

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1724

INTRODUCER: Senator Garcia

SUBJECT: Transitional Living Facilities

DATE: March 27, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Pre-meeting
2.			HP	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

SB 1724 revises regulations for transitional living facilities. The purpose of these facilities is to provide rehabilitative care in a small residential setting to clients of the facility. There are only thirteen such facilities in Florida. Most of the clients in transitional living facilities have suffered a brain or spinal cord injury and need significant care and services to regain their independence.

This bill will have a minor fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends section 381.78 of the Florida Statutes. This bill creates sections 400.9970, 400.9971, 400.9972, 400.9973, 400.9974, 400.9975, 400.9976, 400.9977, 400.9978, 400.9979, 400.998, 400.9981, 400.9982, 400.9983, and 400.9984 of the Florida Statutes. This bill repeals section 400.805 of the Florida Statutes.

II. Present Situation:

Brain and Spinal Cord Injuries

The human spinal cord operates much like a telephone line, relaying messages from the brain to the rest of the body. Spinal cord injuries are caused by bruising, crushing, or tearing of the delicate cord tissue.¹ Swelling of the spinal cord after the injury can cause even more damage. After an injury, the “messages” sent between the brain and the other parts of the body no longer flow through the damaged area. Many times the functions of the body which are located above

¹Florida Spinal Cord Injury Resource Center, *Family and Survivor’s Guide*, available at <http://fscirc.com/> (last visited March 25, 2013).

the injury point will continue to work properly without impairment. However, the area below the injury point will be impaired to some degree, which will include any combination of the following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel and bladder dysfunction.

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Florida Department of Health (DOH).² The program is funded through a percentage of traffic related fines and surcharges for driving or boating under the influence, fees on temporary license tags, and a percentage of fees from the motorcycle specialty tag.

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. Children receive services from the Children's Medical Services nurse care coordinators and human services counselors. The program also employs regional managers who supervise staff in their region and who oversee locally the operation, development, and evaluation of the program's services and supports. Services include: case management, acute care, inpatient and outpatient rehabilitation, transitional living, assistive technology, home and vehicle modifications, nursing home transition facilitation; and long-term supports for survivors and families through contractual agreements with community-based agencies.

In addition to providing resource facilitation and funding for the services above, the program funds education, prevention, and research activities. It expands its services by funding a contract with the Brain Injury Association of Florida and the Florida Disabled Outdoors Association. Other services are provided through working relationships with the Florida Centers for Independent Living and the Florida Department of Education, Division of Vocational Rehabilitation.

Section 381.76, F.S., requires that an individual must be a legal Florida resident who has sustained a moderate-to-severe traumatic brain or spinal cord injury meeting the state's definition of such injuries; has been referred to the BSCIP Central Registry; and must be medically stable to be eligible for services. There must also be a reasonable expectation that with the provision of appropriate services and supports, the person can return to a community-based setting, rather than reside in a skilled nursing facility.

The state definition of a brain injury is an insult to the skull, brain or its covering, resulting from external trauma, which produces an altered state of consciousness or anatomic, motor, sensory, cognitive or behavioral deficit. The state definition of a spinal cord injury is a lesion to the spinal cord or cauda equina resulting from external trauma with evidence of significant involvement of two of the following-motor deficit, sensory deficit, or bowel and bladder dysfunction.

Transitional Living Facilities

Transitional living facilities provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. There are currently thirteen

² Florida Department of Health website, available at <http://www.doh.state.fl.us/> (last visited March 25, 2013).

facilities located in the state.³ Most of the facilities are small and have between 5 and 10 beds. One facility however is licensed for 127 beds (Florida Institute for Neurologic Rehabilitation in Wauchula). The facilities are located primarily in central Florida. The Agency for Health Care Administration (AHCA) is the licensing authority and one of the regulatory authorities which oversee transitional living facilities pursuant to chs. 408, Part II, and ch. 400, Part V, F. S., and ch. 59A-17 of the Florida Administrative Code. The current licensure fee is \$4,588, and \$90 per bed fee per biennium.

AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH, which monitors services for persons with traumatic brain and spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.

Section 400.805, F.S., mandates requirements for transitional living facilities. Section 400.805(2), F.S., provides the licensure requirements and fees for operation of a transitional living facility as well as level 2 background screening requirements for all facility personnel. Section 400.805(3)(a), F.S., requires AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of transitional living facilities.

