

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**HEALTH POLICY**  
**Senator Bean, Chair**  
**Senator Sobel, Vice Chair**

**MEETING DATE:** Tuesday, April 8, 2014  
**TIME:** 3:00 —5:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Bean, Chair; Senator Sobel, Vice Chair; Senators Brandes, Braynon, Flores, Galvano, Garcia, Grimsley, and Joyner

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1486</b> Garcia (Similar H 799)	Transitional Living Facilities; Providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or take other retaliatory action under certain circumstances; providing conditions for investigating and reporting incidents of abuse, neglect, mistreatment, or exploitation of clients; providing background screening requirements; requiring the agency, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic information systems for certain purposes, etc.  CF 03/18/2014 Not Considered CF 03/25/2014 Favorable HP 04/08/2014 Favorable AP	Favorable Yeas 6 Nays 0
2	<b>SB 1180</b> Sobel (Similar H 991)	Chemicals in Consumer Products; Requiring the Department of Health to publish a list of chemicals of high concern present in consumer products designed for use by pregnant women and children; providing criteria for inclusion on the list; authorizing the department to participate with other states and governmental entities in an interstate clearinghouse established for specified purposes, etc.  CF 03/18/2014 Temporarily Postponed CF 03/25/2014 Favorable HP 04/08/2014 Favorable AHS AP	Favorable Yeas 4 Nays 2
3	<b>CS/SB 1580</b> Banking and Insurance / Hays	Workers' Compensation Cost Task Force; Creating the Workers' Compensation Cost Task Force; providing for membership; providing duties; requiring the task force to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by a specified date; providing an expiration date, etc.  BI 04/01/2014 Fav/CS HP 04/08/2014 Fav/CS AP	Fav/CS Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Health Policy

Tuesday, April 8, 2014, 3:00 —5:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 436</b> Altman (Identical H 459)	Payment for Services Provided by Licensed Psychologists; Adding licensed psychologists to the list of health care providers who are protected by a limitations period from claims for overpayment being sought by health insurers or health maintenance organizations, subject to a limitations period for submitting claims to health insurers or health maintenance organizations for underpayment, and eligible for direct payment for medical services by a health insurer under certain circumstances, etc.  BI 04/01/2014 Favorable HP 04/08/2014 Favorable AHS AP	Favorable Yeas 6 Nays 0
5	<b>SB 1154</b> Soto (Similar H 787)	Nursing Home Guide Watch List; Requiring a nursing home facility on the list to post signs containing certain information for a specified period; specifying the content and location of signs; providing sanctions for failure to comply, etc.  HP 04/08/2014 Favorable CA CF RC	Favorable Yeas 5 Nays 1
Other Related Meeting Documents			

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**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1486

INTRODUCER: Senator Garcia

SUBJECT: Transitional Living Facilities

DATE: April 3, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1486 revises regulations for transitional living facilities (TLF or facility). The purpose of these facilities is to provide rehabilitative care in a small residential setting. Such facilities serve persons with brain or spinal cord injuries and who need significant care and services to regain their independence. The bill provides admission criteria, client evaluations, and treatment plans. The bill establishes rights for clients in these facilities, screening requirements for facility employees, and penalties for violations.

**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 and 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 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.<sup>1</sup>

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Department of Health (DOH).<sup>2</sup> The program is funded through a percentage of traffic related fines and surcharges for

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<sup>1</sup>Florida Spinal Cord Injury Resource Center, *Family and Survivor’s Guide*, <http://fscirc.com/what-is-a-sci> (last visited April 3, 2014).

<sup>2</sup> Florida Department of Health, <http://www.floridahealth.gov/licensing-and-regulation/brain-and-spinal-cord-injury-program-site-survey-inspections/BSCIP%20Rules%20and%20Statutes/index.html>. (Last visited April 3, 2014).

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 brain or spinal cord injury meeting the state's definition of such injuries;<sup>3</sup> 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.

### **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 13 facilities located in the state.<sup>4</sup> Most of the facilities are small and have between five and 10 beds. One facility, however, is licensed for 116 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 oversees TLFs pursuant to part II of ch. 408, F.S., part V of ch. 400, F.S., and pursuant to Rule 59A-17 of the Florida Administrative Code. The current licensure fee is \$4,588, and \$90 per bed fee per biennium.<sup>5</sup>

The 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

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<sup>3</sup> Section 381.745, F.S., defines "brain or spinal cord injury" as either a lesion to the spinal cord or cauda equina, resulting from external trauma, with evidence of significant involvement of two of the following deficits or dysfunctions: motor deficit, sensory deficit, or bowel and bladder dysfunction; or an insult to the skull, brain, or its covering, resulting from external trauma that produces an altered state of consciousness or anatomic motor, sensory, cognitive, or behavioral deficits.

<sup>4</sup> The AHCA, *Florida Health Finder* <http://www.floridahealthfinder.gov/index.html> (last visited Mar. 13, 2014).

<sup>5</sup> The AHCA, *House Bill 799 Analysis* (Feb. 7, 2014) (on file with the Senate Committee on Health Policy).

spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.<sup>6</sup>

Section 400.805, F.S., provides requirements for transitional living facilities. Section 400.805(2), F.S., sets licensure requirements and fees for operation of a transitional living facility as well as requiring all facility personnel to submit to a level 2 background screening. Section 400.805(3)(a), F.S., requires the AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of transitional living facilities.<sup>7</sup>

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 the AHCA, the local fire marshal, and other agencies have access to the facilities and clients.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> As of March 13, 2014, the facility remains licensed.

### III. Effect of Proposed Changes:

**Section 1** creates and designates ss. 400.997 through 400.9985, F.S., as part XI of ch. 400, F.S., entitled “Transitional Living Facilities.”

Section 400.997, F.S., provides the legislative intent that transitional living facilities are to assist persons with brain and spinal cord injuries to achieve independent living and a return to the community.

Section 400.9971, F.S., defines the terms:

- “Chemical restraint” as a pharmacologic drug that physically limits, restricts, or deprives a person of movement or mobility and which is used for the client protection or safety and is not required for the treatment of medical conditions or symptoms;
- “Physical restraint” as 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; and,

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<sup>6</sup> Supra n. 5

<sup>7</sup> Supra n. 5

<sup>8</sup> Supra n. 5

<sup>9</sup> David Armstrong, *Abuse of Brain Injured Americans Scandalizes U.S.*, BLOOMBERG, Jan. 7, 2012.

<http://www.bloomberg.com/news/2012-07-24/brain-injured-abuse-at-for-profit-center-scandalizes-u-s-.html> (last visited April 3, 2014)

<sup>10</sup> David Armstrong, *Florida Brain-Injury Facility Files for Bankruptcy*, BLOOMBERG, Jan. 5, 2013.

<http://www.bloomberg.com/news/2013-01-05/florida-brain-injury-facility-files-for-bankruptcy.html> (last visited April 3, 2014)

- “Seclusion” as the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. Seclusion, for the purposes of the part, does not mean isolation due to a person’s medical condition or symptoms.

The bill also moves the definition of a transitional living facility from s. 381.475, F.S., and defines “agency” as the AHCA and “department” as the DOH.

Section 400.9972, F.S., provides the licensure requirements and application fee for TLFs. The bill codifies the current license fee of \$4,588 and the per bed fee of \$90.<sup>11</sup> The bill requires certain information from the applicant, including the facility location, proof that local zoning requirements have been met, proof of liability insurance, proof of a satisfactory fire safety inspection, and documentation of satisfactory sanitation inspection by the county health department. The bill also requires facilities to be accredited by an accrediting organization specializing in rehabilitation facilities. The AHCA may conduct an inspection of a facility after the facility submits proof of accreditation.

### **Admission Criteria**

Section 400.9973, F.S., sets standards that TLFs 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.

Only clients who have a brain or spinal cord injury may be admitted to a TLF. Clients may only be admitted to the facility through a prescription by a licensed physician, physician assistant (PA), or advanced registered nurse practitioner (ARNP) and must remain under the care of a health care practitioner for the duration of the client’s stay in the facility. Clients whose diagnosis does not positively identify a cause may be admitted for an evaluation period of up to 90 days.

A facility may not admit a client whose primary diagnosis is a mental illness or an intellectual or developmental disability. The facility may not admit clients who present significant risk of infection to other clients or personnel. Documentation indicating the person is free of apparent signs and symptoms of communicable disease is required. The facility may not admit clients who are a danger to themselves or others as determined by a physician, PA, ARNP, or mental health practitioner. The facility may not admit clients requiring or nursing supervision on a 24-hour basis or who are bedridden.

The facility’s nursing or medical director must complete an initial evaluation of a client’s functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after the client’s admission to the facility. An initial treatment plan must be implemented within 4 days of admission. The facility must also develop, and update at least

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<sup>11</sup> Section 400.805(2)(b), F.S., authorizes a license fee of \$4,000 and a per bed fee of \$75.50. Pursuant to s. 408.805(2), F.S., The AHCA can increase the fees each year by up to the increase in the consumer price index for that year. The current fee is \$4,588 and \$90 per bed and bill uses these amounts.

monthly, a discharge plan for each client and must discharge a client who no longer requires the facility's specialized services as soon as practicable. The facility must provide at least 30 days' notice to the client before transferring or discharging him or her.

### **Client Plans and Evaluation**

Section 400.9974, F.S., requires that the facility develop a comprehensive treatment plan for each client within 30 days after the initial treatment plan is developed. An interdisciplinary team, including the client, as appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

- The physician's, PA's, or ARNP's orders, diagnosis, medical history, physical exams and rehab needs;
- A nursing evaluation with physician, PA, or ARNP orders for immediate care completed at admission; and
- A comprehensive assessment of the client's functional status and the services needed to become independent and return to the community.

The facility must have qualified staff to carry out and monitor rehabilitation services in accordance with the stated goals of the treatment plan.

