

(a) The assisted living facility core training requirements established by the department pursuant to Section 429.52, F.S., shall consist of a minimum of 26 hours of training plus a competency test.

(b) Administrators and managers must successfully complete the assisted living facility core training requirements within 3 months from the date of becoming a facility administrator or manager. Successful completion of the core training requirements includes passing the competency test. The minimum passing score for the competency test is 75%. Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, shall not be required to take the competency test. Administrators licensed

as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

(c) Administrators and managers shall participate in 12 hours of continuing education in topics related to assisted living every 2 years as provided under Section 429.52, F.S.

(d) A newly hired administrator or manager who has successfully completed the assisted living facility core training and continuing education requirements, shall not be required to retake the core training. An administrator or manager who has successfully completed the core training but has not maintained the continuing education requirements will be considered a new administrator or manager for the purposes of the core training requirements and must:

1. Retake the assisted living facility core training; and
2. Retake and pass the competency test.

(e) The fees for the competency test shall not exceed \$200. The payment for the competency test fee shall be remitted to the entity administering the test. A new fee is due each time the test is taken.

(2) STAFF IN-SERVICE TRAINING. Facility administrators or managers shall provide or arrange for the following in-service training to facility staff:

(a) Staff who provide direct care to residents, other than nurses, certified nursing assistants, or home health aides trained in accordance with Rule 59A-8.0095, F.A.C., must receive a minimum of 1 hour in-service training in infection control, including universal precautions, and facility sanitation procedures before providing personal care to residents. Documentation of compliance with the staff training requirements of 29 CFR 1910.1030, relating to blood borne pathogens, may be used to meet this requirement.

(b) Staff who provide direct care to residents must receive a minimum of 1 hour in-service training within 30 days of employment that covers the following subjects:

1. Reporting major incidents.
2. Reporting adverse incidents.
3. Facility emergency procedures including chain-of-command and staff roles relating to emergency evacuation.

(c) Staff who provide direct care to residents, who have not taken the core training program, shall receive a minimum of 1 hour in-service training within 30 days of employment that covers the following subjects:

1. Resident rights in an assisted living facility.
2. Recognizing and reporting resident abuse, neglect, and exploitation.

(d) Staff who provide direct care to residents, other than nurses, CNAs, or home health aides trained in accordance with Rule 59A-8.0095, F.A.C., must receive 3 hours of in-service training within 30 days of employment that covers the following subjects:

1. Resident behavior and needs.
2. Providing assistance with the activities of daily living.

(e) Staff who prepare or serve food, who have not taken the assisted living facility core training must receive a minimum of 1-hour-in-service training within 30 days of employment in safe food handling practices.

(f) All facility staff shall receive in-service training regarding the facility's resident elopement response policies and procedures within thirty (30) days of employment.

1. All facility staff shall be provided with a copy of the facility's resident elopement response policies and procedures.

2. All facility staff shall demonstrate an understanding and competency in the implementation of the elopement response policies and procedures.

(3) HUMAN IMMUNODEFICIENCY VIRUS/ACQUIRED IMMUNE DEFICIENCY SYNDROME (HIV/AIDS). Pursuant to Section 381.0035, F.S., all facility employees, with the exception of employees subject to the requirements of Section 456.033, F.S., must complete a one-time education course on HIV and AIDS, including the topics prescribed in the Section 381.0035,

F.S. New facility staff must obtain the training within 30 days of employment. Documentation of compliance must be maintained in accordance with subsection (12) of this rule.

(4) **FIRST AID AND CARDIOPULMONARY RESUSCITATION (CPR).** A staff member who has completed courses in First Aid and CPR and holds a currently valid card documenting completion of such courses must be in the facility at all times.

(a) Documentation of attendance at First Aid or CPR course offered by an accredited college, university or vocational school; a licensed hospital; the American Red Cross, American Heart Association, or National Safety Council; or a provider approved by the Department of Health, shall satisfy this requirement.

(b) A nurse shall be considered as having met the training requirement for First Aid. An emergency medical technician or paramedic currently certified under Part III of Chapter 401, F.S., shall be considered as having met the training requirements for both First Aid and CPR.

(5) **ASSISTANCE WITH SELF-ADMINISTERED MEDICATION AND MEDICATION MANAGEMENT.** Unlicensed persons who will be providing assistance with self-administered medications as described in Rule 58A-5.0185, F.A.C., must meet the training requirements pursuant to Section 429.52(5), F.S., prior to assuming this responsibility. Courses provided in fulfillment of this requirement must meet the following criteria:

(a) Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in assisted living facilities; procedures and techniques for assisting the resident with self-administration of medication including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training shall include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises.

(b) The training must be provided by a registered nurse or licensed pharmacist who shall issue a training certificate to a trainee who demonstrates an ability to:

1. Read and understand a prescription label;

2. Provide assistance with self-administration in accordance with Section 429.256, F.S., and Rule 58A-5.0185, F.A.C., including:

a. Assist with oral dosage forms, topical dosage forms, and topical ophthalmic, otic and nasal dosage forms;

b. Measure liquid medications, break scored tablets, and crush tablets in accordance with prescription directions;

c. Recognize the need to obtain clarification of an “as needed” prescription order;

d. Recognize a medication order which requires judgment or discretion, and to advise the resident, resident’s health care provider or facility employer of inability to assist in the administration of such orders;

e. Complete a medication observation record;

f. Retrieve and store medication; and

g. Recognize the general signs of adverse reactions to medications and report such reactions.

(c) Unlicensed persons, as defined in Section 429.256(1)(b), F.S., who provide assistance with self-administered medications and have successfully completed the initial 4 hour training, must obtain, annually, a minimum of 2 hours of continuing education training on providing assistance with self-administered medications and safe medication practices in an assisted living facility. The 2 hours of continuing education training shall only be provided by a licensed registered nurse, or a licensed pharmacist.

(6) **NUTRITION AND FOOD SERVICE.** The administrator or person designated by the administrator as responsible for the facility’s food service and the day-to-day supervision of food service staff must obtain, annually, a minimum of 2 hours continuing education in topics pertinent

to nutrition and food service in an assisted living facility. A certified food manager, licensed dietician, registered dietary technician or health department sanitarians are qualified to train assisted living facility staff in nutrition and food service.

(7) EXTENDED CONGREGATE CARE TRAINING.

(a) The administrator and extended congregate care supervisor, if different from the administrator, must complete core training and 4 hours of initial training in extended congregate care prior to the facility's receiving its extended congregate care license or within 3 months of beginning employment in the facility as an administrator or ECC supervisor. Successful completion of the assisted living facility core training shall be a prerequisite for this training. ECC supervisors who attended the assisted living facility core training prior to April 20, 1998, shall not be required to take the assisted living facility core training competency test.

(b) The administrator and the extended congregate care supervisor, if different from the administrator, must complete a minimum of 4 hours of continuing education every two years in topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons with Alzheimer's disease or related disorders.

(c) All direct care staff providing care to residents in an extended congregate care program must complete at least 2 hours of in-service training, provided by the facility administrator or ECC supervisor, within 6 months of beginning employment in the facility. The training must address extended congregate care concepts and requirements, including statutory and rule requirements, and delivery of personal care and supportive services in an extended congregate care facility.

(8) LIMITED MENTAL HEALTH TRAINING.

(a) Pursuant to Section 429.075, F.S., the administrator, managers and staff, who have direct contact with mental health residents in a licensed limited mental health facility, must receive the following training:

1. A minimum of 6 hours of specialized training in working with individuals with mental health diagnoses.

a. The training must be provided or approved by the Department of Children and Families and must be taken within 6 months of the facility's receiving a limited mental health license or within 6 months of employment in a limited mental health facility.

b. Staff in "direct contact" means direct care staff and staff whose duties take them into resident living areas and require them to interact with mental health residents on a daily basis. The term does not include maintenance, food service or administrative staff, if such staff have only incidental contact with mental health residents.

c. Training received under this subparagraph may count once for 6 of the 12 hours of continuing education required for administrators and managers pursuant to Section 429.52(4), F.S., and subsection (1) of this rule.

2. A minimum of 3 hours of continuing education, which may be provided by the ALF administrator or through distance learning, biennially thereafter in subjects dealing with one or more of the following topics:

a. Mental health diagnoses; and

b. Mental health treatment such as mental health needs, services, behaviors and appropriate interventions; resident progress in achieving treatment goals; how to recognize changes in the resident's status or condition that may affect other services received or may require intervention; and crisis services and the Baker Act procedures.

3. For administrators and managers, the continuing education requirement under this subsection will satisfy 3 of the 12 hours of continuing education required biennially pursuant to Section 429.52(4), F.S., and subsection (1) of this rule.

4. Administrators, managers and direct contact staff affected by the continuing education requirement under this subsection shall have up to 6 months after the effective date of this rule to meet the training requirement.

(b) Administrators, managers and staff do not have to repeat the initial training should they change employers provided they present a copy of their training certificate to the current employer for retention in the facility's personnel files. They must also ensure that copies of the continuing education training certificates, pursuant to subparagraph (a)2. of this subsection, are retained in their personnel files.

(9) ALZHEIMER'S DISEASE AND RELATED DISORDERS ("ADRD") TRAINING REQUIREMENTS. Facilities which advertise that they provide special care for persons with ADRD, or who maintain secured areas as described in Chapter 4, Section 434.4.6 of the Florida Building Code, as adopted in Rule 9N-1.001, F.A.C., Florida Building Code Adopted, must ensure that facility staff receive the following training.

(a) Facility staff who have regular contact with or provide direct care to residents with ADRD, shall obtain 4 hours of initial training within 3 months of employment. Completion of the core training program between April 20, 1998 and July 1, 2003 shall satisfy this requirement. Facility staff who meet the requirements for ADRD training providers under paragraph (g) of this subsection will be considered as having met this requirement. "Staff who have regular contact" means staff who interact on a daily basis with residents but do not provide direct care to residents. Initial training, entitled "Alzheimer's Disease and Related Disorders Level I Training," must address the following subject areas:

1. Understanding Alzheimer's disease and related disorders;
2. Characteristics of Alzheimer's disease;
3. Communicating with residents with Alzheimer's disease;
4. Family issues;
5. Resident environment; and
6. Ethical issues.

(b) Staff who have received both the initial one hour and continuing three hours of ADRD training pursuant to Sections 400.1755, 429.917, and 400.6045(1), F.S., shall be considered to have met the initial assisted living facility Alzheimer's Disease and Related Disorders Level I Training.

(c) Facility staff who provide direct care to residents with ADRD must obtain an additional 4 hours of training, entitled "Alzheimer's Disease and Related Disorders Level II Training," within 9 months of employment. Facility staff who meet the requirements for ADRD training providers under paragraph (g) of this subsection will be considered as having met this requirement. Alzheimer's Disease and Related Disorders Level II Training must address the following subject areas as they apply to these disorders:

1. Behavior management;
2. Assistance with ADLs;
3. Activities for residents;
4. Stress management for the care giver; and
5. Medical information.