The Brain and Spinal Cord Injury Advisory Council has the right to entry and inspection of transitional living facilities granted under s. 400.805(4), F.S. In addition, designated representatives of AHCA, the local fire marshal, and other agencies have access to the facilities and clients.

According to a news report from Bloomberg, dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida were abused, neglected and confined. The news report was based on information from 20 current and former clients and their family members, criminal charging documents, civil complaints and advocates for the disabled.⁴ The report states that three former employees face criminal charges for abusing clients. News reports state the facility and three affiliated corporations filed Chapter 11 petitions in U.S. Bankruptcy Court in Tampa.⁵ As of March 25, 2013, the facility is remains licensed.

III. Effect of Proposed Changes:

Section 1 designates ss. 400.9970 through 400.9984, F.S., as “Transitional Living Facilities.”

Section 2 creates s. 400.997, F.S., to state the intent behind the regulation of transitional living facilities. The bill specifies that such facilities shall be licensed to ensure the quality of care for clients, provide the least restrictive placement, and assist clients to achieve a higher level of functioning. The intent is that these facilities enable the clients to return to the community.

³ Agency for Health Care Administration, *2013 Bill Analysis and Economic Impact Statement SB 1724*, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴ Bloomberg, *Abuse of Brain Injured Americans Scandalizes U.S.*, (Jan. 7, 2012) available at <http://www.bloomberg.com/news/2012-07-24/brain-injured-abuse-at-for-profit-center-scandalizes-u-s-.html>.

⁵ Bloomberg, *Florida Brain-Injury Facility Files for Bankruptcy*, (Jan. 5, 2013) available at <http://www.bloomberg.com/news/2013-01-05/florida-brain-injury-facility-files-for-bankruptcy.html>.

Section 3 creates s. 400.9971, F.S., to define terms. Licensee is defined in this bill. The bill defines a chemical restraint which is used for the client protection or safety and is not required for the treatment of medical conditions or symptoms. Also, the definition of physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body so the client cannot easily remove the restraint and restricts freedom of movement or normal access to one's body.

Section 4 creates s. 400.9972, F.S., to provide the licensure requirements and application fee for transitional living facilities. The bill proposes a decrease in the licensure fee from \$4,588 to \$4,000. The bill requires certain information from the applicant, including the facility location, proof that local zoning requirements have been met, proof of liability insurance, documentation of a satisfactory fire safety inspection, and documentation of satisfactory sanitation inspection by the county health department.

Section 5 creates s. 400.9973, F.S., to set standards transitional living facilities must meet for client admission, transfer, and discharge from the facility. The facility is required to have admission, transfer, and discharge policies and procedures in writing. The client's admission to the facility must be under the supervision of the administrator or designee and must be in line with policies and procedures.

Each client admitted to the facility is required to be admitted upon prescription by a licensed physician and must remain under the care of the physician for the duration of the client's stay in the facility. Clients admitted to the facility must have a brain and spinal cord injury, as defined in s. 381.745(2), F.S.

Clients admitted to the transitional living facility must not present significant risk of infection to other clients or personnel. Documentation must be provided indicating the person is free of apparent signs and symptoms of communicable disease. The client must not be a danger to self or others as determined by a physician or mental health practitioner. Clients requiring mental health treatment or nursing supervision on a 24 hour basis or bedridden must not be admitted to the facility.

Upon a client meeting the admission criteria, the medical or nursing director must implement a preadmission plan stating the services the facility will be providing to the client. The facility must provide adequate notice to clients of a discharge or transfer plan which includes the appropriate transfer location if the client is not independent. If the client terminates the residency, a transfer or discharge plan is not required.

Section 6 creates s. 400.9974, F.S., to require that each client have an individual program plan which is developed by an interdisciplinary team. The team must include persons who possess the knowledge, skills, and expertise necessary to identify the client's needs and to design appropriate services and specialized programs responsive to those needs, and must include the resident and his or her representative. The program plan must be completed prior to admission and every 30 days thereafter. If a significant change in the client's condition occurs, reevaluation must occur. The facility must have qualified staff to carry out and monitor interventions in accordance with the stated goals of the individual program plan.

Each individual program plan must include the following:

- Physician's orders, diagnosis, medical history, physical exams and rehab needs;
- A nursing evaluation with physician orders for immediate care completed at admission;
- A standardized assessment of client's functional capability; and a
- Plan to achieve transition to the community within 90 days of admission.