Section 400.9975, F.S., provides 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;
- Has the opportunity to:
  - Participate in community services and activities;
  - Manage 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;
  - Have regular exercise and to be outdoors several times a week;
  - Exercise civil and religious liberties;
  - Have adequate access to appropriate health care services; and
  - To present grievances and recommend changes in policies, procedures, and services.

The facility must:

- Promote participation of client's representative in the process of treatment for the client;
- Answer communications from a client's family and friends promptly;
- Promote visits by individuals with a relationship to the client at any reasonable hour;
- Allow residents to leave from the facility to visit or to take trips or vacations; and
- Promptly notify client representatives 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 the 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 the AHCA, the

central abuse hotline or Disabilities Rights of Florida. 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.

### **Medication**

Section 400.9976, F.S., requires the facility to record the client's medication administration, including self-administration, and each dose of medication. The medication must be administered in compliance with the physician's, PA's, or ARNP's orders. Drug administration errors and adverse drug reactions must be recorded and reported immediately to the physician, PA, or ARNP. The interdisciplinary team that develops the client's treatment plan must determine whether a client is capable of self-administration of medications.

Section 400.9977, F.S., provides that unlicensed direct care services staff may assist residents<sup>12</sup> with repackaged medications that are prescribed, prepackaged, and premeasured. The bill requires that the facility must provide training, develop procedures, and maintain records in regards to assistance with medication by unlicensed staff. Training must be conducted by a registered nurse, a licensed physician, or a licensed pharmacist. The AHCA is required to adopt rules to implement this section.

Section 400.9979, 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, PA, or ARNP and be consistent with the policies and procedures adopted by the facility. The client's representative or responsible party must be notified as soon as practicable after the use of restraints. 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.

### **Employees**

Section 400.9978, F.S., states 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;
- Provide clients, families, and staff information on how and to whom they may report concerns, incidents and grievances without fear of retribution;

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<sup>12</sup> In both TLF and assisted living facilities.



- 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.

Section 400.998, F.S., requires all facility personnel to complete a level 2 background screening and 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 one person as program director who is responsible for supervising the therapeutic and behavioral staff;
- Designate in writing a person responsible for the facility when the administrator is absent for more than 24 hours;
- Designate a person to be responsible when the program director is absent;
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency; and
- Maintain written records in a form and system in accordance with standard medical and business practices and be available for submission to the 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 400.9981, F.S., grants 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 does 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 the AHCA in an amount equal to twice the average monthly income of the client. If 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 the 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 that any person who intentionally withholds a client's property or funds; demands, beneficially receives or contracts for payment of all or any part of a client's personal property in satisfaction of the facility rate for supplies or services; or borrows from a client's personal funds, unless agreed to by written contract, commits a misdemeanor of the first degree. 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 the 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 400.9982, F.S., authorizes the AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. The AHCA may adopt and enforce rules to implement this part and part II of ch. 408, F.S., including:

- The location of TLFs;
- The qualifications of personnel;
- The requirements for personnel procedures, reporting procedures, and documentation;
- Services provided to clients; and
- The preparation and annual update of a comprehensive emergency management plan.

Section 400.9983, F.S., revises penalties for violations. Current law requires the AHCA to determine if violations in health care related facilities are isolated, patterned or widespread.<sup>13</sup> The penalties in the bill take into account the frequency of the problems within the facility as

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<sup>13</sup> See s. 408.813(2), F.S.

well. Violations are also separated into class I through class IV based on severity with class I violations being the most serious and class IV being the least serious. Class I violations put clients in imminent danger. Class II violations directly threaten the safety of clients. Class III violations indirectly threaten the safety of clients. Class IV violations are primarily for paperwork violations that would not harm clients. The classifications must be included on the written notice of the violation provided to the facility.<sup>14</sup>

The fines for violations are to be levied at the following amounts:

<b>Class of Violation/Correction</b>	<b>Isolated</b>	<b>Patterned</b>	<b>Widespread</b>
1 - Regardless of correction	\$5,000	\$7,500	\$10,000
2 - Regardless of correction	\$1,000	\$2,500	\$5,000
3 - If uncorrected	\$500	\$750	\$1,000
	<b>Range</b>		
4 - Regardless of correction	\$100		\$200

Section 400.9984, F.S., establishes the right for the AHCA to petition a court for the appointment of a receiver using the provisions of s. 429.22, F.S.

Section 400.9985, F.S., requires the 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 2** repeals s. 400.805, F.S. This section of law contains the current regulations for transitional living facilities. These provisions are replaced by new provisions in the bill.

**Section 3** renames the title of part V of chapter 400 as “Intermediate Care Facilities” to remove “Transitional Living Facilities” from the title as the bill creates a new part for such facilities.

**Section 4** amends s. 381.745, F.S., to conform to changes in the definition of a transitional living facility.

**Section 5** amends s. 381.75, F.S., to eliminate a reference to the responsibility of the Department of Health to develop rules with the Agency for Health Care Administration, for the regulation of transitional living facilities. Provisions in this section are moved and revised in the newly-created sections 400.997 - 400.9984, F.S.

**Section 6** amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council’s appointment of a committee to regulate transitional living facilities. These duties are duplicative of the regulation by the AHCA under the bill and, as a result, are removed.

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<sup>14</sup> See s. 408.813, F.S.

**Section 7** amends s. 400.93, F.S., to conform a reference to transitional living facilities.

**Section 8** amends s. 408.802, F.S., to conform a reference to transitional living facilities.

**Section 9** amends s. 408.820, F.S., to conform a reference to transitional living facilities.

**Section 10** creates an unnumbered section of law that requires that transitional living facilities licensed before the effective date of the bill to be licensed under the new requirements of the bill by July 1, 2015.

**Section 11** provides for an effective date of July 1, 2014.

#### **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:

None.

B. Private Sector Impact:

Transitional living facilities may incur indeterminate increased costs based on the increased requirements under SB 1486.

C. Government Sector Impact:

The AHCA may see increased revenue due to the new fine structure established by the bill.

#### **VI. Technical Deficiencies:**

Section 1 of the bill creates s. 400.9977, F.S., allowing certain direct care services staff in both TLFs and assisted living facilities to assist residents with the administration of certain medication. Since this portion of the bill affects assisted living facilities as well as TLFs, it may not be germane to the title of the bill “an act relating to transitional living facilities.”

Line 285 requires participation of the ARNP on an interdisciplinary team that develops the comprehensive treatment plan. The bill does not require an ARNP to be a staff member. The bill refers to an ARNP as one of three types of healthcare practitioners who may prescribe placement in a TLF and who will continue to provide healthcare to the client while at the facility. It is unclear who the ARNP on the interdisciplinary team will be.

**VII. Related Issues:**

Lines 272-276 address providing at least 30 days' notice to a client if a TLF plans to transfer or discharge the client. It may be appropriate to also require the notice to be provided to the client's representative as well.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.745, 381.75, 381.78, 400.93, 408.802, and 408.820.

This bill creates the following sections of the Florida Statutes: 400.997, 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, 400.9984, and 400.9985.

This bill repeals section 400.805 of the Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Garcia

38-00318A-14

20141486\_\_

1                   A bill to be entitled  
 2           An act relating to transitional living  
 3 facilities; creating part XI of ch. 400, F.S.;  
 4 providing legislative intent; providing definitions;  
 5 requiring the licensure of transitional living  
 6 facilities; providing license fees and application  
 7 requirements; requiring accreditation of licensed  
 8 facilities; providing requirements for transitional  
 9 living facility policies and procedures governing  
 10 client admission, transfer, and discharge; requiring a  
 11 comprehensive treatment plan to be developed for each  
 12 client; providing plan and staffing requirements;  
 13 requiring certain consent for continued treatment in a  
 14 transitional living facility; providing licensee  
 15 responsibilities; providing notice requirements;  
 16 prohibiting a licensee or employee of a facility from  
 17 serving notice upon a client to leave the premises or  
 18 take other retaliatory action under certain  
 19 circumstances; requiring the client and client's  
 20 representative to be provided with certain  
 21 information; requiring the licensee to develop and  
 22 implement certain policies and procedures; providing  
 23 licensee requirements relating to administration of  
 24 medication; requiring maintenance of medication  
 25 administration records; providing requirements for  
 26 administration of medications by unlicensed staff;  
 27 specifying who may conduct training of staff;  
 28 requiring licensees to adopt policies and procedures  
 29 for administration of medications by trained staff;

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30           requiring the Agency for Health Care Administration to  
 31 adopt rules; providing requirements for the screening  
 32 of potential employees and training and monitoring of  
 33 employees for the protection of clients; requiring  
 34 licensees to implement certain policies and procedures  
 35 to protect clients; providing conditions for  
 36 investigating and reporting incidents of abuse,  
 37 neglect, mistreatment, or exploitation of clients;  
 38 providing requirements and limitations for the use of  
 39 physical restraints, seclusion, and chemical restraint  
 40 medication on clients; providing a limitation on the  
 41 duration of an emergency treatment order; requiring  
 42 notification of certain persons when restraint or  
 43 seclusion is imposed; authorizing the agency to adopt  
 44 rules; providing background screening requirements;  
 45 requiring the licensee to maintain certain personnel  
 46 records; providing administrative responsibilities for  
 47 licensees; providing recordkeeping requirements;  
 48 providing licensee responsibilities with respect to  
 49 the property and personal affairs of clients;  
 50 providing requirements for a licensee with respect to  
 51 obtaining surety bonds; providing recordkeeping  
 52 requirements relating to the safekeeping of personal  
 53 effects; providing requirements for trust funds or  
 54 other property received by a licensee and credited to  
 55 the client; providing a penalty for certain misuse of  
 56 a client's personal funds, property, or personal needs  
 57 allowance; providing criminal penalties for  
 58 violations; providing for the disposition of property

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59 in the event of the death of a client; authorizing the  
 60 agency to adopt rules; providing legislative intent;  
 61 authorizing the agency to adopt and enforce rules  
 62 establishing standards for transitional living  
 63 facilities and personnel thereof; classifying  
 64 violations and providing penalties therefor; providing  
 65 administrative fines for specified classes of  
 66 violations; authorizing the agency to apply certain  
 67 provisions with regard to receivership proceedings;  
 68 requiring the agency, the Department of Health, the  
 69 Agency for Persons with Disabilities, and the  
 70 Department of Children and Families to develop  
 71 electronic information systems for certain purposes;  
 72 repealing s. 400.805, F.S., relating to transitional  
 73 living facilities; revising the title of part V of ch.  
 74 400, F.S.; amending s. 381.745, F.S.; revising the  
 75 definition of the term "transitional living facility,"  
 76 to conform; amending s. 381.75, F.S.; revising the  
 77 duties of the Department of Health and the agency  
 78 relating to transitional living facilities; amending  
 79 ss. 381.78, 400.93, 408.802, and 408.820, F.S.;

80 conforming provisions to changes made by the act;  
 81 providing applicability with respect to transitional  
 82 living facilities licensed before a specified date;  
 83 providing effective dates.

