

Blog Post

DON'T FORGET YOUR LICENSE: Florida's New Memory Care Services Specialty License for ALFs

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The Florida Legislature has identified a regulatory gap. As Florida's population experiences a "silver tsunami," the number of people who currently live with Alzheimer's disease or related dementias (collectively, Dementia) is expected to increase sharply. Lawmakers concluded that existing Assisted Living Facility (ALF) regulations are insufficient for this growing and vulnerable population that requires specialized care.

To address this concern, the Florida Legislature recently passed, without opposition, a bill (Bill, [CS/CS/SB 1404](#)) that will create a new specialty license for ALFs. Pending the governor's expected signature, the Bill will require that certain ALFs obtain a memory care services license to provide memory care services, serve memory care residents, or advertise themselves as offering those services or serving such residents.

Background

Currently, ALFs in Florida may provide routine personal care services under a standard ALF license. While they are required to hold a specialty license to provide (i) extended congregate care, (ii) limited nursing services, or (iii) limited mental health

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services, no such specialty license is required to provide “memory care.”

In the absence of consistent standards under existing law, ALFs may advertise that they provide memory care without demonstrating that they comply with any specific greater standards for such care, staffing, training, or safety. Instead, ALFs that advertise offering memory care are subject to flexible standards that require (i) disclosing certain information about the memory care services they offer, (ii) having an awake staff member on duty 24/7 (only if the facility has 17 or more residents), (iii) offering activities designed for cognitively impaired individuals, (iv) providing a safe physical environment, and (v) employing staff who meet certain training and continuing education requirements.

But the Legislature noted that these minimum requirements lack specificity and that families making placement decisions for loved ones with Dementia cannot easily compare different facilities’ programs. Accordingly, the goals of the Bill are to (i) enable the Florida Agency for Health Care Administration (AHCA) to ensure that facilities provide the services they advertise, (ii) develop distinct operational requirements for ALFs offering memory care, and (iii) provide consumers greater clarity into the type and quality of memory care that ALFs offer so family members can make informed placement decisions.

This Bill now adds a fourth category of specialty licenses for ALFs that provide memory care services. Additionally, it repeals existing requirements for ALFs offering special care for persons with Dementia once AHCA adopts rules implementing the Bill.

Effect of the Legislation

The Bill will require ALFs to obtain a memory care services specialty license to provide “memory care

services,” serve “memory care residents,” or hold themselves out as serving memory care residents.

The term “memory care services” applies to specialized care, services, or activities an ALF agrees to provide to memory care residents to support their Dementia. However, the definition excludes services, care, or activities an ALF provides as “supportive services” (i.e., services designed to encourage and assist elderly persons or adults with disabilities to remain in the least restrictive living environment and maintain their independence as long as possible) so long as those supportive services are optional and available to all of the ALF’s residents.

A “memory care resident” is a person who suffers from Dementia who is a resident of an ALF that claims that it provides specialized care, services, or activities specifically to support such resident’s Dementia. Importantly, an ALF resident can be a memory care resident even if such specialized care, services, or activities are not listed in the resident’s contract.

Minimum Standards for Memory Care Services Licensees

The Legislature determined that memory care requires distinct operational requirements beyond the existing standard ALF rules. The Bill requires that AHCA’s minimum standards rule must include, but not be limited to, the following:

- Policies and procedures for providing memory care services
- Standardized admittance criteria for memory care residents
- The minimum level of care, services, and activities that licensed ALFs must provide to memory care residents
- Minimum staff training requirements, which must meet or exceed those of the Alzheimer’s

Disease and Related Forms of Dementia Education and Training Act

- Safety requirements specific to memory care residents, such as requiring at least one awake staff member to be on duty at all hours. (No reference is made to an exception for facilities with fewer than 17 residents, so AHCA might interpret this as eliminating the current exception to the 24/7 staffing requirement for smaller facilities.)
- Physical plant requirements for the parts of a facility serving memory care residents
- Requirements that contracts with memory care residents also specify the memory care services that will be provided to them

Furthermore, AHCA's minimum requirements must prohibit any facility that does not have the specialty memory care license from using terms that may be misleading about their provision of memory care. For example, facilities without the specialty license may not use any references to memory care, dementia care, or Alzheimer's care in their advertising.

Exceptions

While the Bill provides an exception from the licensure requirement, it is unclear who could qualify for such an exception, and the process is likely designed to limit its availability. First, it is only available to ALFs that were serving at least one memory care resident who was accepted before the effective date of AHCA's minimum standards rule. Second, it requires a demonstration that the ALF is "unable to reasonably obtain" a memory care services license. However, the Bill offers no guidance on what evidence would suffice. Third, the facility is subjected to potentially problematic conditions requiring them to: (i) notify their memory care residents of the facility's inability to comply with the licensure requirement and the ability of the patient to move to a facility with the specialty licensure; (ii)

provide assistance in “finding a suitable alternate facility” to those who request it; (iii) stop accepting new memory care residents until the specialty license is obtained; and (iv) for those residents who choose to remain after receiving the notice referenced in (i) above, amend the resident’s contract to specify the memory care services provided, maintain records of the services, and make those records available upon request to the resident. Additionally, AHCA’s minimum standards rule must establish requirements that ALFs that qualify for the exception must meet to continue to serve memory care residents without obtaining a memory care services license.

To be clear, the exception is limited to exempting the facility from the specialty licensure requirement. It does not exempt those facilities from other relevant licensure requirements.

ALFs that do not become licensed to provide memory care services may nonetheless advertise the supportive services they provide for persons with Dementia if such advertisements meet the following conditions:

- The advertisements do not use any terms or terminology prohibited by the AHCA’s rules implementing the Bill.
- The advertisements do not make any claim that the facility provides memory care services.
- The facility maintains a copy of such advertisements in its records. AHCA must examine all such advertisements in the facility’s records as part of its licensure renewal procedure.

Effective Dates

For new ALFs, the memory care services licensure requirement takes effect once AHCA adopts rules providing minimum standards for this new specialty license, which the agency is required to do by June 1, 2027. Existing ALFs will have until six months after

the rules take effect to obtain a memory care services license.

Conclusion

The Florida Legislature established the memory care services specialty license based upon its recognition that care for Dementia is fundamentally different from care requirements applicable to general assisted living. Families of these patients need a clear understanding of the services provided, and existing laws failed to prevent misleading advertising and inconsistent care. This specialty license is designed to improve safety, transparency, and accountability for a vulnerable population.

By the end of next year, ALFs providing memory care services, serving memory care residents, or advertising themselves as offering those services or serving such residents will be required to obtain a memory care services specialty license, unless they qualify for the limited exception discussed above.

AHCA will determine the specific requirements for a memory care services license through rulemaking. However, as set forth in this blog, the Bill outlines several required licensure standards that are more strict than existing requirements applicable to ALFs that offer special care for persons who have Dementia.

The current requirements are flexible and open-ended. Based on the direction given by the Legislature, AHCA's new rules will likely involve more specific standards in a variety of areas. ALFs serving memory care patients should closely monitor AHCA's rulemaking in response to this Bill. Akerman's Healthcare Practice Group stands ready to answer any questions about how this legislation could affect your organization.

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