(d) A detailed description of the subject areas that must be included in an ADRD curriculum which meets the requirements of paragraphs (a) and (b) of this subsection can be found in the document "Training Guidelines for the Special Care of Persons with Alzheimer's Disease and Related Disorders," dated March 1999, incorporated by reference, available from the Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000.

(e) Direct care staff shall participate in 4 hours of continuing education annually as required under Section 429.178, F.S. Continuing education received under this paragraph may be used to meet 3 of the 12 hours of continuing education required by Section 429.52, F.S., and subsection (1) of this rule, or 3 of the 6 hours of continuing education for extended congregate care required by subsection (7) of this rule.

(f) Facility staff who have only incidental contact with residents with ADRD must receive general written information provided by the facility on interacting with such residents, as required

under Section 429.178, F.S., within three (3) months of employment. "Incidental contact" means all staff who neither provide direct care nor are in regular contact with such residents.

(g) Persons who seek to provide ADRD training in accordance with this subsection must provide the department or its designee with documentation that they hold a Bachelor's degree from an accredited college or university or hold a license as a registered nurse, and:

1. Have 1 year teaching experience as an educator of caregivers for persons with Alzheimer's disease or related disorders; or
2. Three years of practical experience in a program providing care to persons with Alzheimer's disease or related disorders; or
3. Completed a specialized training program in the subject matter of this program and have a minimum of two years of practical experience in a program providing care to persons with Alzheimer's disease or related disorders.

(h) With reference to requirements in paragraph (g), a Master's degree from an accredited college or university in a subject related to the content of this training program can substitute for the teaching experience. Years of teaching experience related to the subject matter of this training program may substitute on a year-by-year basis for the required Bachelor's degree referenced in paragraph (g).

#### (10) ALZHEIMER'S DISEASE AND RELATED DISORDERS ("ADR") TRAINING PROVIDER AND CURRICULUM APPROVAL.

(a) The training provider and curriculum shall be approved by the department or its designee prior to commencing training activities. The department or its designee shall maintain a list of approved ADRD training providers and curricula. Approval as a training provider and approval of the curriculum may be obtained as follows:

1. Applicants seeking approval as ADRD training providers shall complete DOEA form ALF/ADR-001, Application for Alzheimer's Disease and Related Disorders Training Provider Certification, dated March 2005, which is incorporated by reference and available at the Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000.
2. Applicants seeking approval of ADRD curricula shall complete DOEA form ALF/ADR-002, Application for Alzheimer's Disease and Related Disorders Training Three-Year Curriculum Certification, dated March 2005, which is incorporated by reference and available at the Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000. Approval of the curriculum shall be granted for 3 years, whereupon the curriculum shall be re-submitted to the department or its designee for re-approval.

(b) Approved ADRD training providers must maintain records of each course taught for a period of 3 years following each program presentation. Course records shall include the title of the approved ADRD training curriculum, the curriculum approval number, the number of hours of training, the training provider's name and approval number, the date and location of the course, and a roster of trainees.

(c) Upon successful completion of training, the trainee shall be issued a certificate by the approved training provider. The certificate shall include the title of the approved training and the curriculum approval number, the number of hours of training, the trainee's name, dates of attendance, location and the training provider's name, approval number and dated signature. The training provider's signature on the certificate shall serve as documentation that the training provider has verified that the trainee has completed the required training pursuant to Section 429.178, F.S.

(d) The department or its designee reserves the right to attend and monitor ADRD training courses, review records and course materials approved pursuant to this rule, and revoke approval on the basis of non-adherence to approved curriculum, the provider's failure to maintain required training credentials, or if the provider is found to knowingly disseminate any false or misleading information.

(e) Except as otherwise noted, certificates of any ADRD training required by this rule shall be documented in the facility's personnel files.

(f) ADRD training providers and training curricula which are approved consistent with the provisions of Sections 429.1755, 429.6045, and 429.5571, F.S., shall be considered as having met the requirements of paragraph (9)(a) and subsection (10) of this rule.

(11) DO NOT RESUSCITATE ORDERS TRAINING.

(a) Currently employed facility administrators, managers, direct care staff and staff involved in resident admissions must receive at least one hour of training in the facility's policies and procedures regarding DNROs within 60 days after the effective date of this rule.

(b) Newly hired facility administrators, managers, direct care staff and staff involved in resident admissions must receive at least one hour of training in the facility's policy and procedures regarding DNROs within 30 days after employment.

(c) Training shall consist of the information included in Rule 58A-5.0186, F.A.C.

(12) TRAINING DOCUMENTATION AND MONITORING.

(a) Except as otherwise noted, certificates, or copies of certificates, of any training required by this rule must be documented in the facility's personnel files. The documentation must include the following:

1. The title of the training program;
2. The subject matter of the training program;
3. The training program agenda;
4. The number of hours of the training program;
5. The trainee's name, dates of participation, and location of the training program;
6. The training provider's name, dated signature and credentials, and professional license number, if applicable.

(b) Upon successful completion of training pursuant to this rule, the training provider must issue a certificate to the trainee as specified in this rule.

(c) The facility must provide the Department of Elder Affairs and the Agency for Health Care Administration with training documentation and training certificates for review, as requested. The department and agency reserve the right to attend and monitor all facility in-service training, which is intended to meet regulatory requirements.

*Rulemaking Authority 429.178, 429.41, 429.52 FS. Law Implemented 429.07, 429.075, 429.178, 429.41, 429.52 FS. History—New 9-30-92, Formerly 10A-5.0191, Amended 10-30-95, 6-2-96, 4-20-98, 11-2-98, 10-17-99, 7-5-05, 7-30-06, 10-9-06, 7-1-08, 4-15-10.*

**58A-5.020 Food Service Standards.**

(1) GENERAL RESPONSIBILITIES. When food service is provided by the facility, the administrator or a person designated in writing by the administrator shall:

(a) Be responsible for total food services and the day-to-day supervision of food services staff.

(b) Perform his/her duties in a safe and sanitary manner.

(c) Provide regular meals which meet the nutritional needs of residents, and therapeutic diets as ordered by the resident's health care provider for resident's who require special diets.

(d) Maintain the in-service and continuing education requirements specified in Rule 58A-5.0191, F.A.C.

(2) DIETARY STANDARDS.

(a) The Tenth Edition Recommended Dietary Allowances established by the Food and Nutrition Board – National Research Council, adjusted for age, sex and activity, shall be the nutritional standard used to evaluate meals. Therapeutic diets shall meet these nutritional standards to the extent possible. A summary of the Tenth Edition Recommended Dietary Allowances, interpreted by a daily food guide, is available from the DOEA Assisted Living Program.

(b) The recommended dietary allowances shall be met by offering a variety of foods adapted to the food habits, preferences and physical abilities of the residents and prepared by the use of

standardized recipes. For facilities with a licensed capacity of 16 or fewer residents, standardized recipes are not required. Unless a resident chooses to eat less, the recommended dietary allowances to be made available to each resident daily by the facility are as follows:

1. Protein: 6 ounces or 2 or more servings;
2. Vegetables: 3-5 servings;
3. Fruit: 2-4 or more servings;
4. Bread and starches: 6-11 or more servings;
5. Milk or milk equivalent: 2 servings;
6. Fats, oils, and sweets: use sparingly; and
7. Water.

(c) All regular and therapeutic menus to be used by the facility shall be reviewed annually by a registered dietitian, licensed dietitian/nutritionist, or by a dietetic technician supervised by a registered dietitian or licensed dietitian/nutritionist, to ensure the meals are commensurate with the nutritional standards established in this rule. Portion sizes shall be indicated on the menus or on a separate sheet. Daily food servings may be divided among three or more meals per day, including snacks, as necessary to accommodate resident needs and preferences. This review shall be documented in the facility files and include the signature of the reviewer, registration or license number, and date reviewed. Menu items may be substituted with items of comparable nutritional value based on the seasonal availability of fresh produce or the preferences of the residents.

(d) Menus to be served shall be dated and planned at least one week in advance for both regular and therapeutic diets. Residents shall be encouraged to participate in menu planning. Planned menus shall be conspicuously posted or easily available to residents. Regular and therapeutic menus as served, with substitutions noted before or when the meal is served, shall be kept on file in the facility for 6 months.

(e) Therapeutic diets shall be prepared and served as ordered by the health care provider.

1. Facilities that offer residents a variety of food choices through a select menu, buffet style dining or family style dining are not required to document what is eaten unless a health care provider's order indicates that such monitoring is necessary. However, the food items which enable residents to comply with the therapeutic diet shall be identified on the menus developed for use in the facility.

2. The facility shall document a resident's refusal to comply with a therapeutic diet and notification to the resident's health care provider of such refusal. If a resident refuses to follow a therapeutic diet after the benefits are explained, a signed statement from the resident or the resident's responsible party refusing the diet is acceptable documentation of a resident's preferences. In such instances daily documentation is not necessary.

(f) For facilities serving three or more meals a day, no more than 14 hours shall elapse between the end of an evening meal containing a protein food and the beginning of a morning meal. Intervals between meals shall be evenly distributed throughout the day with not less than two hours nor more than six hours between the end of one meal and the beginning of the next. For residents without access to kitchen facilities, snacks shall be offered at least once per day. Snacks are not considered to be meals for the purposes of calculating the time between meals.

(g) Food shall be served attractively at safe and palatable temperatures. All residents shall be encouraged to eat at tables in the dining areas. A supply of eating ware sufficient for all residents, including adaptive equipment if needed by any resident, shall be on hand.

(h) A 3-day supply of non-perishable food, based on the number of weekly meals the facility has contracted with residents to serve, and shall be on hand at all times. The quantity shall be based on the resident census and not on licensed capacity. The supply shall consist of dry or canned foods that do not require refrigeration and shall be kept in sealed containers which are labeled and dated. The food shall be rotated in accordance with shelf life to ensure safety and palatability. Water sufficient for drinking and food preparation shall also be stored, or the facility shall have a plan for

obtaining water in an emergency, with the plan coordinated with and reviewed by the local disaster preparedness authority.

(3) **FOOD HYGIENE.** Copies of inspection reports issued by the county health department for the last 2 years pursuant to Rule 64E-12.004 or Chapter 64E-11, F.A.C., as applicable, depending on the licensed capacity of the ALF, shall be on file in the facility.

(4) **CATERED FOOD SERVICE.** When food service is catered the facility shall ensure that the catered food meets all dietary standards imposed by this rule and is adequately protected upon delivery to the facility pursuant to subsection 64E-12.004(4), F.A.C. The facility shall maintain:

(a) A copy of the current contract between the facility and the food service establishment agreeing to provide food service in the facility which includes the terms of the agreement.

(b) A copy of the annually issued certificate or license authorizing the operation of the food service establishment issued by the applicable regulating agency. The license or certificate shall provide documentation of the food service establishment's compliance with food service regulatory requirements.