84  
 85 Be It Enacted by the Legislature of the State of Florida:  
 86  
 87 Section 1. Part XI of chapter 400, Florida Statutes,

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88 consisting of sections 400.997 through 400.9985, is created to  
 89 read:

## PART XI

TRANSITIONAL LIVING FACILITIES

92 400.997 Legislative intent.—It is the intent of the  
 93 Legislature to provide for the licensure of transitional living  
 94 facilities and require the development, establishment, and  
 95 enforcement of basic standards by the Agency for Health Care  
 96 Administration to ensure quality of care and services to clients  
 97 in transitional living facilities. It is the policy of the state  
 98 that the least restrictive appropriate available treatment be  
 99 used based on the individual needs and best interest of the  
 100 client, consistent with optimum improvement of the client's  
 101 condition. The goal of a transitional living program for persons  
 102 who have brain or spinal cord injuries is to assist each person  
 103 who has such an injury to achieve a higher level of independent  
 104 functioning and to enable the person to reenter the community.  
 105 It is also the policy of the state that the restraint or  
 106 seclusion of a client is justified only as an emergency safety  
 107 measure used in response to danger to the client or others. It  
 108 is therefore the intent of the Legislature to achieve an ongoing  
 109 reduction in the use of restraint or seclusion in programs and  
 110 facilities that serve persons who have brain or spinal cord  
 111 injuries.

112 400.9971 Definitions.—As used in this part, the term:

113 (1) "Agency" means the Agency for Health Care

114 Administration.

115 (2) "Chemical restraint" means a pharmacologic drug that  
 116 physically limits, restricts, or deprives a person of movement

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117 or mobility, is used for client protection or safety, and is not  
 118 required for the treatment of medical conditions or symptoms.

119 (3) "Client's representative" means the parent of a child  
 120 client or the client's guardian, designated representative,  
 121 designee, surrogate, or attorney in fact.

122 (4) "Department" means the Department of Health.

123 (5) "Physical restraint" means a manual method to restrict  
 124 freedom of movement of or normal access to a person's body, or a  
 125 physical or mechanical device, material, or equipment attached  
 126 or adjacent to the person's body that the person cannot easily  
 127 remove and that restricts freedom of movement of or normal  
 128 access to the person's body, including, but not limited to, a  
 129 half-bed rail, a full-bed rail, a geriatric chair, or a Posey  
 130 restraint. The term includes any device that is not specifically  
 131 manufactured as a restraint but is altered, arranged, or  
 132 otherwise used for this purpose. The term does not include  
 133 bandage material used for the purpose of binding a wound or  
 134 injury.

135 (6) "Seclusion" means the physical segregation of a person  
 136 in any fashion or the involuntary isolation of a person in a  
 137 room or area from which the person is prevented from leaving.  
 138 Such prevention may be accomplished by imposition of a physical  
 139 barrier or by action of a staff member to prevent the person  
 140 from leaving the room or area. For purposes of this part, the  
 141 term does not mean isolation due to a person's medical condition  
 142 or symptoms.

143 (7) "Transitional living facility" means a site where  
 144 specialized health care services are provided to persons who  
 145 have brain or spinal cord injuries, including, but not limited

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146 to, rehabilitative services, behavior modification, community  
 147 reentry training, aids for independent living, and counseling.

148 400.9972 License required; fee; application.-

149 (1) The requirements of part II of chapter 408 apply to the  
 150 provision of services that require licensure pursuant to this  
 151 part and part II of chapter 408 and to entities licensed by or  
 152 applying for licensure from the agency pursuant to this part. A  
 153 license issued by the agency is required for the operation of a  
 154 transitional living facility in this state. However, this part  
 155 does not require a provider licensed by the agency to obtain a  
 156 separate transitional living facility license to serve persons  
 157 who have brain or spinal cord injuries as long as the services  
 158 provided are within the scope of the provider's license.

159 (2) In accordance with this part, an applicant or a  
 160 licensee shall pay a fee for each license application submitted  
 161 under this part. The license fee shall consist of a \$4,588  
 162 license fee and a \$90 per-bed fee per biennium and shall conform  
 163 to the annual adjustment authorized in s. 408.805.

164 (3) An applicant for licensure must provide:

165 (a) The location of the facility for which the license is  
 166 sought and documentation, signed by the appropriate local  
 167 government official, which states that the applicant has met  
 168 local zoning requirements.

169 (b) Proof of liability insurance as defined in s.  
 170 624.605(1)(b).

171 (c) Proof of compliance with local zoning requirements,  
 172 including compliance with the requirements of chapter 419 if the  
 173 proposed facility is a community residential home.

174 (d) Proof that the facility has received a satisfactory



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175 firesafety inspection.

176 (e) Documentation that the facility has received a  
 177 satisfactory sanitation inspection by the county health  
 178 department.

179 (4) The applicant's proposed facility must attain and  
 180 continuously maintain accreditation by an accrediting  
 181 organization that specializes in evaluating rehabilitation  
 182 facilities whose standards incorporate licensure regulations  
 183 comparable to those required by the state. An applicant for  
 184 licensure as a transitional living facility must acquire  
 185 accreditation within 12 months after issuance of an initial  
 186 license. The agency shall accept the accreditation survey report  
 187 of the accrediting organization in lieu of conducting a  
 188 licensure inspection if the standards included in the survey  
 189 report are determined by the agency to document that the  
 190 facility substantially complies with state licensure  
 191 requirements. Within 10 days after receiving the accreditation  
 192 survey report, the applicant shall submit to the agency a copy  
 193 of the report and evidence of the accreditation decision as a  
 194 result of the report. The agency may conduct an inspection of a  
 195 transitional living facility to ensure compliance with the  
 196 licensure requirements of this part, to validate the inspection  
 197 process of the accrediting organization, to respond to licensure  
 198 complaints, or to protect the public health and safety.

199 400.9973 Client admission, transfer, and discharge.-

200 (1) A transitional living facility shall have written  
 201 policies and procedures governing the admission, transfer, and  
 202 discharge of clients.

203 (2) The admission of a client to a transitional living

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204 facility must be in accordance with the licensee's policies and  
 205 procedures.

206 (3) A client admitted to a transitional living facility  
 207 must have a brain or spinal cord injury, such as a lesion to the  
 208 spinal cord or cauda equina syndrome, with evidence of  
 209 significant involvement of at least two of the following  
 210 deficits or dysfunctions:

211 (a) A motor deficit.

212 (b) A sensory deficit.

213 (c) Bowel and bladder dysfunction.

214 (d) An acquired internal or external injury to the skull,  
 215 the brain, or the brain's covering, whether caused by a  
 216 traumatic or nontraumatic event, which produces an altered state  
 217 of consciousness or an anatomic motor, sensory, cognitive, or  
 218 behavioral deficit.

219 (4) A client whose medical condition and diagnosis do not  
 220 positively identify a cause of the client's condition, whose  
 221 symptoms are inconsistent with the known cause of injury, or  
 222 whose recovery is inconsistent with the known medical condition  
 223 may be admitted to a transitional living facility for evaluation  
 224 for a period not to exceed 90 days.

225 (5) A client admitted to a transitional living facility  
 226 must be admitted upon prescription by a licensed physician,  
 227 physician assistant, or advanced registered nurse practitioner  
 228 and must remain under the care of a licensed physician,  
 229 physician assistant, or advanced registered nurse practitioner  
 230 for the duration of the client's stay in the facility.

231 (6) A transitional living facility may not admit a person  
 232 whose primary admitting diagnosis is mental illness or an

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233 intellectual or developmental disability.

234 (7) A person may not be admitted to a transitional living

235 facility if the person:

236 (a) Presents significant risk of infection to other clients

237 or personnel. A health care practitioner must provide

238 documentation that the person is free of apparent signs and

239 symptoms of communicable disease;

240 (b) Is a danger to himself or herself or others as

241 determined by a physician, physician assistant, or advanced

242 registered nurse practitioner or a mental health practitioner

243 licensed under chapter 490 or chapter 491, unless the facility

244 provides adequate staffing and support to ensure patient safety;

245 (c) Is bedridden; or

246 (d) Requires 24-hour nursing supervision.

247 (8) If the client meets the admission criteria, the medical

248 or nursing director of the facility must complete an initial

249 evaluation of the client's functional skills, behavioral status,

250 cognitive status, educational or vocational potential, medical

251 status, psychosocial status, sensorimotor capacity, and other

252 related skills and abilities within the first 72 hours after the

253 client's admission to the facility. An initial comprehensive

254 treatment plan that delineates services to be provided and

255 appropriate sources for such services must be implemented within

256 the first 4 days after admission.

257 (9) A transitional living facility shall develop a

258 discharge plan for each client before or upon admission to the

259 facility. The discharge plan must identify the intended

260 discharge site and possible alternative discharge sites. For

261 each discharge site identified, the discharge plan must identify

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262 the skills, behaviors, and other conditions that the client must

263 achieve to be eligible for discharge. A discharge plan must be

264 reviewed and updated as necessary but at least once monthly.