Section 7 creates s. 400.9975, F.S., to provide for certain rights of each client. Specifically, the facility must ensure that each client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors;
- Participates in community services and activities;
- Manages his or her own financial affairs, unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
- Has reasonable opportunity for regular exercise and to be outdoors several times a week;
- May exercise civil and religious liberties;
- Has adequate access to appropriate health care services;
- Has the ability to present grievances and recommend changes in policies, procedures, and services;
- Promotes participation of client's representative in the process of treatment for the client;
- Answers communications from a client's family and friends promptly;
- Has visits by individuals with a relationship to the client at any reasonable hour;
- Is allowed leave from the facility to visit or to take trips or vacations; and
- That the client's representative is promptly notified of any significant incidents or changes in condition.

The bill requires the administrator to post a written notice of provider responsibilities in a prominent place in the facility that includes the statewide toll-free telephone number for reporting complaints to AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call AHCA, the central abuse hotline, Disabilities Rights of Florida, or the local advocacy council. The facility cannot take retaliatory action against a client for filing a complaint or grievance. These are similar to protections provided to residents of nursing homes and assisted living facilities.

Section 8 creates s. 400.9976, F.S., to require the facility to record the client's medication administration, including self-administration, and each dose of medication. All drugs must be administered as ordered by the physician. The medication must be administered in compliance with the physician's orders. Drug administration errors and adverse drug reaction must be recorded and reported immediately to the physician. The interdisciplinary team that develops the client's treatment plan must determine whether a client is capable of self-administration of medications.

Section 9 creates s. 400.9977, F.S., to state that the facility is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect,

mistreatment, and exploitation. This includes the facility identifying clients whose history renders the client a risk for abusing other clients. The facility must implement procedures to:

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;
- Train employees through orientation and on-going sessions on abuse prohibition practices;
- Implement procedures to provide clients, families, and staff information on how and to whom they may report concerns, incidents and grievances without fear of retribution;
- Implement procedures to identify events, such as suspicious bruising of clients, that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial reporting, and reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under chs. 39 and 415, F.S., to the appropriate licensing authorities.

The facility must identify, correct, and intervene in situations where abuse, neglect, mistreatment, or exploitation is likely to occur, including conditions in the physical environment that make abuse and/or neglect more likely to occur, such as secluded areas. The facility must have sufficient numbers of staff to meet the needs of the clients; must assure staff has knowledge of each individual client's care needs; and provides adequate supervision to identify inappropriate behaviors, such as rough handling or ignoring clients while giving care. The facility must analyze the occurrences of abuse, exploitation, mistreatment, or neglect and determine what changes are needed to policies and procedures to prevent further occurrences.

Section 10 creates s. 400.9978, F.S., to require that physical and chemical restraints be ordered for clients before they are used by the facility. The bill requires that the order must be documented by the client's physician and provided with the consent of the client or client's representative. Chemical restraint is limited to the dosage of medications prescribed by the client's physician. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

- Continued use of medication;
- Level of the medication in client's blood; and
- Adjustments in the prescription.

The facility must ensure clients are free from unnecessary drugs and physical restraints. All interventions to manage inappropriate client behaviors must be administered with sufficient safeguards and supervision.

Section 11 creates s. 400.9979, F.S., to require all facility personnel to complete a level 2 background screening as required in s 408.809(1)(e), F.S. pursuant to ch. 435, F.S. The facility must maintain personnel records which contain the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certification held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires the facility to:

- Implement infection control policies and procedures.
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times.

- Designate one person as administrator who is responsible for the overall management of the facility.
- Designate in writing a person responsible for the facility when the administrator is absent for 24 hours.
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency.
- Maintain written records in a form and system in accordance with standard medical and business practices and be available for submission to AHCA upon request. The records must include:
 - A daily census record;
 - A report of all accident or unusual incidents involving clients or a staff member that caused or had the potential to cause injury or harm to any person or property within the facility;
 - Agreements with third party providers;
 - Agreements with consultants employed by the facility; and
 - Documentation of each consultant's visits and required written, dated reports.

Section 12 creates s. 400.998, F.S., to allow clients the option of using their own personal belongings, and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein shall not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian, trustee, or payee for social security or other benefits. The licensee, administrator, employee, or representative may be granted power of attorney for a client if the licensee has filed a surety bond with AHCA in an amount equal to twice the average monthly income of the client. When the power of attorney is granted to the licensee, administrator, staff, or representative, he or she must notify the client on a monthly basis of any transactions made on their behalf and a copy of such statement given to the client and retained in the client's file and available for inspection by AHCA.