*Rulemaking Authority 429.41 FS. Law Implemented 429.41 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.20, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.020, Amended 10-30-95, 6-2-96, 10-17-99.*

#### **58A-5.021 Fiscal Standards.**

(1) **FINANCIAL STABILITY.** The facility shall be administered on a sound financial basis in order to ensure adequate resources to meet resident needs. For the purposes of Section 429.47, F.S., evidence of financial instability includes filed bankruptcy by any owner; issuance of checks returned for insufficient funds; delinquent accounts; nonpayment of local, state, or federal taxes or fees; unpaid utility bills; tax or judgment liens against facility or owners property; failure to meet employee payroll; confirmed complaints to the agency or district long-term care ombudsman council regarding withholding of refunds or funds due residents; failure to maintain liability insurance due to non-payment of premiums; non-payment of rent or mortgage; non-payment for essential services; or adverse court action which could result in the closure or change in ownership or management of the ALF. When there is evidence of financial instability, the agency shall require the facility to submit the following documentation:

(a) Facilities with a capacity of 25 or less:

1. Payment of local, state or federal taxes;

2. Delinquent accounts, if any;

3. Number of checks returned for insufficient funds during the previous 24 months, if any;

4. Receipt of resident rent payment;

5. Amount of cash assets deposited in the facility bank account;

6. Capability of obtaining additional financing, if needed; and

7. A statement of operations or AHCA Form 3180-1002, July 1995, projecting revenues, expenses, taxes, extraordinary items, and other credits and charges for the next 12 months.

(b) Facilities with a capacity of 26 or more, shall provide the documentation described in paragraph (a) above, or submit a current asset and liabilities statement or AHCA Form 3180-1003, January 1998.

(2) **ACCOUNTING PROCEDURES.** The facility shall maintain written business records using generally accepted accounting principles as defined in Rule 61H1-20.007, F.A.C., which accurately reflect the facility's assets and liabilities and income and expenses. Income from residents shall be identified by resident name in supporting documents, and income and expenses from other sources, such as from day care or interest on facility funds, shall be separately identified.

(3) **PERSONAL EFFECTS.**

(a) The facility, upon resident request, may provide for the safekeeping in the facility of up to \$200 in personal funds, and \$500 in personal property. If the resident is expected to be absent from

the facility for more than 24 hours, the facility may provide for the safekeeping of more than \$500 in personal property.

(b) Any personal funds shall be kept separately from facility funds and shall be used by residents as they choose.

(c) Any personal property held by the facility, including property held for safekeeping, shall be itemized.

(4) RESIDENT TRUST FUNDS AND ADVANCED PAYMENTS.

(a) Funds or other property received by the facility belonging to or due a resident, including the personal funds described in subsection (3), shall be held as trust funds and expended only for the resident's account. Resident funds or property may be held in one bank account if a separate written accounting for each resident is maintained. A separate bank account is required for facility funds; co-mingling resident funds with facility funds is prohibited. Written accounting procedures for resident trust funds shall include income and expense records of the trust fund, including the source and disposition of the funds.

(b) Money deposited or advanced as security for performance of the contract agreement or as advance rent for other than the next immediate rental period shall be kept separate from the funds and property of the facility, and shall be used, or otherwise expended, only for the account of the resident. On facility financial statements, such funds shall be indicated as restricted assets and there shall be a corresponding liability shown.

(5) BANK ACCOUNTS. Resident funds and property in excess of the amount stated in subsection (3), and money deposited or advanced as security for performance of the contract agreement or as advance rent for other than the next immediate rental period shall be held in a Florida banking institution, located if possible in the same community in which the facility is located. The facility shall notify the resident of the name and address of the depository where all funds are being held.

(6) SURETY BONDS. Pursuant to the requirements of Section 429.27(2), F.S.:

(a) A facility whose owner, administrator, or staff, or representative thereof, serves as the representative payee or attorney-in-fact for facility residents, must maintain a surety bond, a copy of which shall be filed with the agency. For corporations which own more than one facility in the state, one surety bond may be purchased to cover the needs of all residents served by the corporation.

1. If serving as representative payee:

a. The minimum bond proceeds must equal twice the average monthly aggregate income or personal funds due to residents, or expendable for their account which are held by the facility; or

b. For residents who receive OSS, the minimum bond proceeds shall equal twice the supplemental security income or social security disability income plus the OSS payments including the personal needs allowance.

2. If holding a power of attorney:

a. The minimum bond proceeds shall equal twice the average monthly income of the resident, plus the value of any resident property under the control of the attorney in fact; or

b. For residents who receive OSS, the minimum bond proceeds shall equal twice the supplemental security income or social security disability income and the OSS payments including the personal allowance, plus the value of any resident property held at the facility.

(b) Upon the annual issuance of a new bond or continuation bond the facility shall file a copy of the bond with the AHCA central office.

(7) RESIDENT ACCOUNTING.

(a) If the facility provides safekeeping for money or property; holds resident money or property in a trust fund; or if the facility owner, administrator, or staff, or representative thereof, acts as a representative payee; the resident or the resident's legal representative shall be provided with a quarterly statement detailing the income and expense records required under subsection (4), and a list of any property held for safekeeping with copies maintained in the resident's file. The facility

shall also provide such statement upon the discharge of the resident, and if there is a change in ownership of the facility as provided under Rule 58A-5.014, F.A.C.

(b) If the facility owner, administrator, or staff, or representative thereof, serves as a resident's attorney-in-fact, the resident shall be given, on a monthly basis, a written statement of any transaction made on behalf of the resident.

(c) Within 30 days of receipt of an advance rent or security deposit, the facility shall notify the resident in writing of the manner in which the licensee is holding the advance rent or security deposit.

(8) **LIABILITY INSURANCE.** Pursuant to Section 429.275, F.S., facilities shall maintain liability insurance coverage, as defined in Section 624.605, F.S., in force at all times. On the renewal date of the facility's policy or whenever a facility changes policies, the facility shall file documentation of continued coverage with the AHCA central office. Such documentation shall be issued by the insurance company and shall include the name of the facility, the street address of the facility, that it is an assisted living facility, its licensed capacity, and the dates of coverage.

*Rulemaking Authority 429.27, 429.275, 429.41 FS. Law Implemented 429.11, 429.24, 429.27, 429.275 FS. History—New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.21, Amended 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.021, Amended 10-30-95, 6-2-96, 10-17-99.*

#### **58A-5.022 Facility Maintenance and Housekeeping Standards.**

*Rulemaking Authority 400.441 FS. Law Implemented 400.441(2), (3), (4) FS. History—New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.22, Amended 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.022, Amended 10-30-95, Repealed 10-17-99.*

#### **58A-5.0221 Water Supply.**

*Rulemaking Authority 400.441 FS. Law Implemented 400.441 FS. History—New 8-15-90, Amended 9-30-92, Formerly 10A-5.0221, Repealed 10-17-99.*

#### **58A-5.0222 Sewage.**

*Rulemaking Authority 400.441 FS. Law Implemented 400.441 FS. History—New 8-15-90, Amended 9-30-92, Formerly 10A-5.0222, Repealed 10-30-95.*

#### **58A-5.023 Physical Plant Standards.**

##### **(1) NEW FACILITIES.**

(a) **Newly Constructed Facilities.** Newly constructed facilities that are to be licensed as assisted living facilities and any subsequent additions, modifications, alterations, renovations or refurbishing of such facilities should be aware of the following standards:

1. Chapter 4, Section 434, of the Florida Building Code, as adopted in Rule 9N-1.001, F.A.C., Florida Building Code Adopted; and

2. Section 633.022, F.S., Uniform Firesafety Standards, and Rule Chapter 69A-40, F.A.C., The Uniform Fire Safety Standards for Assisted Living Facilities, except for the specific National Fire Protection Association codes described in Section 429.41, F.S.

(b) **New Facilities in Converted Buildings.** Existing structures not previously licensed as assisted living facilities that are to be converted to assisted living facilities and any subsequent additions, modifications, alterations, renovations or refurbishing of such facilities should be aware of the following standards:

1. Chapter 4, Section 434, of the Building Code, as adopted in Rule 9N-1.001, F.A.C., Florida Building Code Adopted; and

2. Section 633.022, F.S., Uniform Firesafety Standards, and Rule Chapter 69A-40, F.A.C., The Uniform Fire Safety Standards for Assisted Living Facilities, except for the specific National Fire Protection Association codes described in Section 429.41, F.S.

(2) EXISTING FACILITIES.

(a) An assisted living facility that was initially licensed prior to the effective date of this rule must comply with the rule or building code in effect at the time of initial licensure, except that any part of the facility included in additions, modifications, alterations, refurbishing, renovations or reconstruction must comply with the codes and standards referenced in subsection (1) of this rule. Determination of the installation of a fire sprinkler system in an existing facility must comply with the requirements described in Section 429.41, F.S.

(b) A facility undergoing change of ownership shall be considered an existing facility for purposes of this rule.

(3) OTHER REQUIREMENTS.

(a) All facilities must:

1. Provide a safe living environment pursuant to Section 429.28(1)(a), F.S.; and
2. Must be maintained free of hazards; and
3. Must ensure that all existing architectural, mechanical, electrical and structural systems and appurtenances are maintained in good working order.

(b) Pursuant to Section 429.27, F.S., residents shall be given the option of using their own belongings as space permits. When the facility supplies the furnishings, each resident bedroom or sleeping area must have at least the following furnishings:

1. A clean, comfortable bed with a mattress no less than 36 inches wide and 72 inches long, with the top surface of the mattress a comfortable height to ensure easy access by the resident;
2. A closet or wardrobe space for hanging clothes;
3. A dresser, chest or other furniture designed for storage of personal effects;
4. A table, bedside lamp or floor lamp, and waste basket; and
5. A comfortable chair, if requested.

(c) The facility must maintain master or duplicate keys to resident bedrooms to be used in the event of an emergency.

(d) Residents who use portable bedside commodes must be provided with privacy during use.

(e) Facilities must make available linens and personal laundry services for residents who require such services. Linens provided by a facility shall be free of tears, stains and not be threadbare.

(4) FACILITIES WITH 16 OR FEWER RESIDENTS: Pursuant to Section 429.41, F.S., facilities with 16 or fewer residents are not required to maintain an accessible telephone in each building where residents reside, maintain written staff job descriptions, have awake night staff, or maintain standardized recipes as provided in paragraphs 58A-5.0182(6)(g), 58A-5.019(2)(e), 58A-5.019(4)(a), and 58A-5.020(2)(b), F.A.C., respectively.

*Rulemaking Authority 429.41 FS. Law Implemented 429.27, 429.41 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.23, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.023, Amended 10-30-95, 6-2-96, 10- 17-99, 7-30-06, 4-15-10.*

**58A-5.0223 Garbage and Rubbish.**

*Rulemaking Authority 381.031(1)(g), 381.80 FS. Law Implemented 381.031, 381.80(1)-(4), 395.0101, 400.441(1), 403.708 FS. History—New 8-15-90, Formerly 10A-5.0223, Repealed 10-17-99.*

**58A-5.024 Records.**

The facility shall maintain the following written records in a form, place and system ordinarily employed in good business practice and accessible to Department of Elder Affairs and Agency staff.