265 (10) A transitional living facility shall discharge a

266 client as soon as practicable when the client no longer requires

267 the specialized services described in s. 400.9971(7), when the

268 client is not making measurable progress in accordance with the

269 client's comprehensive treatment plan, or when the transitional

270 living facility is no longer the most appropriate and least

271 restrictive treatment option.

272 (11) A transitional living facility shall provide at least

273 30 days' notice to a client of transfer or discharge plans,

274 including the location of an acceptable transfer location if the

275 client is unable to live independently. This subsection does not

276 apply if a client voluntarily terminates residency.

277 400.9974 Client comprehensive treatment plans; client

278 services.-

279 (1) A transitional living facility shall develop a

280 comprehensive treatment plan for each client as soon as

281 practicable but no later than 30 days after the initial

282 comprehensive treatment plan is developed. The comprehensive

283 treatment plan must be developed by an interdisciplinary team

284 consisting of the case manager, the program director, the

285 advanced registered nurse practitioner, and appropriate

286 therapists. The client or, if appropriate, the client's

287 representative must be included in developing the comprehensive

288 treatment plan. The comprehensive treatment plan must be

289 reviewed and updated if the client fails to meet projected

290 improvements outlined in the plan or if a significant change in

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291 the client's condition occurs. The comprehensive treatment plan  
 292 must be reviewed and updated at least once monthly.

293 (2) The comprehensive treatment plan must include:

294 (a) Orders obtained from the physician, physician  
 295 assistant, or advanced registered nurse practitioner and the  
 296 client's diagnosis, medical history, physical examination, and  
 297 rehabilitative or restorative needs.

298 (b) A preliminary nursing evaluation, including orders for  
 299 immediate care provided by the physician, physician assistant,  
 300 or advanced registered nurse practitioner, which shall be  
 301 completed when the client is admitted.

302 (c) A comprehensive, accurate, reproducible, and  
 303 standardized assessment of the client's functional capability;  
 304 the treatments designed to achieve skills, behaviors, and other  
 305 conditions necessary for the client to return to the community;  
 306 and specific measurable goals.

307 (d) Steps necessary for the client to achieve transition  
 308 into the community and estimated length of time to achieve those  
 309 goals.

310 (3) The client or, if appropriate, the client's  
 311 representative must consent to the continued treatment at the  
 312 transitional living facility. Consent may be for a period of up  
 313 to 3 months. If such consent is not given, the transitional  
 314 living facility shall discharge the client as soon as  
 315 practicable.

316 (4) A client must receive the professional program services  
 317 needed to implement the client's comprehensive treatment plan.

318 (5) The licensee must employ qualified professional staff  
 319 to carry out and monitor the various professional interventions

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320 in accordance with the stated goals and objectives of the  
 321 client's comprehensive treatment plan.

322 (6) A client must receive a continuous treatment program  
 323 that includes appropriate, consistent implementation of  
 324 specialized and general training, treatment, health services,  
 325 and related services and that is directed toward:

326 (a) The acquisition of the behaviors and skills necessary  
 327 for the client to function with as much self-determination and  
 328 independence as possible.

329 (b) The prevention or deceleration of regression or loss of  
 330 current optimal functional status.

331 (c) The management of behavioral issues that preclude  
 332 independent functioning in the community.

333 400.9975 Licensee responsibilities.-

334 (1) The licensee shall ensure that each client:

335 (a) Lives in a safe environment free from abuse, neglect,  
 336 and exploitation.

337 (b) Is treated with consideration and respect and with due  
 338 recognition of personal dignity, individuality, and the need for  
 339 privacy.

340 (c) Retains and uses his or her own clothes and other  
 341 personal property in his or her immediate living quarters to  
 342 maintain individuality and personal dignity, except when the  
 343 licensee demonstrates that such retention and use would be  
 344 unsafe, impractical, or an infringement upon the rights of other  
 345 clients.

346 (d) Has unrestricted private communication, including  
 347 receiving and sending unopened correspondence, access to a  
 348 telephone, and visits with any person of his or her choice. Upon

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349 request, the licensee shall modify visiting hours for caregivers  
 350 and guests. The facility shall restrict communication in  
 351 accordance with any court order or written instruction of a  
 352 client's representative. Any restriction on a client's  
 353 communication for therapeutic reasons shall be documented and  
 354 reviewed at least weekly and shall be removed as soon as no  
 355 longer clinically indicated. The basis for the restriction shall  
 356 be explained to the client and, if applicable, the client's  
 357 representative. The client shall retain the right to call the  
 358 central abuse hotline, the agency, and Disability Rights Florida  
 359 at any time.

360 (e) Has the opportunity to participate in and benefit from  
 361 community services and activities to achieve the highest  
 362 possible level of independence, autonomy, and interaction within  
 363 the community.

364 (f) Has the opportunity to manage his or her financial  
 365 affairs unless the client or, if applicable, the client's  
 366 representative authorizes the administrator of the facility to  
 367 provide safekeeping for funds as provided under this part.

368 (g) Has reasonable opportunity for regular exercise more  
 369 than once per week and to be outdoors at regular and frequent  
 370 intervals except when prevented by inclement weather.

371 (h) Has the opportunity to exercise civil and religious  
 372 liberties, including the right to independent personal  
 373 decisions. However, a religious belief or practice, including  
 374 attendance at religious services, may not be imposed upon any  
 375 client.

376 (i) Has access to adequate and appropriate health care  
 377 consistent with established and recognized community standards.

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378 (j) Has the opportunity to present grievances and recommend  
 379 changes in policies, procedures, and services to the staff of  
 380 the licensee, governing officials, or any other person without  
 381 restraint, interference, coercion, discrimination, or reprisal.  
 382 A licensee shall establish a grievance procedure to facilitate a  
 383 client's ability to present grievances, including a system for  
 384 investigating, tracking, managing, and responding to complaints  
 385 by a client or, if applicable, the client's representative and  
 386 an appeals process. The appeals process must include access to  
 387 Disability Rights Florida and other advocates and the right to  
 388 be a member of, be active in, and associate with advocacy or  
 389 special interest groups.

390 (2) The licensee shall:

391 (a) Promote participation of the client's representative in  
 392 the process of providing treatment to the client unless the  
 393 representative's participation is unobtainable or inappropriate.

394 (b) Answer communications from the client's family,  
 395 guardians, and friends promptly and appropriately.

396 (c) Promote visits by persons with a relationship to the  
 397 client at any reasonable hour, without requiring prior notice,  
 398 in any area of the facility that provides direct care services  
 399 to the client, consistent with the client's and other clients'  
 400 privacy, unless the interdisciplinary team determines that such  
 401 a visit would not be appropriate.

402 (d) Promote opportunities for the client to leave the  
 403 facility for visits, trips, or vacations.

404 (e) Promptly notify the client's representative of a  
 405 significant incident or change in the client's condition,  
 406 including, but not limited to, serious illness, accident, abuse,

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407 unauthorized absence, or death.

408 (3) The administrator of a facility shall ensure that a  
 409 written notice of licensee responsibilities is posted in a  
 410 prominent place in each building where clients reside and is  
 411 read or explained to clients who cannot read. This notice shall  
 412 be provided to clients in a manner that is clearly legible,  
 413 shall include the statewide toll-free telephone number for  
 414 reporting complaints to the agency, and shall include the words:  
 415 "To report a complaint regarding the services you receive,  
 416 please call toll-free ...[telephone number]... or Disability  
 417 Rights Florida ...[telephone number]..." The statewide toll-  
 418 free telephone number for the central abuse hotline shall be  
 419 provided to clients in a manner that is clearly legible and  
 420 shall include the words: "To report abuse, neglect, or  
 421 exploitation, please call toll-free ...[telephone number]..."

422 The licensee shall ensure a client's access to a telephone where  
 423 telephone numbers are posted as required by this subsection.

424 (4) A licensee or employee of a facility may not serve  
 425 notice upon a client to leave the premises or take any other  
 426 retaliatory action against another person solely because of the  
 427 following:

428 (a) The client or other person files an internal or  
 429 external complaint or grievance regarding the facility.

430 (b) The client or other person appears as a witness in a  
 431 hearing inside or outside the facility.

432 (5) Before or at the time of admission, the client and, if  
 433 applicable, the client's representative shall receive a copy of  
 434 the licensee's responsibilities, including grievance procedures  
 435 and telephone numbers, as provided in this section.

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436 (6) The licensee must develop and implement policies and  
 437 procedures governing the release of client information,  
 438 including consent necessary from the client or, if applicable,  
 439 the client's representative.

440 400.9976 Administration of medication.—

441 (1) An individual medication administration record must be  
 442 maintained for each client. A dose of medication, including a  
 443 self-administered dose, shall be properly recorded in the  
 444 client's record. A client who self-administers medication shall  
 445 be given a pill organizer. Medication must be placed in the pill  
 446 organizer by a nurse. A nurse shall document the date and time  
 447 that medication is placed into each client's pill organizer. All  
 448 medications must be administered in compliance with orders of a  
 449 physician, physician assistant, or advanced registered nurse  
 450 practitioner.

451 (2) If an interdisciplinary team determines that self-  
 452 administration of medication is an appropriate objective, and if  
 453 the physician, physician assistant, or advanced registered nurse  
 454 practitioner does not specify otherwise, the client must be  
 455 instructed by the physician, physician assistant, or advanced  
 456 registered nurse practitioner to self-administer his or her  
 457 medication without the assistance of a staff person. All forms  
 458 of self-administration of medication, including administration  
 459 orally, by injection, and by suppository, shall be included in  
 460 the training. The client's physician, physician assistant, or  
 461 advanced registered nurse practitioner must be informed of the  
 462 interdisciplinary team's decision that self-administration of  
 463 medication is an objective for the client. A client may not  
 464 self-administer medication until he or she demonstrates the

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465 competency to take the correct medication in the correct dosage  
 466 at the correct time, to respond to missed doses, and to contact  
 467 the appropriate person with questions.