The bill states the facility, upon consent from the client, shall provide for the safekeeping in the facility of personal effects not in excess of \$1,000 and funds of the client not in excess of \$500 in cash, and shall keep complete and accurate records of all funds and personal effects received.

The bill provides for any funds or other property belonging to or due to a client, or expendable for his or her account, which is received by licensee, shall be trust funds which shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. At least once every month, unless upon order of a court of competent jurisdiction, the facility shall furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill mandates any licensee, administrator, or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree.

In the event of the death of a client, the facility shall return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill allows AHCA, by rule, to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients' funds and personal property and the execution of surety bonds.

Section 13 creates s. 400.9981, F.S., to authorize AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. AHCA, in consultation with the DOH, may adopt and enforce rules related to:

- Physical plant of transitional living facilities.
- Qualifications of all personnel having responsibility for any part of the client's care and services.
- Requirements for personnel procedures, insurance coverage, and reporting procedures.
- Services provided to clients.
- The preparation and annual update of a comprehensive emergency management plan.

Section 14 creates s. 400.9982, F.S., to authorize AHCA to classify each violation of this law and adopt rules and impose an administrative fine according to the number of clients affected by the violation. The classifications must be included on the written notice of the violation in the following categories as defined in s. 408.813, F.S.:

- Class "I" violations – AHCA shall issue a citation regardless of correction and impose an administrative fine up to \$10,000 for a widespread violation.
- Class "II" violations – AHCA shall impose an administrative fine up to \$5,000 for a widespread violation.
- Class "III" violations – AHCA shall impose an administrative fine up to \$1,000 for a widespread violation.
- Class "IV" violations - AHCA shall impose an administrative fine not less than \$100 and not exceeding \$200 for each violation.

Section 15 creates s. 400.9983, F.S., to establish the right for AHCA to petition a court for the appointment of a receiver when the following conditions exist:

- The facility is closing or has informed AHCA that it intends to close.
- AHCA determines the conditions exist in the facility that presents danger to the health, safety, or welfare of the clients of the facility.
- The facility cannot meet its financial obligation for providing food, shelter, care, and utilities.

The bill states petitions for receivership shall take priority over other court business. A hearing shall be conducted within five days of the petition filing. AHCA notifies the facility administrator or owner of the petition and sets the date of the hearing. The court may grant the petition only upon finding that the health, safety, or welfare of the client is threatened if certain conditions exist. A receiver is appointed from a list of persons qualified to act as receiver developed by AHCA. The receiver must make provisions for the continued health, safety, and

welfare of all clients for the facility and perform all duties set out by the court. The receiver must operate the facility to assure the safety and adequate health care for the clients. The receiver may use all resources and consumable goods in the provision of care services to the client and correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety of clients and staff. The receiver may hire or contract staff to carry out the duties of the receiver. The receiver must also honor all leases and mortgages, and has the power to direct and manage and to discharge employees of the facility.

Section 16 creates s. 400.9984, F.S., to require AHCA, the DOH, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure relevant data pertaining to the regulation of transitional living facilities and clients is communicated timely among all agencies for the protection of clients. This system must include the Brain and Spinal Cord Registry and the abuse registries. A database containing information on facilities will assist the various state agencies that are involved in regulating the facilities and the treatment of their clients.

Section 17 repeals s. 400.805, F.S. This section of law contains the current regulations for transitional living facilities. These provisions will no longer be needed under the bill.

Section 18 amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council. The bill deletes language authorizing members appointed to visit transitional living facilities. The deleted language contained a cross-reference to s. 400.805, F.S., which is repealed by the bill.

Section 19 provides for an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Transitional living facilities will see their licensure fees decreased from \$4,588 to \$4,000.

B. Private Sector Impact:

The bill reduces the license fee for transitional living facilities which will have a positive fiscal impact on owners and operators of such facilities. Operators of transitional living facilities will, however, have to meet increased standards. The fiscal impact of these changes is indeterminate.

C. Government Sector Impact:

AHCA will see increased costs to implement the changes in the bill. Specifically, the bill would require AHCA to develop a database to hold information on facilities that would be shared with other state agencies.

Fiscal Impact	Fiscal Year 2013-14
AHCA	Total
Develop database	\$164,060
Total	\$164,060

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.