- (1) FACILITY RECORDS. Facility records shall include:
- (a) The facility's license which shall be displayed in a conspicuous and public place within the facility.
  - (b) An up-to-date admission and discharge log listing the names of all residents and each resident's:
    1. Date of admission, the place from which the resident was admitted, and if applicable, a notation the resident was admitted with a stage 2 pressure sore; and
    2. Date of discharge, the reason for discharge, and the identification of the facility to which the resident is discharged or home address, or if the person is deceased, the date of death. Readmission of a resident to the facility after discharge requires a new entry. Discharge of a resident is not required if the facility is holding a bed for a resident who is out of the facility but intends to return pursuant to Rule 58A-5.025, F.A.C.
  - (c) A log listing the names of all temporary emergency placement and respite care residents if not included on the log described in paragraph (b).
  - (d) An up-to-date record of major incidents occurring within the last 2 years. Such record shall contain a clear description of each incident; the time, place, names of individuals involved; witnesses; nature of injuries; cause if known; action taken; a description of medical or other services provided; by whom such services were provided; and any steps taken to prevent recurrence. These reports shall be made by the individuals having first hand knowledge of the incidents, including paid staff, volunteer staff, emergency and temporary staff, and student interns.
  - (e) The facility's emergency management plan, with documentation of review and approval by the county emergency management agency, as described under Rule 58A-5.026, F.A.C., which shall be located where immediate access by facility staff is assured.
  - (f) Documentation of radon testing conducted pursuant to Rule 58A-5.023, F.A.C.;
  - (g) The facility's liability insurance policy required under Rule 58A-5.021, F.A.C.;
  - (h) For facilities which have a surety bond, a copy of the surety bond currently in effect as required by Rule 58A-5.021, F.A.C.
  - (i) The admission package presented to new or prospective residents (less the resident's contract) described in Rule 58A-5.0182, F.A.C.
  - (j) If the facility advertises that it provides special care for persons with Alzheimer's disease or related disorders, a copy of all such facility advertisements as required by Section 429.177, F.S.
  - (k) A grievance procedure for receiving and responding to resident complaints and recommendations as described in Rule 58A-5.0182, F.A.C.
  - (l) All food service records required under Rule 58A-5.020, F.A.C., including menus planned and served; county health department inspection reports; and for facilities which contract for catered food services, a copy of the contract for catered services and the caterer's license or certificate to operate.
  - (m) All fire safety inspection reports issued by the local authority or the State Fire Marshal pursuant to Section 429.41, F.S., and Rule Chapter 69A-40, F.A.C., issued within the last two (2) years.
  - (n) All sanitation inspection reports issued by the county health department pursuant to Section 381.031, F.S., and Chapter 64E-12, F.A.C., issued within the last 2 years.
  - (o) Pursuant to Section 429.35, F.S., all completed survey, inspection and complaint investigation reports, and notices of sanctions and moratoriums issued by the agency within the last 5 years.
  - (p) Additional facility records requirements for facilities holding a limited mental health, extended congregate care, or limited nursing services license are provided in Rules 58A-5.029, 58A-5.030 and 58A-5.031, F.A.C., respectively.
  - (q) The facility's resident elopement response policies and procedures.
  - (r) The facility's documented resident elopement response drills.

(2) STAFF RECORDS.

(a) Personnel records for each staff member shall contain, at a minimum, a copy of the original employment application with references furnished and verification of freedom from communicable disease including tuberculosis. In addition, records shall contain the following, as applicable:

1. Documentation of compliance with all staff training required by Rule 58A-5.0191, F.A.C.;
2. Copies of all licenses or certifications for all staff providing services which require licensing or certification;
3. Documentation of compliance with level 1 background screening for all staff subject to screening requirements as required under Rule 58A-5.019, F.A.C.;
4. A copy of the job description given to each staff member pursuant to Rule 58A-5.019, F.A.C., for facilities with a licensed capacity of seventeen (17) or more residents; and
5. Documentation of facility direct care staff and administrator participation in resident elopement drills pursuant to paragraph 58A-5.0182(8)(c), F.A.C.

(b) The facility shall not be required to maintain personnel records for staff provided by a licensed staffing agency or staff employed by a business entity contracting to provide direct or indirect services to residents and the facility. However, the facility must maintain a copy of the contract between the facility and the staffing agency or contractor as described in Rule 58A-5.019, F.A.C.

(c) The facility shall maintain the facility's written work schedules and staff time sheets as required under Rule 58A-5.019, F.A.C., for the last 6 months.

(3) RESIDENT RECORDS. Resident records shall be maintained on the premises and include:

(a) Resident demographic data as follows:

1. Name;
2. Sex;
3. Race;
4. Date of birth;
5. Place of birth, if known;
6. Social security number;
7. Medicaid and/or Medicare number, or name of other health insurance carrier;
8. Name, address, and telephone number of next of kin, responsible party, or other person the resident would like to have notified in case of an emergency, and relationship to resident; and
9. Name, address, and phone number of health care provider, and case manager if applicable.

(b) A copy of the medical examination described in Rule 58A-5.0181, F.A.C.

(c) Any health care provider's orders for medications, nursing services, therapeutic diets, do not resuscitate order, or other services to be provided, supervised, or implemented by the facility that require a health care provider's order.

(d) A signed statement from a resident refusing a therapeutic diet pursuant to Rule 58A-5.020, F.A.C.

(e) The resident record described in paragraph 58A-5.0182(1)(e), F.A.C.

(f) A weight record which is initiated on admission. Information may be taken from the resident's health assessment. Residents receiving assistance with the activities of daily living shall have their weight recorded semi-annually.

(g) For facilities which will have unlicensed staff assisting the resident with the self-administration of medication, a copy of the written informed consent described in Rule 58A-5.0181, F.A.C., if such consent is not included in the resident's contract.

(h) For facilities which manage a pill organizer, assist with self-administration of medications or administer medications for a resident, the required medication records maintained pursuant to Rule 58A-5.0185, F.A.C.

(i) A copy of the resident's contract with the facility, including any addendums to the contract, as described in Rule 58A-5.025, F.A.C.

(j) For a facility whose owner, administrator, or staff, or representative thereof serves as an attorney in fact for a resident, a copy of the monthly written statement of any transaction made on behalf of the resident as required under Section 429.27, F.S.

(k) For any facility which maintains a separate trust fund to receive funds or other property belonging to or due a resident, a copy of the quarterly written statement of funds or other property disbursed as required under Section 429.27, F.S.

(l) A copy of Alternate Care Certification for Optional State Supplementation (OSS) Form, CF-ES 1006, March 1998, if the resident is an OSS recipient. The absence of this form shall not be considered a deficiency if the facility can demonstrate that it has made a good faith effort to obtain the required documentation from the Department of Children and Family Services.

(m) Documentation of the appointment of a health care surrogate, guardian, or the existence of a power of attorney where applicable.

(n) For hospice patients, the interdisciplinary care plan and other documentation that the resident is a hospice patient as required under Rule 58A-5.0181, F.A.C.

(o) For apartments, duplexes, quadruplexes, or single family homes that are designated for independent living but which are licensed as assisted living facilities solely for the purpose of delivering personal services to residents in their homes, when and if such services are needed, record keeping on residents who may receive meals but who do not receive any personal, limited nursing, or extended congregate care service shall be limited to the following:

1. A log listing the names of residents participating in this arrangement;
2. The resident demographic data required under this subsection;
3. The medical examination described in Rule 58A-5.0181, F.A.C.;
4. The resident's contract described in Rule 58A-5.025, F.A.C.; and
5. A health care provider's order for a therapeutic diet if such diet is prescribed and the resident participates in the meal plan offered by the facility.

(p) Except for resident contracts which must be retained for 5 years, all resident records shall be retained for 2 years following the departure of a resident from the facility unless it is required by contract to retain the records for a longer period of time. Upon request, residents shall be provided a copy of their resident records upon departure from the facility.

(q) Additional resident records requirements for facilities holding a limited mental health, extended congregate care, or limited nursing services license are provided in Rules 58A-5.029, 58A-5.030 and 58A-5.031, F.A.C., respectively.

#### (4) RECORD INSPECTION.

(a) All records required by this rule chapter shall be available for inspection at all times by staff of the agency, the department, the district long-term care ombudsman council, and the advocacy center for persons with disabilities.

(b) The resident's records shall be available to the resident, and the resident's legal representative, designee, surrogate, guardian, or attorney in fact, case manager, or the resident's estate, and such additional parties as authorized in writing.

(c) Pursuant to Section 429.35, F.S., agency reports which pertain to any agency survey, inspection, monitoring visit, or complaint investigation shall be available to the residents and the public.

1. Requestors shall be required to provide identification prior to review of records.
2. In facilities that are co-located with a licensed nursing home, the inspection of record for all common areas shall be the nursing home inspection report.

(d) The facility shall ensure the availability of records for inspection.

*Rulemaking Authority 429.41, 429.275 FS. Law Implemented 429.07, 429.075, 429.24, 429.27, 429.275, 429.28, 429.35, 429.41 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.24, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.024, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, 7-30-06, 10-9-06.*

**58A-5.0241 Adverse Incident Report.**

(1) INITIAL ADVERSE INCIDENT REPORT. The preliminary adverse incident report required by Section 429.23(3), F.S., must be submitted within one (1) business day after the incident on AHCA Form 3180-1024, Assisted Living Facility Initial Adverse Incident Report–1 Day, January 2006, and incorporated by reference. The form shall be submitted via electronic mail to [riskmgmtps@ahca.myflorida.com](mailto:riskmgmtps@ahca.myflorida.com); on-line at <http://ahca.myflorida.com/reporting/index.shtml>; by facsimile to (850)922-2217; or by U.S. Mail to AHCA, Florida Center for Health Information and Policy Analysis, 2727 Mahan Drive, Mail Stop 16, Tallahassee, Florida 32308-5403, telephone (850)412-3731. AHCA Form 3180-1024 is available from the Florida Center for Health Information and Policy Analysis at the address stated above. The Initial Adverse Incident Report is in addition to, and does not replace, other reporting requirements specified in Florida Statutes.

(2) FULL ADVERSE INCIDENT REPORT. For each adverse incident reported under subsection (1) above, the facility shall submit a full report within fifteen (15) days of the incident. The full report shall be submitted on AHCA Form 3180-1025, Assisted Living Facility Full Adverse Incident Report–15 Day, dated January 2006, and incorporated by reference. The methods for obtaining and submitting the form are set forth in subsection (1) of this rule.