468 (3) Medication administration discrepancies and adverse  
 469 drug reactions must be recorded and reported immediately to a  
 470 physician, physician assistant, or advanced registered nurse  
 471 practitioner.

472 400.9977 Assistance with medication.—

473 (1) Notwithstanding any provision of part I of chapter 464,  
 474 the Nurse Practice Act, unlicensed direct care services staff  
 475 who provide services to clients in a facility licensed under  
 476 this chapter or chapter 429 may administer prescribed,  
 477 prepackaged, and premeasured medications under the general  
 478 supervision of a registered nurse as provided under this section  
 479 and applicable rules.

480 (2) Training required by this section and applicable rules  
 481 shall be conducted by a registered nurse licensed under chapter  
 482 464, a physician licensed under chapter 458 or chapter 459, or a  
 483 pharmacist licensed under chapter 465.

484 (3) A facility that allows unlicensed direct care service  
 485 staff to administer medications pursuant to this section shall:

486 (a) Develop and implement policies and procedures that  
 487 include a plan to ensure the safe handling, storage, and  
 488 administration of prescription medications.

489 (b) Maintain written evidence of the expressed and informed  
 490 consent for each client.

491 (c) Maintain a copy of the written prescription, including  
 492 the name of the medication, the dosage, and the administration  
 493 schedule and termination date.

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494 (d) Maintain documentation of compliance with required  
 495 training.

496 (4) The agency shall adopt rules to implement this section.  
 497 400.9978 Protection of clients from abuse, neglect,  
 498 mistreatment, and exploitation.—The licensee shall develop and  
 499 implement policies and procedures for the screening and training  
 500 of employees; the protection of clients; and the prevention,  
 501 identification, investigation, and reporting of abuse, neglect,  
 502 mistreatment, and exploitation. The licensee shall identify  
 503 clients whose personal histories render them at risk for abusing  
 504 other clients, develop intervention strategies to prevent  
 505 occurrences of abuse, monitor clients for changes that would  
 506 trigger abusive behavior, and reassess the interventions on a  
 507 regular basis. A licensee shall:

508 (1) Screen each potential employee for a history of abuse,  
 509 neglect, mistreatment, or exploitation of clients. The screening  
 510 shall include an attempt to obtain information from previous and  
 511 current employers and verification of screening information by  
 512 the appropriate licensing boards.

513 (2) Train employees through orientation and ongoing  
 514 sessions regarding issues related to abuse prohibition  
 515 practices, including identification of abuse, neglect,  
 516 mistreatment, and exploitation; appropriate interventions to  
 517 address aggressive or catastrophic reactions of clients; the  
 518 process for reporting allegations without fear of reprisal; and  
 519 recognition of signs of frustration and stress that may lead to  
 520 abuse.

521 (3) Provide clients, families, and staff with information  
 522 regarding how and to whom they may report concerns, incidents,

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523 and grievances without fear of retribution and provide feedback  
 524 regarding the concerns that are expressed. A licensee shall  
 525 identify, correct, and intervene in situations in which abuse,  
 526 neglect, mistreatment, or exploitation is likely to occur,  
 527 including:

528 (a) Evaluating the physical environment of the facility to  
 529 identify characteristics that may make abuse or neglect more  
 530 likely to occur, such as secluded areas.

531 (b) Providing sufficient staff on each shift to meet the  
 532 needs of the clients and ensuring that the assigned staff have  
 533 knowledge of each client's care needs.

534 (c) Identifying inappropriate staff behaviors, such as  
 535 using derogatory language, rough handling of clients, ignoring  
 536 clients while giving care, and directing clients who need  
 537 toileting assistance to urinate or defecate in their beds.

538 (d) Assessing, monitoring, and planning care for clients  
 539 with needs and behaviors that might lead to conflict or neglect,  
 540 such as a history of aggressive behaviors including entering  
 541 other clients' rooms without permission, exhibiting self-  
 542 injurious behaviors or communication disorders, requiring  
 543 intensive nursing care, or being totally dependent on staff.

544 (4) Identify events, such as suspicious bruising of  
 545 clients, occurrences, patterns, and trends that may constitute  
 546 abuse and determine the direction of the investigation.

547 (5) Investigate alleged violations and different types of  
 548 incidents, identify the staff member responsible for initial  
 549 reporting, and report results to the proper authorities. The  
 550 licensee shall analyze the incidents to determine whether  
 551 policies and procedures need to be changed to prevent further

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552 incidents and take necessary corrective actions.

553 (6) Protect clients from harm during an investigation.

554 (7) Report alleged violations and substantiated incidents,  
 555 as required under chapters 39 and 415, to the licensing  
 556 authorities and all other agencies, as required, and report any  
 557 knowledge of actions by a court of law that would indicate an  
 558 employee is unfit for service.

559 400.9979 Restraint and seclusion; client safety.—

560 (1) A facility shall provide a therapeutic milieu that  
 561 supports a culture of individual empowerment and responsibility.  
 562 The health and safety of the client shall be the facility's  
 563 primary concern at all times.

564 (2) The use of physical restraints must be ordered and  
 565 documented by a physician, physician assistant, or advanced  
 566 registered nurse practitioner and must be consistent with the  
 567 policies and procedures adopted by the facility. The client or,  
 568 if applicable, the client's representative shall be informed of  
 569 the facility's physical restraint policies and procedures when  
 570 the client is admitted.

571 (3) The use of chemical restraints shall be limited to  
 572 prescribed dosages of medications as ordered by a physician,  
 573 physician assistant, or advanced registered nurse practitioner  
 574 and must be consistent with the client's diagnosis and the  
 575 policies and procedures adopted by the facility. The client and,  
 576 if applicable, the client's representative shall be informed of  
 577 the facility's chemical restraint policies and procedures when  
 578 the client is admitted.

579 (4) Based on the assessment by a physician, physician  
 580 assistant, or advanced registered nurse practitioner, if a

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581 client exhibits symptoms that present an immediate risk of  
 582 injury or death to himself or herself or others, a physician,  
 583 physician assistant, or advanced registered nurse practitioner  
 584 may issue an emergency treatment order to immediately administer  
 585 rapid-response psychotropic medications or other chemical  
 586 restraints. Each emergency treatment order must be documented  
 587 and maintained in the client's record.

588 (a) An emergency treatment order is not effective for more  
 589 than 24 hours.

590 (b) Whenever a client is medicated under this subsection,  
 591 the client's representative or a responsible party and the  
 592 client's physician, physician assistant, or advanced registered  
 593 nurse practitioner shall be notified as soon as practicable.

594 (5) A client who is prescribed and receives a medication  
 595 that can serve as a chemical restraint for a purpose other than  
 596 an emergency treatment order must be evaluated by his or her  
 597 physician, physician assistant, or advanced registered nurse  
 598 practitioner at least monthly to assess:

599 (a) The continued need for the medication.

600 (b) The level of the medication in the client's blood.

601 (c) The need for adjustments to the prescription.

602 (6) The licensee shall ensure that clients are free from  
 603 unnecessary drugs and physical restraints and are provided  
 604 treatment to reduce dependency on drugs and physical restraints.

605 (7) The licensee may only employ physical restraints and  
 606 seclusion as authorized by the facility's written policies,  
 607 which shall comply with this section and applicable rules.

608 (8) Interventions to manage dangerous client behavior shall  
 609 be employed with sufficient safeguards and supervision to ensure

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610 that the safety, welfare, and civil and human rights of a client  
 611 are adequately protected.

612 (9) A facility shall notify the parent, guardian, or, if  
 613 applicable, the client's representative when restraint or  
 614 seclusion is employed. The facility must provide the  
 615 notification within 24 hours after the restraint or seclusion is  
 616 employed. Reasonable efforts must be taken to notify the parent,  
 617 guardian, or, if applicable, the client's representative by  
 618 telephone or e-mail, or both, and these efforts must be  
 619 documented.

620 (10) The agency may adopt rules that establish standards  
 621 and procedures for the use of restraints, restraint positioning,  
 622 seclusion, and emergency treatment orders for psychotropic  
 623 medications, restraint, and seclusion. These rules must include  
 624 duration of restraint, staff training, observation of the client  
 625 during restraint, and documentation and reporting standards.

626 400.998 Personnel background screening; administration and  
 627 management procedures.-

628 (1) The agency shall require level 2 background screening  
 629 for licensee personnel as required in s. 408.809(1)(e) and  
 630 pursuant to chapter 435 and s. 408.809.

631 (2) The licensee shall maintain personnel records for each  
 632 staff member that contain, at a minimum, documentation of  
 633 background screening, a job description, documentation of  
 634 compliance with the training requirements of this part and  
 635 applicable rules, the employment application, references, a copy  
 636 of each job performance evaluation, and, for each staff member  
 637 who performs services for which licensure or certification is  
 638 required, a copy of all licenses or certification held by that



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639 staff member.640 (3) The licensee must:641 (a) Develop and implement infection control policies and  
642 procedures and include the policies and procedures in the  
643 licensee's policy manual.644 (b) Maintain liability insurance as defined in s.  
645 624.605(1)(b).646 (c) Designate one person as an administrator to be  
647 responsible and accountable for the overall management of the  
648 facility.649 (d) Designate in writing a person to be responsible for the  
650 facility when the administrator is absent from the facility for  
651 more than 24 hours.652 (e) Designate in writing a program director to be  
653 responsible for supervising the therapeutic and behavioral  
654 staff, determining the levels of supervision, and determining  
655 room placement for each client.656 (f) Designate in writing a person to be responsible when  
657 the program director is absent from the facility for more than  
658 24 hours.659 (g) Obtain approval of the comprehensive emergency  
660 management plan, pursuant to s. 400.9982(2)(e), from the local  
661 emergency management agency. Pending the approval of the plan,  
662 the local emergency management agency shall ensure that the  
663 following agencies, at a minimum, are given the opportunity to  
664 review the plan: the Department of Health, the Agency for Health  
665 Care Administration, and the Division of Emergency Management.  
666 Appropriate volunteer organizations shall also be given the  
667 opportunity to review the plan. The local emergency management

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668 agency shall complete its review within 60 days after receipt of  
669 the plan and either approve the plan or advise the licensee of  
670 necessary revisions.671 (h) Maintain written records in a form and system that  
672 comply with medical and business practices and make the records  
673 available by the facility for review or submission to the agency  
674 upon request. The records shall include:675 1. A daily census record that indicates the number of  
676 clients currently receiving services in the facility, including  
677 information regarding any public funding of such clients.678 2. A record of each accident or unusual incident involving  
679 a client or staff member that caused, or had the potential to  
680 cause, injury or harm to any person or property within the  
681 facility. The record shall contain a clear description of each  
682 accident or incident; the names of the persons involved; a  
683 description of medical or other services provided to these  
684 persons, including the provider of the services; and the steps  
685 taken to prevent recurrence of such accident or incident.686 3. A copy of current agreements with third-party providers.687 4. A copy of current agreements with each consultant  
688 employed by the licensee and documentation of a consultant's  
689 visits and required written and dated reports.690 400.9981 Property and personal affairs of clients.-691 (1) A client shall be given the option of using his or her  
692 own belongings, as space permits; choosing a roommate if  
693 practical and not clinically contraindicated; and, whenever  
694 possible, unless the client is adjudicated incompetent or  
695 incapacitated under state law, managing his or her own affairs.696 (2) The admission of a client to a facility and his or her

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 697 presence therein does not confer on a licensee or administrator,  
 698 or an employee or representative thereof, any authority to  
 699 manage, use, or dispose of the property of the client, and the  
 700 admission or presence of a client does not confer on such person  
 701 any authority or responsibility for the personal affairs of the  
 702 client except that which may be necessary for the safe  
 703 management of the facility or for the safety of the client.

704 (3) A licensee or administrator, or an employee or  
 705 representative thereof, may:

706 (a) Not act as the guardian, trustee, or conservator for a  
 707 client or a client's property.

708 (b) Act as a competent client's payee for social security,  
 709 veteran's, or railroad benefits if the client provides consent  
 710 and the licensee files a surety bond with the agency in an  
 711 amount equal to twice the average monthly aggregate income or  
 712 personal funds due to the client, or expendable for the client's  
 713 account, that are received by a licensee.

714 (c) Act as the attorney in fact for a client if the  
 715 licensee files a surety bond with the agency in an amount equal  
 716 to twice the average monthly income of the client, plus the  
 717 value of a client's property under the control of the attorney  
 718 in fact.

719  
 720 The surety bond required under paragraph (b) or paragraph (c)  
 721 shall be executed by the licensee as principal and a licensed  
 722 surety company. The bond shall be conditioned upon the faithful  
 723 compliance of the licensee with the requirements of licensure  
 724 and is payable to the agency for the benefit of a client who  
 725 suffers a financial loss as a result of the misuse or

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 726 misappropriation of funds held pursuant to this subsection. A  
 727 surety company that cancels or does not renew the bond of a  
 728 licensee shall notify the agency in writing at least 30 days  
 729 before the action, giving the reason for cancellation or  
 730 nonrenewal. A licensee or administrator, or an employee or  
 731 representative thereof, who is granted power of attorney for a  
 732 client of the facility shall, on a monthly basis, notify the  
 733 client in writing of any transaction made on behalf of the  
 734 client pursuant to this subsection, and a copy of the  
 735 notification given to the client shall be retained in the  
 736 client's file and available for agency inspection.

737 (4) A licensee, with the consent of the client, shall  
 738 provide for safekeeping in the facility of the client's personal  
 739 effects of a value not in excess of \$1,000 and the client's  
 740 funds not in excess of \$500 cash and shall keep complete and  
 741 accurate records of the funds and personal effects received. If  
 742 a client is absent from a facility for 24 hours or more, the  
 743 licensee may provide for safekeeping of the client's personal  
 744 effects of a value in excess of \$1,000.

745 (5) Funds or other property belonging to or due to a client  
 746 or expendable for the client's account that are received by a  
 747 licensee shall be regarded as funds held in trust and shall be  
 748 kept separate from the funds and property of the licensee and  
 749 other clients or shall be specifically credited to the client.  
 750 The funds held in trust shall be used or otherwise expended only  
 751 for the account of the client. At least once every month, except  
 752 pursuant to an order of a court of competent jurisdiction, the  
 753 licensee shall furnish the client and, if applicable, the  
 754 client's representative with a complete and verified statement

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755 of all funds and other property to which this subsection  
 756 applies, detailing the amount and items received, together with  
 757 their sources and disposition. The licensee shall furnish the  
 758 statement annually and upon discharge or transfer of a client. A  
 759 governmental agency or private charitable agency contributing  
 760 funds or other property to the account of a client is also  
 761 entitled to receive a statement monthly and upon the discharge  
 762 or transfer of the client.

763 (6) (a) In addition to any damages or civil penalties to  
 764 which a person is subject, a person who:

765 1. Intentionally withholds a client's personal funds,  
 766 personal property, or personal needs allowance;

767 2. Demands, beneficially receives, or contracts for payment  
 768 of all or any part of a client's personal property or personal  
 769 needs allowance in satisfaction of the facility rate for  
 770 supplies and services; or

771 3. Borrows from or pledges any personal funds of a client,  
 772 other than the amount agreed to by written contract under s.  
 773 429.24,

774 commits a misdemeanor of the first degree, punishable as  
 775 provided in s. 775.082 or s. 775.083.

776 (b) A licensee or administrator, or an employee, or  
 777 representative thereof, who is granted power of attorney for a  
 778 client and who misuses or misappropriates funds obtained through  
 779 this power commits a felony of the third degree, punishable as  
 780 provided in s. 775.082, s. 775.083, or s. 775.084.

781 (7) In the event of the death of a client, a licensee shall  
 782 return all refunds, funds, and property held in trust to the  
 783

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784 client's personal representative, if one has been appointed at  
 785 the time the licensee disburses such funds, or, if not, to the  
 786 client's spouse or adult next of kin named in a beneficiary  
 787 designation form provided by the licensee to the client. If the  
 788 client does not have a spouse or adult next of kin or such  
 789 person cannot be located, funds due to be returned to the client  
 790 shall be placed in an interest-bearing account, and all property  
 791 held in trust by the licensee shall be safeguarded until such  
 792 time as the funds and property are disbursed pursuant to the  
 793 Florida Probate Code. The funds shall be kept separate from the  
 794 funds and property of the licensee and other clients of the  
 795 facility. If the funds of the deceased client are not disbursed  
 796 pursuant to the Florida Probate Code within 2 years after the  
 797 client's death, the funds shall be deposited in the Health Care  
 798 Trust Fund administered by the agency.

799 (8) The agency, by rule, may clarify terms and specify  
 800 procedures and documentation necessary to administer the  
 801 provisions of this section relating to the proper management of  
 802 clients' funds and personal property and the execution of surety  
 803 bonds.

804 400.9982 Rules establishing standards.—

805 (1) It is the intent of the Legislature that rules adopted  
 806 and enforced pursuant to this part and part II of chapter 408  
 807 include criteria to ensure reasonable and consistent quality of  
 808 care and client safety. The rules should make reasonable efforts  
 809 to accommodate the needs and preferences of the client to  
 810 enhance the client's quality of life while residing in a  
 811 transitional living facility.

812 (2) The agency may adopt and enforce rules to implement

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813 this part and part II of chapter 408, which shall include  
 814 reasonable and fair criteria with respect to:  
 815 (a) The location of transitional living facilities.  
 816 (b) The qualifications of personnel, including management,  
 817 medical, nursing, and other professional personnel and nursing  
 818 assistants and support staff, who are responsible for client  
 819 care. The licensee must employ enough qualified professional  
 820 staff to carry out and monitor interventions in accordance with  
 821 the stated goals and objectives of each comprehensive treatment  
 822 plan.  
 823 (c) Requirements for personnel procedures, reporting  
 824 procedures, and documentation necessary to implement this part.  
 825 (d) Services provided to clients of transitional living  
 826 facilities.  
 827 (e) The preparation and annual update of a comprehensive  
 828 emergency management plan in consultation with the Division of  
 829 Emergency Management. At a minimum, the rules must provide for  
 830 plan components that address emergency evacuation  
 831 transportation; adequate sheltering arrangements; postdisaster  
 832 activities, including provision of emergency power, food, and  
 833 water; postdisaster transportation; supplies; staffing;  
 834 emergency equipment; individual identification of clients and  
 835 transfer of records; communication with families; and responses  
 836 to family inquiries.  
 837 400.9983 Violations; penalties.—A violation of this part or  
 838 any rule adopted pursuant thereto shall be classified according  
 839 to the nature of the violation and the gravity of its probable  
 840 effect on facility clients. The agency shall indicate the  
 841 classification on the written notice of the violation as

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842 follows:  
 843 (1) Class "I" violations are defined in s. 408.813. The  
 844 agency shall issue a citation regardless of correction and  
 845 impose an administrative fine of \$5,000 for an isolated  
 846 violation, \$7,500 for a patterned violation, or \$10,000 for a  
 847 widespread violation. Violations may be identified, and a fine  
 848 must be levied, notwithstanding the correction of the deficiency  
 849 giving rise to the violation.  
 850 (2) Class "II" violations are defined in s. 408.813. The  
 851 agency shall impose an administrative fine of \$1,000 for an  
 852 isolated violation, \$2,500 for a patterned violation, or \$5,000  
 853 for a widespread violation. A fine must be levied  
 854 notwithstanding the correction of the deficiency giving rise to  
 855 the violation.  
 856 (3) Class "III" violations are defined in s. 408.813. The  
 857 agency shall impose an administrative fine of \$500 for an  
 858 isolated violation, \$750 for a patterned violation, or \$1,000  
 859 for a widespread violation. If a deficiency giving rise to a  
 860 class III violation is corrected within the time specified by  
 861 the agency, the fine may not be imposed.  
 862 (4) Class "IV" violations are defined in s. 408.813. The  
 863 agency shall impose for a cited class IV violation an  
 864 administrative fine of at least \$100 but not exceeding \$200 for  
 865 each violation. If a deficiency giving rise to a class IV  
 866 violation is corrected within the time specified by the agency,  
 867 the fine may not be imposed.  
 868 400.9984 Receivership proceedings.—The agency may apply s.  
 869 429.22 with regard to receivership proceedings for transitional  
 870 living facilities.