*Rulemaking Authority 429.23 FS. Law Implemented 429.23 FS. History–New 1-9-02, Amended 7-30-06.*

**58A-5.0242 Liability Claim Report.**

(1) MONTHLY LIABILITY CLAIM REPORT. Each facility licensed under Part I of Chapter 429, F.S., shall report monthly any liability claim filed against the facility by completing an Assisted Living Facility Monthly Liability Claim Information, DOEA Form 3180-1026, dated July 2006, which is incorporated by reference and available from the Agency for Health Care Administration at 2727 Mahan Drive, Mail Stop 27, Tallahassee, Florida 32308, or the agency Web site at [http://ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/Assisting\\_living/monthly\\_liability\\_claim.pdf](http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisting_living/monthly_liability_claim.pdf). Each facility must comply with report time frame and transmission requirements specified in Section 429.23(5), F.S.

(2) If a liability claim has not been filed against the facility in a given month, no report is required.

*Rulemaking Authority 429.23 FS. Law Implemented 429.23 FS. History–New 1-9-02.*

**58A-5.025 Resident Contracts.**

(1) Pursuant to Section 429.24, F.S., prior to or at the time of admission, each resident or legal representative shall execute a contract with the facility which contains the following provisions:

(a) A list of the specific services, supplies and accommodations to be provided by the facility to the resident, including limited nursing and extended congregate care services if the facility is licensed to provide such services.

(b) The daily, weekly, or monthly rate.

(c) A list of any additional services and charges to be provided that are not included in the daily, weekly, or monthly rates, or a reference to a separate fee schedule which shall be attached to the contract.

(d) A provision giving at least 30 days written notice prior to any rate increase.

(e) Any rights, duties, or obligations of residents, other than those specified in Section 429.28, F.S.

(f) The purpose of any advance payments or deposit payments and the refund policy for such advance or deposit payments.

(g) A refund policy which shall conform to Section 429.24(3), F.S.

(h) A written bed hold policy and provisions for terminating a bed hold agreement if a facility agrees in writing to reserve a bed for a resident who is admitted to a nursing home, health care facility, or psychiatric facility. The resident or responsible party shall notify the facility in writing of any change in status that would prevent the resident from returning to the facility. Until such written notice is received, the agreed upon daily, weekly, or monthly rate may be charged by the facility unless the resident's medical condition, such as the resident's being comatose, prevents the resident from giving written notification and the resident does not have a responsible party to act in the resident's behalf.

(i) A provision stating whether the organization is affiliated with any religious organization, and, if so, which organization and its relationship to the facility.

(j) A provision that, upon determination by the administrator or health care provider that the resident needs services beyond those the facility is licensed to provide, the resident or the resident's representative, or agency acting on the resident's behalf, shall be notified in writing that the resident must make arrangements for transfer to a care setting that has services needed by the resident. In the event the resident has no person to represent him, the facility shall refer the resident to the social service agency for placement. If there is disagreement regarding the appropriateness of placement, provisions as outlined in Section 429.26(8), F.S., shall take effect.

(k) A provision that residents must be assessed upon admission pursuant to subsection 58A-5.0181(2), F.A.C., and every 3 years thereafter, or after a significant change, pursuant to subsection (4) of that rule.

(l) The facility's policies and procedures for self-administration, assistance with self-administration and administration of medications, if applicable, pursuant to Rule 58A-5.0185, F.A.C. This also includes provisions regarding over-the-counter (OTC) products pursuant to subsection (8) of that rule.

(m) The facility's policies and procedures related to a properly executed Do Not Resuscitate Order.

(2) The resident, or the resident's representative, shall be provided with a copy of the contract.

(3) The facility may not levy an additional charge for any supplies, services, or accommodations that the facility has agreed by contract to provide as part of the standard daily, weekly, or monthly rate. The resident or resident's representative shall be furnished in advance with an itemized written statement setting forth additional charges for any services, supplies, or accommodations available to residents not covered under the contract. An addendum shall be added to the resident contract to reflect the additional services, supplies, or accommodations not provided under the original agreement. Such addendum must be dated and signed by the facility and the resident or the resident's legal representative and a copy given to the resident or the resident's representative.

*Rulemaking Authority 429.24, 429.41 FS. Law Implemented 429.24, 429.41 FS. History—New 10-17-99, Amended 7-30-06, 4-15-10.*

#### **58A-5.026 Emergency Management.**

(1) EMERGENCY PLAN COMPONENTS. Pursuant to Section 429.41, F.S., each facility shall prepare a written comprehensive emergency management plan in accordance with the "Emergency Management Criteria for Assisted Living Facilities," dated October 1995, which is incorporated by reference. This document is available from the local emergency management agency. The emergency management plan must, at a minimum address the following:

(a) Provision for all hazards.

(b) Provision for the care of residents remaining in the facility during an emergency including pre-disaster or emergency preparation; protecting the facility; supplies; emergency power; food and water; staffing; and emergency equipment.

(c) Provision for the care of residents who must be evacuated from the facility during an emergency including identification of such residents and transfer of resident records; evacuation transportation; sheltering arrangements; supplies; staffing; emergency equipment; and medications.

(d) Provision for the care of additional residents who may be evacuated to the facility during an emergency including the identification of such residents, staffing, and supplies.

(e) Identification of residents with Alzheimer's disease and related dementias, and residents with mobility limitations who may need specialized assistance either at the facility or in case of evacuation.

(f) Identification of and coordination with the local emergency management agency.

(g) Arrangement for post-disaster activities including responding to family inquiries, obtaining medical intervention for residents; transportation; and reporting to the county office of emergency management the number of residents who have been relocated and the place of relocation.

(h) The identification of staff responsible for implementing each part of the plan.

(2) EMERGENCY PLAN APPROVAL. The plan shall be submitted for review and approval to the county emergency management agency.

(a) The county emergency management agency has 60 days in which to review and approve the plan or advise the facility of necessary revisions. Any revisions must be made and the plan resubmitted to the county office of emergency management within 30 days of receiving notification from the county agency that the plan must be revised.

(b) Newly-licensed facility and facilities whose ownership has been transferred, must submit an emergency management plan within 30 days after obtaining a license.

(c) The facility shall review its emergency management plan on an annual basis. Any substantive changes must be submitted to the county emergency agency for review and approval.

1. Changes in the name, address, telephone number, or position of staff listed in the plan are not considered substantive revisions for the purposes of this rule.

2. Changes in the identification of specific staff must be submitted to the county emergency management agency annually as a signed and dated addendum that is not subject to review and approval.

(d) The county emergency management agency shall be the final administrative authority for emergency management plans prepared by assisted living facilities.

(e) Any plan approved by the county emergency management agency shall be considered to have met all the criteria and conditions established in this rule.

(3) PLAN IMPLEMENTATION. In the event of an internal or external disaster the facility shall implement the facility's emergency management plan in accordance with Chapter 252, F.S.

(a) All staff must be trained in their duties and are responsible for implementing the emergency management plan.

(b) If telephone service is not available during an emergency, the facility shall request assistance from local law enforcement or emergency management personnel in maintaining communication.

(4) FACILITY EVACUATION. The facility must evacuate the premises during or after an emergency if so directed by the local emergency management agency.

(a) The facility shall report the evacuation to the local office of emergency management or designee and to the agency within 6 hours of the evacuation order and when the evacuation is complete if the evacuation is not completed within the 6 hour period.

(b) The facility shall not be re-occupied until the area is cleared for reentry by the local emergency management agency or its designee and the facility can meet the immediate needs of the residents.

(c) A facility with significant structural damage must relocate residents until the facility can be safely re-occupied.

(d) The facility is responsible for knowing the location of all residents until the resident has been relocated from the facility.

(e) The facility shall provide the agency with the name of a contact person who shall be available by telephone 24 hours a day, seven days a week, until the facility is re-occupied.

(f) The facility shall assist in the relocation of residents and shall cooperate with outreach teams established by the Department of Health or emergency management agency to assist in relocation efforts. Resident needs and preferences shall be considered to the extent possible in any relocation decision.

(5) EMERGENCY SHELTER. In the event a state of emergency has been declared and the facility is not required to evacuate the premises, the facility may provide emergency shelter above the facility's licensed capacity provided the following conditions are met:

(a) Life safety will not be jeopardized for any individual.

(b) The immediate needs of residents and other individuals sheltered at the facility can be met by the facility.

(c) The facility reports the over capacity and conditions causing it to the Agency Field Office within forty-eight (48) hours or as soon as practical. As an alternative, the facility may report to the Agency Central Office at (850)487-2515. If the facility will continue to be over capacity after the declared emergency ends, the Agency shall review requests for excess capacity on a case-by-case basis.

(d) The facility maintains a log of the additional persons being housed in the facility. The log shall include the individual's name, usual address, and the dates of arrival and departure. The log shall be available for review by representatives of the agency, the department, the local emergency management agency or its designee. The admissions and discharge log maintained by the facility may be used for this purpose provided the information is maintained in a manner that is easily accessible.

*Rulemaking Authority 429.41 FS. Law Implemented 429.41 FS. History—New 10-17-99, Amended 7-30-06.*

#### **58A-5.028 Subsidy.**

*Rulemaking Authority 400.454 FS. (New 400.428 FS.) Law Implemented 400.454 FS. History—New 10-20-86, Formerly 10A-5.028, Amended 10-30-95, Repealed 11-2-98.*

#### **58A-5.029 Limited Mental Health.**

##### **(1) LICENSE APPLICATION.**

(a) Any facility intending to admit three or more mental health residents must obtain a limited mental health license from the Agency in accordance with Rule 58A-5.014, F.A.C., and Section 429.075, F.S., prior to accepting the third mental health resident.

(b) Facilities applying for a limited mental health license which have uncorrected deficiencies or violations found during the facility's last survey, complaint investigation, or monitoring visit will be surveyed prior to the issuance of a limited mental health license to determine if such deficiencies or violations have been corrected.

##### **(2) RECORDS.**

(a) A facility with a limited mental health license shall maintain an up-to-date admission and discharge log containing the names and dates of admission and discharge for all mental health residents. The admission and discharge log required under Rule 58A-5.024, F.A.C., shall be sufficient provided that all mental health residents are clearly identified.

(b) Staff records shall contain documentation that designated staff have completed limited mental health training as required by Rule 58A-5.0191, F.A.C.

(c) Resident records for mental health residents in a facility with a limited mental health license must include the following:

1. Documentation, provided by the Department of Children and Family Services within 30 days of the resident's admission to the facility, that the resident is a mental health resident.

Documentation that the resident is receiving social security disability or supplemental security income, optional state supplementation, and any of the following shall meet this requirement.

a. An affirmative statement on the Alternate Care Certification for Optional State Supplementation (OSS) Form, CF-ES 1006, March 1998, that the resident is receiving SSI/SSDI due to a psychiatric disorder.

b. Written verification provided by the Social Security Administration that the resident is receiving SSI or SSDI for a mental disorder. Such verification may be acquired from the Social Security Administration upon obtaining a release from the resident permitting the Social Security Administration to provide such information to the Department of Children and Family Services.

c. A written statement from the resident's case manager that the resident is an adult with severe and persistent mental illness. The case manager shall consider the following minimum criteria in making that determination.