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871 400.9985 Interagency communication.—The agency, the  
 872 department, the Agency for Persons with Disabilities, and the  
 873 Department of Children and Families shall develop electronic  
 874 systems to ensure that relevant information pertaining to the  
 875 regulation of transitional living facilities and clients is  
 876 timely and effectively communicated among agencies in order to  
 877 facilitate the protection of clients. Electronic sharing of  
 878 information shall include, at a minimum, a brain and spinal cord  
 879 injury registry and a client abuse registry.

880 Section 2. Section 400.805, Florida Statutes, is repealed.

881 Section 3. The title of part V of chapter 400, Florida  
 882 Statutes, consisting of sections 400.701-400.801, is  
 883 redesignated as "INTERMEDIATE CARE FACILITIES."

884 Section 4. Subsection (9) of section 381.745, Florida  
 885 Statutes, is amended to read:

886 381.745 Definitions; ss. 381.739-381.79.—As used in ss.  
 887 381.739-381.79, the term:

888 (9) "Transitional living facility" means a state-approved  
 889 facility, ~~as defined and licensed under chapter 400 or chapter~~  
 890 ~~429, or a facility approved by the brain and spinal cord injury~~  
 891 ~~program in accordance with this chapter.~~

892 Section 5. Section 381.75, Florida Statutes, is amended to  
 893 read:

894 381.75 Duties and responsibilities of the department, ~~of~~  
 895 ~~transitional living facilities, and of residents.~~—Consistent  
 896 with the mandate of s. 381.7395, the department shall develop  
 897 and administer a multilevel treatment program for individuals  
 898 who sustain brain or spinal cord injuries and who are referred  
 899 to the brain and spinal cord injury program.

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900 (1) Within 15 days after any report of an individual who  
 901 has sustained a brain or spinal cord injury, the department  
 902 shall notify the individual or the most immediate available  
 903 family members of their right to assistance from the state, the  
 904 services available, and the eligibility requirements.

905 (2) The department shall refer individuals who have brain  
 906 or spinal cord injuries to other state agencies to ~~ensure~~ assure  
 907 that rehabilitative services, if desired, are obtained by that  
 908 individual.

909 (3) The department, in consultation with emergency medical  
 910 service, shall develop standards for an emergency medical  
 911 evacuation system that will ensure that all individuals who  
 912 sustain traumatic brain or spinal cord injuries are transported  
 913 to a department-approved trauma center that meets the standards  
 914 and criteria established by the emergency medical service and  
 915 the acute-care standards of the brain and spinal cord injury  
 916 program.

917 (4) The department shall develop standards for designation  
 918 of rehabilitation centers to provide rehabilitation services for  
 919 individuals who have brain or spinal cord injuries.

920 (5) The department shall determine the appropriate number  
 921 of designated acute-care facilities, inpatient rehabilitation  
 922 centers, and outpatient rehabilitation centers, ~~needed based on~~  
 923 ~~incidence, volume of admissions, and other appropriate criteria.~~

924 (6) The department shall develop standards for designation  
 925 of transitional living facilities to provide transitional living  
 926 services for individuals who participate in the brain and spinal  
 927 cord injury program ~~the opportunity to adjust to their~~  
 928 ~~disabilities and to develop physical and functional skills in a~~

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929 supported living environment.

930 (a) ~~The Agency for Health Care Administration, in~~  
 931 ~~consultation with the department, shall develop rules for the~~  
 932 ~~licensure of transitional living facilities for individuals who~~  
 933 ~~have brain or spinal cord injuries.~~

934 (b) ~~The goal of a transitional living program for~~  
 935 ~~individuals who have brain or spinal cord injuries is to assist~~  
 936 ~~each individual who has such a disability to achieve a higher~~  
 937 ~~level of independent functioning and to enable that person to~~  
 938 ~~reenter the community. The program shall be focused on preparing~~  
 939 ~~participants to return to community living.~~

940 (c) ~~A transitional living facility for an individual who~~  
 941 ~~has a brain or spinal cord injury shall provide to such~~  
 942 ~~individual, in a residential setting, a goal-oriented treatment~~  
 943 ~~program designed to improve the individual's physical,~~  
 944 ~~cognitive, communicative, behavioral, psychological, and social~~  
 945 ~~functioning, as well as to provide necessary support and~~  
 946 ~~supervision. A transitional living facility shall offer at least~~  
 947 ~~the following therapies: physical, occupational, speech,~~  
 948 ~~neuropsychology, independent living skills training, behavior~~  
 949 ~~analysis for programs serving brain-injured individuals, health~~  
 950 ~~education, and recreation.~~

951 (d) ~~All residents shall use the transitional living~~  
 952 ~~facility as a temporary measure and not as a permanent home or~~  
 953 ~~domicile. The transitional living facility shall develop an~~  
 954 ~~initial treatment plan for each resident within 3 days after the~~  
 955 ~~resident's admission. The transitional living facility shall~~  
 956 ~~develop a comprehensive plan of treatment and a discharge plan~~  
 957 ~~for each resident as soon as practical, but no later than 30~~

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958 days after the resident's admission. Each comprehensive  
 959 treatment plan and discharge plan must be reviewed and updated  
 960 as necessary, but no less often than quarterly. This subsection  
 961 does not require the discharge of an individual who continues to  
 962 require any of the specialized services described in paragraph  
 963 (e) or who is making measurable progress in accordance with that  
 964 individual's comprehensive treatment plan. The transitional  
 965 living facility shall discharge any individual who has an  
 966 appropriate discharge site and who has achieved the goals of his  
 967 or her discharge plan or who is no longer making progress toward  
 968 the goals established in the comprehensive treatment plan and  
 969 the discharge plan. The discharge location must be the least  
 970 restrictive environment in which an individual's health, well-  
 971 being, and safety is preserved.

972 (7) ~~Recipients of services, under this section, from any of~~  
 973 ~~the facilities referred to in this section shall pay a fee based~~  
 974 ~~on ability to pay.~~

975 Section 6. Subsection (4) of section 381.78, Florida  
 976 Statutes, is amended to read:

977 381.78 Advisory council on brain and spinal cord injuries.-

978 (4) The council shall:

979 (a) provide advice and expertise to the department in the  
 980 preparation, implementation, and periodic review of the brain  
 981 and spinal cord injury program.

982 (b) ~~Annually appoint a five-member committee composed of~~  
 983 ~~one individual who has a brain injury or has a family member~~  
 984 ~~with a brain injury, one individual who has a spinal cord injury~~  
 985 ~~or has a family member with a spinal cord injury, and three~~  
 986 ~~members who shall be chosen from among these representative~~

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987 ~~groups: physicians, other allied health professionals,~~  
 988 ~~administrators of brain and spinal cord injury programs, and~~  
 989 ~~representatives from support groups with expertise in areas~~  
 990 ~~related to the rehabilitation of individuals who have brain or~~  
 991 ~~spinal cord injuries, except that one and only one member of the~~  
 992 ~~committee shall be an administrator of a transitional living~~  
 993 ~~facility. Membership on the council is not a prerequisite for~~  
 994 ~~membership on this committee.~~

995 ~~1. The committee shall perform onsite visits to those~~  
 996 ~~transitional living facilities identified by the Agency for~~  
 997 ~~Health Care Administration as being in possible violation of the~~  
 998 ~~statutes and rules regulating such facilities. The committee~~  
 999 ~~members have the same rights of entry and inspection granted~~  
 1000 ~~under s. 400.805(4) to designated representatives of the agency.~~

1001 ~~2. Factual findings of the committee resulting from an~~  
 1002 ~~onsite investigation of a facility pursuant to subparagraph 1.~~  
 1003 ~~shall be adopted by the agency in developing its administrative~~  
 1004 ~~response regarding enforcement of statutes and rules regulating~~  
 1005 ~~the operation of the facility.~~

1006 ~~3. Onsite investigations by the committee shall be funded~~  
 1007 ~~by the Health Care Trust Fund.~~

1008 ~~4. Travel expenses for committee members shall be~~  
 1009 ~~reimbursed in accordance with s. 112.061.~~

1010 ~~5. Members of the committee shall recuse themselves from~~  
 1011 ~~participating in any investigation that would create a conflict~~  
 1012 ~~of interest under state law, and the council shall replace the~~  
 1013 ~~member, either temporarily or permanently.~~

1014 Section 7. Subsection (5) of section 400.93, Florida  
 1015 Statutes, is amended to read:

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1016 400.93 Licensure required; exemptions; unlawful acts;  
 1017 penalties.-

1018 (5) The following are exempt from home medical equipment  
 1019 provider licensure, unless they have a separate company,  
 1020 corporation, or division that is in the business of providing  
 1021 home medical equipment and services for sale or rent to  
 1022 consumers at their regular or temporary place of residence  
 1023 pursuant to the provisions of this part:

1024 (a) Providers operated by the Department of Health or  
 1025 Federal Government.

1026 (b) Nursing homes licensed under part II.