(i) The resident is eligible for, is receiving, or has received state funded services from the Department of Children and Family Services' Substance Abuse and Mental Health program office within the last 5 years; or

(ii) The resident has been diagnosed as having a mental disorder.

2. An appropriate placement assessment provided by the resident's mental health care provider within 30 days of admission to the facility that the resident has been assessed and found appropriate for residence in an assisted living facility. Such assessment shall be conducted by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or person supervised by one of these professionals.

a. Any of the following documentation which contains the name of the resident and the name, signature, date, and license number, if applicable, of the person making the assessment, shall meet this requirement:

(i) Completed Alternate Care Certification for Optional State Supplementation (OSS) Form, CF-ES Form 1006, March 1998;

(ii) Discharge Statement from a state mental hospital completed within 90 days prior to admission to the ALF provided it contains a statement that the individual is appropriate to live in an assisted living facility; or

(iii) Other signed statement that the resident has been assessed and found appropriate for residency in an assisted living facility.

b. A mental health resident returning to a facility from treatment in a hospital or crisis stabilization unit (CSU) will not be considered a new admission and not require a new assessment. However, a break in a resident's continued residency which requires the facility to execute a new resident contract or admission agreement will be considered a new admission and the resident's mental health care provider must provide a new assessment.

3. A Community Living Support Plan.

a. Each mental health resident and the resident's mental health case manager shall, in consultation with the facility administrator, prepare a plan within 30 days of the resident's admission to the facility or within 30 days after receiving the appropriate placement assessment under paragraph (c), whichever is later, which:

(i) Includes the specific needs of the resident which must be met in order to enable the resident to live in the assisted living facility and the community;

(ii) Includes the clinical mental health services to be provided by the mental health care provider to help meet the resident's needs, and the frequency and duration of such services;

(iii) Includes any other services and activities to be provided by or arranged for by the mental health care provider or mental health case manager to meet the resident's needs, and the frequency and duration of such services and activities;

(iv) Includes the obligations of the facility to facilitate and assist the resident in attending appointments and arranging transportation to appointments for the services and activities identified

in the plan which have been provided or arranged for by the resident's mental health care provider or case manager;

(v) Includes a description of other services to be provided or arranged by the facility;

(vi) Includes a list of factors pertinent to the care, safety, and welfare of the mental health resident and a description of the signs and symptoms particular to the resident that indicate the immediate need for professional mental health services;

(vii) Is in writing and signed by the mental health resident, the resident's mental health case manager, and the ALF administrator or manager and a copy placed in the resident's file. If the resident refuses to sign the plan, the resident's mental health case manager shall add a statement that the resident was asked but refused to sign the plan;

(viii) Is updated at least annually;

(ix) May include the Cooperative Agreement described in subparagraph 4. If included, the mental health care provider must also sign the plan; and

(x) Must be available for inspection to those who have a lawful basis for reviewing the document.

b. Those portions of a service or treatment plan prepared pursuant to Rule 65E-4.014, F.A.C., which address all the elements listed in sub-subparagraph a. above may be substituted.

4. Cooperative Agreement. The mental health care provider for each mental health resident and the facility administrator or designee shall, within 30 days of the resident's admission to facility or receipt of the resident's appropriate placement assessment, whichever is later, prepare a written statement which:

a. Provides procedures and directions for accessing emergency and after-hours care for the mental health resident. The provider must furnish the resident and the facility with the provider's 24-hour emergency crisis telephone number.

b. Must be signed by the administrator or designee and the mental health care provider, or by a designated representative of a Medicaid prepaid health plan if the resident is on a plan and the plan provides behavioral health services under Section 409.912, F.S.

c. May cover all mental health residents of the facility who are clients of the same provider.

d. May be included in the Community Living Support Plan described in subparagraph 3.

Missing documentation shall not be considered a deficiency if the facility can demonstrate that it has made a good faith effort to obtain the required documentation from the Department of Children and Family Services, or the mental health care provider under contract to provide mental health services to clients of the department.

(3) RESPONSIBILITIES OF FACILITY. In addition to the staffing and care standards of this rule chapter to provide for the welfare of residents in an assisted living facility, a facility holding a limited mental health license must:

(a) Meet the facility's obligation to assist the resident in carrying out the activities identified in Community Living Support Plan.

(b) Provide an opportunity for private face-to-face contact between the mental health resident and the resident's mental health case manager or other treatment personnel of the resident's mental health care provider.

(c) Observe resident behavior and functioning in the facility, and record and communicate observations to the resident's mental health case manager or mental health care provider regarding any significant behavioral or situational changes which may signify the need for a change in the resident's professional mental health services, supports and services described in the community living support plan, or that the resident is no longer appropriate for residency in the facility.

(d) Ensure that designated staff have completed limited mental health training as required by Rule 58A-5.0191, F.A.C.

(e) Maintain facility, staff, and resident records in accordance with the requirements of this rule.

*Rulemaking Authority 429.41 FS. Law Implemented 394.4574, 429.02, 429.075, 429.26, 429.41, 409.912 FS. History—New 8-15-90, Amended 9-30-92, Formerly 10A-5.029, Repromulgated 10-30-95, Amended 6-2-96, 11-2-98, 7-30-06.*

**58A-5.030 Extended Congregate Care Services.**

(1) LICENSING.

(a) Any facility intending to establish an extended congregate care program must meet the license requirements specified in Section 429.07, F.S., and obtain a license from the agency in accordance with Rule 58A-5.014, F.A.C.

(b) Only that portion of a facility which meets the physical requirements of subsection (3) and which is staffed in accordance with subsection (4) shall be considered licensed to provide ECC services to residents which meet the admission and continued residency requirements of this rule.

(2) EXTENDED CONGREGATE CARE POLICIES. Policies and procedures established through an extended congregate care program must promote resident independence, dignity, choice, and decision-making. The program shall develop and implement specific written policies and procedures which address:

(a) Aging in place.

(b) The facility's residency criteria developed in accordance with the admission and discharge requirements described in subsection (5) and ECC services listed in subsection (8).

(c) The personal and supportive services the facility intends to provide, how the services will be provided, and the identification of staff positions to provide the services including their relationship to the facility.

(d) The nursing services the facility intends to provide, identification of staff positions to provide nursing services, and the license status, duties, general working hours, and supervision of such staff.

(e) Identifying potential unscheduled resident service needs and mechanism for meeting those needs including the identification of resources to meet those needs.

(f) A process for mediating conflicts among residents regarding choice of room or apartment and roommate.

(g) How to involve residents in decisions concerning the resident. The program shall provide opportunities and encouragement for the resident to make personal choices and decisions. If a resident needs assistance to make choices or decisions a family member or other resident representative shall be consulted. Choices shall include at a minimum:

1. To participate in the process of developing, implementing, reviewing, and revising the resident's service plan;

2. To remain in the same room in the facility, except that a current resident transferring into an ECC program may be required to move to the part of the facility licensed for extended congregate care, if only part of the facility is so licensed;

3. To select among social and leisure activities;

4. To participate in activities in the community. At a minimum the facility shall arrange transportation to such activities if requested by the resident; and

5. To provide input with respect to the adoption and amendment of facility policies and procedures.

(3) PHYSICAL SITE REQUIREMENTS. Each extended congregate care facility shall provide a homelike physical environment which promotes resident privacy and independence including:

(a) A private room or apartment, or a semi-private room or apartment shared with roommate of the resident's choice. The entry door to the room or apartment shall have a lock which is operable from the inside by the resident with no key needed. The resident shall be provided with a key to the entry door on request. The resident's service plan may allow for a non-locking entry door if the resident's safety would otherwise be jeopardized.

(b) A bathroom, with a toilet, sink, and bathtub or shower, which is shared by a maximum of four (4) residents for a maximum ratio of four (4) residents to one (1) bathroom.

1. A centrally located hydro-massage bathtub may substitute for a bathtub or shower and be considered equivalent to two bathrooms, increasing the resident to bathroom ratio from four (4) to one (1) to eight (8) to one (1). The substitution of a centrally located hydro-massage bathtub for a bathtub or shower that increases the resident to bathroom ratio above four (4) to one (1) may occur only once in a facility. The one time substitution of a centrally located hydro-massage bathtub does not preclude the installation of multiple hydro-massage bathtubs in the facility. The limitation applies only to the one-time reduction in the total number of bathrooms in the facility.

2. The entry door to the bathroom shall have a lock that the resident can operate from the inside with no key needed. The resident's service plan may allow for a non-locking bathroom door if the resident's safety would otherwise be jeopardized.

(4) **STAFFING REQUIREMENTS.** Each extended congregate care program shall:

(a) Specify a staff member to serve as the extended congregate care supervisor if the administrator does not perform this function. If the administrator supervises more than one facility, he/she shall appoint a separate ECC supervisor for each facility holding an extended congregate care license.

1. The extended congregate care supervisor shall be responsible for the general supervision of the day-to-day management of an ECC program and ECC resident service planning.

2. The administrator of a facility with an extended congregate care license and the ECC supervisor, if separate from the administrator, must have a minimum of two years of managerial, nursing, social work, therapeutic recreation, or counseling experience in a residential, long-term care, or acute care setting or agency serving elderly or disabled persons. A baccalaureate degree may be substituted for one year of the required experience. A nursing home administrator licensed under Chapter 468, F.S., shall be considered qualified under this paragraph.

(b) Provide, as staff or by contract, the services of a nurse who shall be available to provide nursing services as needed by ECC residents, participate in the development of resident service plans, and perform monthly nursing assessments.

(c) Provide enough qualified staff to meet the needs of ECC residents in accordance with Rule 58A-5.019, F.A.C., and the amount and type of services established in each resident's service plan.

(d) Regardless of the number of ECC residents, awake staff shall be provided to meet resident scheduled and unscheduled night needs.

(e) In accordance with agency procedures established in Rule 58A-5.019, F.A.C., the agency shall require facilities to immediately provide additional or more qualified staff, when the agency determines that service plans are not being followed or that residents' needs are not being met because of the lack of sufficient or adequately trained staff.

(f) Ensure and document that staff receive extended congregate care training as required under Rule 58A-5.0191, F.A.C.

(5) **ADMISSION AND CONTINUED RESIDENCY.**

(a) An individual must meet the following minimum criteria in order to be admitted to an extended congregate care program.

1. Be at least 18 years of age.

2. Be free from signs and symptoms of a communicable disease which is likely to be transmitted to other residents or staff; however, a person who has human immunodeficiency virus (HIV) infection may be admitted to a facility, provided that he would otherwise be eligible for admission according to this rule.

3. Be able to transfer, with assistance if necessary. The assistance of more than one person is permitted.

4. Not be a danger to self or others as determined by a health care provider, or mental health practitioner licensed under Chapters 490 or 491, F.S.

5. Not be bedridden.

6. Not have any stage 3 or 4 pressure sores.
7. Not require any of the following nursing services:
  - a. Oral or nasopharyngeal suctioning;
  - b. Nasogastric tube feeding;
  - c. Monitoring of blood gases;
  - d. Intermittent positive pressure breathing therapy;
  - e. Skilled rehabilitative services as described in Rule 59G-4.290, F.A.C.; or
  - f. Treatment of a surgical incision, unless the surgical incision and the condition which caused it have been stabilized and a plan of care developed.

8. Not require 24-hour nursing supervision.

9. Have been determined to be appropriate for admission to the facility by the facility administrator. The administrator shall base his/her decision on:

- a. An assessment of the strengths, needs, and preferences of the individual, the health assessment required by subsection (6) of this rule, and the preliminary service plan developed under subsection (7);

- b. The facility's residency criteria, and services offered or arranged for by the facility to meet resident needs; and

- c. The ability of the facility to meet the uniform fire safety standards for assisted living facilities established under Section 429.41, F.S., and Rule Chapter 69A-40, F.A.C.

(b) Criteria for continued residency in an ECC program shall be the same as the criteria for admission, except as follows:

1. A resident may be bedridden for up to 14 consecutive days.

2. A terminally ill resident who no longer meets the criteria for continued residency may continue to reside in the facility if the following conditions are met:

- a. The resident qualifies for, is admitted to, and consents to the services of a licensed hospice which coordinates and ensures the provision of any additional care and services that may be needed;

- b. Continued residency is agreeable to the resident and the facility;

- c. An interdisciplinary care plan is developed and implemented by a licensed hospice in consultation with the facility. Facility staff may provide any nursing service within the scope of their license including 24-hour nursing supervision, and total help with the activities of daily living; and

- d. Documentation of the requirements of this subparagraph is maintained in the resident's file.

(6) HEALTH ASSESSMENT. Prior to admission to an ECC program, all persons, including residents transferring within the same facility to that portion of the facility licensed to provide extended congregate care services, must be examined by a physician or advanced registered nurse practitioner pursuant to Rule 58A-5.0181, F.A.C. A health assessment conducted within 60 days prior to admission to the ECC program shall meet this requirement. Once admitted, a new health assessment must be obtained at least annually.

(7) SERVICE PLANS.

- (a) Prior to admission the extended congregate care supervisor shall develop a preliminary service plan which includes an assessment of whether the resident meets the facility's residency criteria, an appraisal of the resident's unique physical and psycho social needs and preferences, and an evaluation of the facility's ability to meet the resident's needs.

- (b) Within 14 days of admission the congregate care supervisor shall coordinate the development of a written service plan which takes into account the resident's health assessment obtained pursuant to subsection (6); the resident's unique physical and psycho social needs and preferences; and how the facility will meet the resident's needs including the following if required:

1. Health monitoring;
2. Assistance with personal care services;
3. Nursing services;

4. Supervision;
5. Special diets;
6. Ancillary services;
7. The provision of other services such as transportation and supportive services; and
8. The manner of service provision, and identification of service providers, including family and friends, in keeping with resident preferences.

(c) Pursuant to the definitions of “shared responsibility” and “managed risk” as provided in Section 429.02, F.S., the service plan shall be developed and agreed upon by the resident or the resident’s representative or designee, surrogate, guardian, or attorney-in-fact, the facility designee, and shall reflect the responsibility and right of the resident to consider options and assume risks when making choices pertaining to the resident’s service needs and preferences.

(d) The service plan shall be reviewed and updated quarterly to reflect any changes in the manner of service provision, accommodate any changes in the resident’s physical or mental status, or pursuant to recommendations for modifications in the resident’s care as documented in the nursing assessment.

(8) **EXTENDED CONGREGATE CARE SERVICES.** All services shall be provided in the least restrictive environment, and in a manner which respects the resident’s independence, privacy, and dignity.

(a) An extended congregate care program may provide supportive services including social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. Family or friends shall be encouraged to provide supportive services for residents. The facility shall provide training for family or friends to enable them to provide supportive services in accordance with the resident’s service plan.

(b) An extended congregate care program shall make available the following additional services if required by the resident’s service plan:

1. Total help with bathing, dressing, grooming and toileting;
2. Nursing assessments conducted more frequently than monthly;
3. Measurement and recording of basic vital functions and weight;
4. Dietary management including provision of special diets, monitoring nutrition, and observing the resident’s food and fluid intake and output;
5. Assistance with self-administered medications, or the administration of medications and treatments pursuant to a health care provider’s order. If the individual needs assistance with self-administration the facility must inform the resident of the qualifications of staff who will be providing this assistance, and if unlicensed staff will be providing such assistance, obtain the resident’s or the resident’s surrogate, guardian, or attorney-in-fact’s informed consent to provide such assistance as required under Section 429.256, F.S.;
6. Supervision of residents with dementia and cognitive impairments;
7. Health education and counseling and the implementation of health-promoting programs and preventive regimes;
8. Provision or arrangement for rehabilitative services; and
9. Provision of escort services to health-related appointments.

(c) Licensed nursing staff in an extended congregate care program may provide any nursing service permitted within the scope of their license consistent with the residency requirements of this rule and the facility’s written policies and procedures, and the nursing services are:

1. Authorized by a health care provider’s order and pursuant to a plan of care;
2. Medically necessary and appropriate for treatment of the resident’s condition;
3. In accordance with the prevailing standard of practice in the nursing community;
4. A service that can be safely, effectively, and efficiently provided in the facility;
5. Recorded in nursing progress notes; and

6. In accordance with the resident's service plan.

(d) At least monthly, or more frequently if required by the resident's service plan, a nursing assessment of the resident shall be conducted.

(9) RECORDS.

(a) In addition to the records required under Rule 58A-5.024, F.A.C., an extended congregate care program shall maintain the following:

1. The service plans for each resident receiving extended congregate care services;
2. The nursing progress notes for each resident receiving nursing services;
3. Nursing assessments; and
4. The facility's ECC policies and procedures.

(b) Upon request, a facility shall report to the department such information as necessary to meet the requirements of Section 429.07(3)(b)9., F.S.

(10) DISCHARGE. If the facility and the resident are unable to agree on a service plan, or if the facility is unable to meet the resident's needs as identified in the service plan, or if the resident no longer meets the criteria for continued residency, the resident shall be discharged in accordance with Sections 429.26(8) and 429.28(1), F.S.

*Rulemaking Authority 429.07, 429.41 FS. Law Implemented 429.02, 429.07, 429.255, 429.26, 429.28, 429.41 FS. History—New 9-30-92, Formerly 10A-5.030, Amended 10-30-95, 6-2-96, 4-20-98, 11-2-98, 10-17-99, 7-30-06.*

**58A-5.031 Limited Nursing Services.**

Any facility intending to provide limited nursing services as described in subsection (1) must meet the license requirements specified in Section 429.07, F.S., and obtain a license from the Agency in accordance with Rule 58A-5.014, F.A.C.

(1) NURSING SERVICES. A facility with a limited nursing license may provide the following nursing services in addition to any nursing service permitted under a standard license pursuant to Section 429.255, F.S.

- (a) Conducting passive range of motion exercises.
- (b) Applying ice caps or collars.
- (c) Applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks.
- (d) Cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained.
- (e) Performing ear and eye irrigations.
- (f) Conducting a urine dipstick test.
- (g) Replacement of an established self-maintained indwelling urinary catheter, or performance of an intermittent urinary catheterizations.
- (h) Performing digital stool removal therapies.
- (i) Applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds.
- (j) Care for stage 2 pressure sores. Care for stage 3 or 4 pressure sores are not permitted under this rule.
- (k) Caring for casts, braces and splints. Care for head braces, such as a halo is not permitted under this rule.
- (l) Conduct nursing assessments if conducted by a registered nurse or under the direct supervision of a registered nurse.
- (m) For hospice patients, providing any nursing service permitted within the scope of the nurse's license including 24-hour nursing supervision.
- (n) Assisting, applying, caring for and monitoring the application of anti-embolism stockings or hosiery as prescribed by the health care provider and in accordance with the manufacturers' guidelines.

- (o) Administration and regulation of portable oxygen.
- (p) Applying, caring for and monitoring a transcutaneous electric nerve stimulator (TENS).
- (q) Catheter, colostomy, ileostomy care and maintenance.
- (2) RESIDENT CARE STANDARDS.

(a) A resident receiving limited nursing services in a facility holding only a standard and limited nursing license must meet the admission and continued residency criteria specified in Rule 58A-5.0181, F.A.C.

(b) In accordance with Rule 58A-5.019, F.A.C., the facility must employ sufficient and qualified staff to meet the needs of residents requiring limited nursing services based on the number of such residents and the type of nursing service to be provided.

(c) Limited nursing services may only be provided as authorized by a health care provider's order, a copy of which shall be maintained in the resident's file.

(d) Facilities licensed to provide limited nursing services must employ or contract with a nurse(s) who shall be available to provide such services as needed by residents. The facility shall maintain documentation of the qualifications of nurses providing limited nursing services in the facility's personnel files.

(e) The facility must ensure that nursing services are conducted and supervised in accordance with Chapter 464, F.S., and the prevailing standard of practice in the nursing community.

(3) RECORDS.

(a) A record of all residents receiving limited nursing services under this license and the type of service provided, shall be maintained.

(b) Nursing progress notes shall be maintained for each resident who receives limited nursing services.

(c) A nursing assessment conducted at least monthly shall be maintained on each resident who receives a limited nursing service.

*Rulemaking Authority 429.02, 429.41 FS. Law Implemented 429.02, 429.07, 429.255, 429.26, 429.41 FS. History—New 9-30-92, Formerly 10A-5.031, Amended 10-30-95, 10-17-99, 7-30-06.*

**58A-5.033 Administrative Enforcement.**

Facility staff shall cooperate with Agency personnel during surveys, complaint investigations, monitoring visits, implementation of correction plans, license application and renewal procedures and other activities necessary to ensure compliance with Part I of Chapter 429, F.S., and this rule chapter.

(1) INSPECTIONS.

(a) Pursuant to Section 429.34, F.S., the agency shall conduct a survey, investigation, or appraisal of a facility:

1. Prior to issuance of a license;
2. Prior to biennial renewal of a license;
3. When there is a change of ownership;
4. To monitor facilities licensed to provide limited nursing or extended congregate care services, or who were cited in the previous year for a Class I or Class II, or 4 or more uncorrected Class III violations;
5. Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents;
6. If the agency has reason to believe a facility is violating a provision of Part III of Chapter 429, F.S., or this rule chapter;
7. To determine if cited deficiencies have been corrected; and
8. To determine if a facility is operating without a license.

(b) The inspection shall consist of full access to and examination of the facility's physical premises and facility records and accounts, and staff and resident records.

(c) Agency personnel shall interview facility staff and residents in order to determine whether the facility is respecting resident rights and to determine compliance with resident care standards. Interviews shall be conducted privately.

(d) Agency personnel shall respect the private possessions of residents and staff while conducting facility inspections.

(2) ABBREVIATED SURVEY.

(a) An applicant for license renewal who does not have any class I or class II violations or uncorrected class III violations, confirmed long-term care ombudsman council complaints reported to the agency by the LTCOC, or confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date shall be eligible for an abbreviated biennial survey by the agency. Facilities that do not have two survey reports on file with the agency under current ownership are not eligible for an abbreviated inspection. Upon arrival at the facility, the agency shall inform the facility that it is eligible for and that an abbreviated survey will be conducted.

(b) Compliance with key quality of care standards described in the following statutes and rules will be used by the agency during its abbreviated survey of eligible facilities:

1. Section 429.26, F.S., and Rule 58A-5.0181, F.A.C., relating to residency criteria;
2. Section 429.27, F.S., and Rule 58A-5.021, F.A.C., relating to proper management of resident funds and property;
3. Section 429.28, F.S., and Rule 58A-5.0182, F.A.C., relating to respect for resident rights;
4. Section 429.41, F.S., and Rule 58A-5.0182, F.A.C., relating to the provision of supervision, assistance with ADLs, and arrangement for appointments and transportation to appointments;
5. Section 429.256, F.S., and Rule 58A-5.0185, F.A.C., relating to assistance with or administration of medications;
6. Section 429.41, F.S., and Rule 58A-5.019, F.A.C., relating to the provision of sufficient staffing to meet resident needs;
7. Section 429.41, F.S., and Rule 58A-5.0191, F.A.C., relating to minimum dietary requirements and proper food hygiene;
8. Section 429.075, F.S., and Rule 58A-5.029, F.A.C., relating to mental health residents' community support living plan;
9. Section 429.07, F.S., and Rule 58A-5.030, F.A.C., relating to meeting the environmental standards and residency criteria in a facility with an extended congregate care license; and
10. Section 429.07, F.S., and Rule 58A-5.031, F.A.C., relating to the provision of care and staffing in a facility with a limited nursing license.

(c) The agency will expand the abbreviated survey or conduct a full survey if violations which threaten or potentially threaten the health, safety, or security of residents are identified during the abbreviated survey. The facility shall be informed that a full survey will be conducted. If one or more of the following serious problems are identified during an abbreviated survey, a full biennial survey will be immediately conducted:

1. Violations of Rule Chapter 69A-40, F.A.C., relating to firesafety, that threaten the life or safety of a resident;
2. Violations relating to staffing standards or resident care standards that adversely affect the health or safety of a resident;
3. Violations relating to facility staff rendering services for which the facility is not licensed; or
4. Violations relating to facility medication practices that are a threat to the health or safety of a resident.

(3) SURVEY DEFICIENCY.

(a) Prior to or in conjunction with a notice of violation issued pursuant to Section 429.19 and Chapter 120, F.S., the agency shall issue a statement of deficiency for Class I, II, III, and IV violations which are observed by Agency personnel during any inspection of the facility. The deficiency statement shall be issued within ten (10) working days of the Agency's inspection and shall include:

1. A description of the deficiency;
2. A citation to the statute or rule violated;
3. A time frame for the correction of the deficiency;
4. A request for a plan of correction which shall include time frame for correction of the deficiency; and
5. A description of the administrative sanction that may be imposed if the facility fails to correct the deficiency within the established time frame.

(b) Additional time may be granted to correct specific deficiencies if a written request is received by the agency prior to the time frame included in the agency's statement.

(c) The facility's plan of correction must be received by the agency within 10 working days of receipt of the deficiency statement and is subject to approval by the agency.

(4) EMPLOYMENT OF A CONSULTANT.

(a) Medication Deficiencies.

1. If a Class I, Class II, or uncorrected Class III deficiency directly relating to facility medication practices as established in Rule 58A-5.0185, F.A.C., is documented by agency personnel pursuant to an inspection of the facility, the agency shall notify the facility in writing that the facility must employ, on staff or by contract, the services of a pharmacist licensed pursuant to Section 465.0125, F.S., or registered nurse, as determined by the agency.

2. The initial on-site consultant visit shall take place within 7 working days of the identification of a Class I or Class II deficiency and within 14 working days of the identification of an uncorrected Class III deficiency. The facility shall have available for review by the agency a copy of the pharmacist's or registered nurse's license and a signed and dated recommended corrective action plan no later than 10 working days subsequent to the initial on-site consultant visit.

3. The facility shall provide the agency with, at a minimum, quarterly on-site corrective action plan updates until the agency determines after written notification by the consultant and facility administrator that deficiencies are corrected and staff has been trained to ensure that proper medication standards are followed and that such consultant services are no longer required. The agency shall provide the facility with written notification of such determination.

(b) Dietary Deficiencies.

1. If a Class I, Class II, or uncorrected Class III deficiency directly related to dietary standards as established in Rule 58A-5.020, F.A.C., is documented by agency personnel pursuant to an inspection of the facility, the agency shall notify the facility in writing that the facility must employ, on staff or by contract, the services of a registered dietitian or licensed dietitian/nutritionist.

2. The initial on-site consultant visit shall take place within 7 working days of the identification of a Class I or Class II deficiency and within 14 working days of the identification of an uncorrected Class III deficiency. The facility shall have available for review by the agency a copy of the dietitian's license or registration card and a signed and dated dietary consultant's recommended corrective action plan no later than 10 working days subsequent to the initial on-site consultant visit.

3. The facility shall provide the agency with, at a minimum, quarterly on-site corrective action plan updates until the agency determines after written notification by the dietary consultant and facility administrator that deficiencies are corrected and staff has been trained to ensure that proper dietary standards are followed and that such consultant services are no longer required. The agency shall provide the facility with written notification of such determination.

(5) ADMINISTRATIVE SANCTIONS. Administrative fines shall be imposed for Class I and Class II violations, or Class III or IV violations which are not corrected within the time frame set by the Agency, and for repeat Class III violations, as set forth in Section 429.19, F.S.

(a) The Agency shall notify facilities of the imposition of sanctions, their right to appeal the sanctions, the remedies available, and the time limit for requesting such remedies as provided under Chapter 120, F.S., and Part II of Chapter 59-1, F.A.C.

(b) When an administrative fine payment is returned from the applicant's bank for whatever reason, the agency shall add to the amount due a service fee of \$20 or 5 percent of the face amount of the check, whichever is greater, up to a maximum charge of \$200. Proceeds from this fee shall be deposited in the same agency account as the fine.

*Rulemaking Authority 429.41, 429.42 FS. Law Implemented 429.07, 429.08, 429.11, 429.12, 429.14, 429.17, 429.19, 429.256, 429.26, 429.27, 429.28, 429.34, 429.41, 429.42 FS. History—New 9-30-92, Formerly 10A-5.033, Amended 10-30-95, 10-17-99, 1-9-02, 7-30-06, 4-15-10.*

#### **58A-5.035 Waivers.**

The agency, in consultation with the department, may waive rules promulgated pursuant to Part I, Chapter 429, F.S., if the waiver request meets the conditions set forth in Section 429.41(4), F.S., and demonstrates and evaluates innovative or cost-effective congregate care alternatives which will enable individuals to age in place.

##### **(1) Application Process.**

(a) Licensed assisted living facilities proposing a waiver under this statute must submit the request in writing. All requests must include the facility name and address, license number, administrator's name and contact information for the requestor, or its attorney. Petitions for waiver of rules other than for the objectives detailed in Section 429.41(4), F.S., including emergency waivers, will not be considered under this section but should follow the petition for waiver provisions of Section 120.542, F.S., and Rule Chapter 28-104, Variance or Waiver, F.A.C.

(b) The written request must address the elements required in Section 429.41(4), F.S. In addition, the following information must be included in order to demonstrate how a waiver of the stated rule will permit development of a concept that will achieve the purpose of the underlying statute:

1. The rule or rules for which the waiver is requested.
2. The licensee's anticipated date or dates for implementation of the concept.
3. If applying based on cost-effectiveness or cost-savings, a cost-benefit analysis of the proposed alternative to both residents or potential residents as well as facility operations.
4. An analysis of the impact the alternative will have on the relevant local community, including any barriers such as zoning or use issues, which may need resolution prior to implementation.
5. Specific performance measures with an annual projection of objectives and goals to be achieved broken into quarterly increments or an annual projection of outcome measures, if the concept will be implemented in less than 90 days.
6. If applying based on cost-effectiveness or cost-savings, an annual budget projection for the proposed alternative broken into quarterly increments.

(c) A waiver can be requested at the time of the initial license application, relicensure, or any time during the licensure period.

(d) Waiver requests must be submitted to the Agency for Health Care Administration, Assisted Living Unit, 2727 Mahan Drive, Mail Stop 30, Tallahassee, Florida 32308-5403.

(2) In accordance with Section 120.542(6), F.S., the agency shall post notice of the request within fifteen (15) days of receipt of the request. The agency shall make any requests for additional information within 30 days of receipt of the request. If additional information is provided, the agency may request clarification of only that information no later than 30 days following receipt of the information. The agency shall process the waiver request pursuant to the time frame referenced in Section 120.542(8), F.S.

(3) The agency, in consultation with the department, will evaluate all requests in light of the likelihood the concept, as described in detail, will achieve the underlying statutory objectives of innovative or cost effective congregate care alternatives to enable individuals to age in place, as provided in Section 429.41(4), F.S. Waivers may be granted only so long as there is reasonable assurance that the health, safety or welfare of residents will not be endangered by the waiver.

(4) The agency shall grant or deny the request for waiver and enter an order summarizing the facts it relied on and reasons supporting its decision. The agency must provide notice of its order as described in Section 120.542(8), F.S. The requestor shall be advised that a denial of the request may be reviewed as provided in subsection (5) of this rule.

(5) Report of Findings. A facility that has been granted a waiver must submit an annual report within 12 months of the order granting the waiver as specified in Section 429.41(4), F.S. If the report is not submitted as required, the agency may revoke the waiver.

(a) The agency will review the report of findings to determine whether the waiver shall be renewed or revoked. The agency shall make the determination based on whether the facility has met the requirements outlined in subparagraph (1)(b) of this rule. The agency shall enter an order providing the general basis for making its decision and notify the licensee of its opportunity to seek review of a revocation in accordance with Sections 120.569 and 120.57, F.S. and Rule 28-106.111, F.A.C.

(b) The agency may also consider other material which is available relative to this review.

(c) A waiver is effective unless revoked by the agency or superseded by statutory or regulatory change.

(d) In reviewing the report of findings, the agency, in consultation with the department, shall assess whether statutory or regulatory changes should be pursued to enable other facilities to adopt the same practices.

*Rulemaking Authority 429.41 FS. Law Implemented 120.542, 429.41 FS. History—New 9-30-92, Formerly 10A-5.035, Amended 10-30-95, 7-1-08.*