1027 (c) Assisted living facilities licensed under chapter 429,  
 1028 when serving their residents.

1029 (d) Home health agencies licensed under part III.

1030 (e) Hospices licensed under part IV.

1031 (f) Intermediate care facilities and, homes for special  
 1032 services, ~~and transitional living facilities~~ licensed under part  
 1033 V.

1034 (g) Transitional living facilities licensed under part XI.

1035 (h)-(g) Hospitals and ambulatory surgical centers licensed  
 1036 under chapter 395.

1037 (i)-(h) Manufacturers and wholesale distributors when not  
 1038 selling directly to consumers.

1039 (j)-(i) Licensed health care practitioners who use utilize  
 1040 home medical equipment in the course of their practice, but do  
 1041 not sell or rent home medical equipment to their patients.

1042 (k)-(j) Pharmacies licensed under chapter 465.

1043 Section 8. Subsection (21) of section 408.802, Florida  
 1044 Statutes, is amended to read:

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1045 408.802 Applicability.—The provisions of this part apply to  
1046 the provision of services that require licensure as defined in  
1047 this part and to the following entities licensed, registered, or  
1048 certified by the agency, as described in chapters 112, 383, 390,  
1049 394, 395, 400, 429, 440, 483, and 765:

1050 (21) Transitional living facilities, as provided under part  
1051 XI ¶ of chapter 400.

1052 Section 9. Subsection (20) of section 408.820, Florida  
1053 Statutes, is amended to read:

1054 408.820 Exemptions.—Except as prescribed in authorizing  
1055 statutes, the following exemptions shall apply to specified  
1056 requirements of this part:

1057 (20) Transitional living facilities, as provided under part  
1058 XI ¶ of chapter 400, are exempt from s. 408.810(10).

1059 Section 10. Effective July 1, 2015, a transitional living  
1060 facility licensed before the effective date of this act pursuant  
1061 to s. 400.805, Florida Statutes, must be licensed under part XI  
1062 of chapter 400, Florida Statutes, as created by this act.

1063 Section 11. Except as otherwise expressly provided in this  
1064 act, this act shall take effect July 1, 2014.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Communications, Energy, and Public Utilities, Vice  
Chair  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and Human  
Services  
Transportation  
Health Policy  
Agriculture  
Transportation

### JOINT COMMITTEE:

Joint Committee on Administrative Procedures, Chair

**SENATOR RENE GARCIA**  
38th District

March 28, 2014

The Honorable Aaron Bean  
Chair, Health Policy Committee  
302 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Bean:

This letter should serve as a request to have my bill *SB 1486 Transitional Living Facilities* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García  
District 38  
RG:jt

CC: Sandra Stovall, Staff Director

#### REPLY TO:

- 1490 West 68 St., Suite 201 Hialeah, FL 33014 (305) 364-3100
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



THE FLORIDA SENATE  
**APPEARANCE RECORD**



(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/2014  
Meeting Date

Topic TRANSITIONAL LIVING FACILITIES

Bill Number SB 1486  
*(if applicable)*

Name DANA FARMER

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title DIRECTOR LEGISLATIVE AFFAIRS

Address 2728 CENTERVIEW DRIVE, STE. 102  
*Street*

Phone 850.617.9709

TALCAHASSEE FL 32701  
*City State Zip*

E-mail danaf@d  
disabilityrightsflorida.org

Speaking:  For  Against  Information

Representing DISABILITY RIGHTS FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1180

INTRODUCER: Senators Sobel and Thompson

SUBJECT: Chemicals in Consumer Products

DATE: April 3, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	<b>Favorable</b>
2.	Lloyd	Stovall	HP	<b>Favorable</b>
3.	_____	_____	AHS	_____
4.	_____	_____	AP	_____

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**I. Summary:**

SB 1180 creates s. 381.986, F.S., to require the Department of Health (department) to generate a list of at least 50, but no more than 100 chemicals of high concern present in consumer products and publish the list on its website by January 1, 2015. If funds are not available, the department is authorized to cite lists developed by other states. The list would allow public identification of such chemicals, encourage substitution with safer alternatives, and reduce the exposure of pregnant women and children to chemicals of high concern.

The bill authorizes the department to join in an interstate clearinghouse with other states and governmental entities to promote use of safer chemicals in consumer products.

The effective date of the bill is July 1, 2014, and there is a fiscal impact.

**II. Present Situation:**

The State of Florida does not currently maintain a list of chemicals of high concern in consumer products. In 2008, the Florida Department of Environmental Protection formed an internal workgroup to look at the issue of contaminants, collectively called emerging substances of concerns (ESOCs) in the report, such as flame retardants, pharmaceuticals and personal care products, endocrine-modulating chemicals, nanoparticles, and biological metabolites.<sup>1</sup> The workgroup focused on the effect of the ESOCs predominantly on the environment and the state's water supply. However, the workgroup did agree that a national policy and strategy would be more effective than a piece-meal approach by the states given the volume of new chemicals released each year.<sup>2</sup>

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<sup>1</sup> Florida Department of Environmental Protection, *Emerging Substance of Concern* (December 2008). [http://www.dep.state.fl.us/water/wqssp/docs/esoc\\_fdep\\_report\\_12\\_8\\_08.pdf](http://www.dep.state.fl.us/water/wqssp/docs/esoc_fdep_report_12_8_08.pdf) (last visited April 3, 2014).

<sup>2</sup> *Id.*

## Federal Policies

The U.S. Environmental Protection Agency (EPA) assesses the safety of commercial chemicals through a three-tiered process: 1) risk assessment and risk reduction; 2) data collection and screening; and, 3) public access to chemical data and information.<sup>3</sup> The EPA will assess those chemicals with well-known hazard concerns which have a high possibility of significant exposure.<sup>4</sup> This Toxic Substances Control Act (TSCA) Work Plan included 83 chemicals for further assessment in 2012. In 2013, the list focused on 23 chemicals, including 23 flame retardant chemicals.<sup>5</sup> The EPA focused on chemicals that meet one or more of the following factors:<sup>6</sup>

- Potentially of concern to children's health;
- Neurotoxic effects;
- Persistent, Bioaccumulative, and Toxic (PBT);
- Probable or known carcinogens;
- Used in children's products; or
- Detected in biomonitoring programs.

## Other State Programs

Maine, Minnesota, California, and Washington currently maintain chemicals of high concern lists.

Maine's law requires its Department of Environmental Protection to publish a list of no more than 70 chemicals of high concern.<sup>7</sup> To be included on Maine's list, there must be a determination of strong, credible scientific evidence that the chemical is a reproductive or developmental toxicant, endocrine disruptor, or human carcinogen; and, there is strong, credible scientific evidence that the chemical meets one or more of the following criteria:<sup>8</sup>

- The chemical has been found through biomonitoring studies to be present in human blood, human breast milk, human urine, or other bodily tissues or fluids;
- The chemical has been found through sampling and analysis to be present in household dust, indoor air or drinking water or elsewhere in the home environment; or
- The chemical has been added to or is present in a consumer product used or present in the home.

Currently, Maine lists 49 compounds as chemicals of high concern.<sup>9</sup>

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<sup>3</sup> U.S. Environmental Protection Agency, *Existing Chemicals Program: Strategy* (Feb. 2012).  
[http://www.epa.gov/oppt/existingchemicals/pubs/Existing\\_Chemicals\\_Strategy\\_Web.2-23-12.pdf](http://www.epa.gov/oppt/existingchemicals/pubs/Existing_Chemicals_Strategy_Web.2-23-12.pdf) (last visited April 3, 2014).

<sup>4</sup> *Id.*

<sup>5</sup> U.S. Environmental Protection Agency, *Existing Chemicals - List of Chemicals for Assessment*  
[http://www.epa.gov/oppt/existingchemicals/pubs/assessment\\_chemicals\\_list.html](http://www.epa.gov/oppt/existingchemicals/pubs/assessment_chemicals_list.html) (last visited April 3, 2014).

<sup>6</sup> U.S. Environmental Protection Agency, *Existing Chemicals - TSCA Work Plan Chemicals*  
<http://www.epa.gov/oppt/existingchemicals/pubs/workplans.html> (last visited April 3, 2014).

<sup>7</sup> Maine Department of Environmental Protection, *Sustainability - Chemicals of High Concern*,  
<http://www.maine.gov/dep/safechem/highconcern/> (last visited April 3, 2014).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Minnesota passed its Toxic Free Kids legislation in 2009, which requires the publication of a list identifying chemicals which could be harmful to human or environmental health and specifically chemicals which are suspected carcinogens, reproductive or developmental toxicants, or persistent, bioaccumulative and toxic or very persistent and very bioaccumulative.<sup>10</sup> The Minnesota legislation also requires the state department of health to review and revise the list every 3 years. More than 1,700 chemicals are included on the state's 2013 list.<sup>11</sup>

Washington passed the Children's Safe Products Act (CSPA) in 2008, requiring its Department of Ecology, in consultation with the Department of Health, to develop a list of chemicals of high concern for children and to establish rules for manufacturers of children's products to report on their use of these chemicals.<sup>12</sup> Information reported under the CSPA can be used by policy makers to determine what, if any, further actions might be required to assure consumers that children's products on the shelves are safe. The CSPA marks a significant departure from other laws aimed at reducing the threats and impacts caused by the continued and increasing use of toxic chemicals.<sup>13</sup> Washington State's law is considered to be stronger than any other chemical disclosure law in the United States.<sup>14</sup>

Washington's CSPA created a searchable, online database that includes 66 chemicals. These chemicals were chosen because studies have linked them to cancer or to reproductive, developmental, or neurological effects in animals or people.<sup>15</sup> In most cases, no one knows what, if anything, exposure to small doses of these chemicals may do to people, especially babies and toddlers who tend to chew on items or rub them on their skin.<sup>16</sup> For many of these compounds, there has been little or no research to investigate children's exposure to them.<sup>17</sup> According to Dr. Sheela Sathyanarayana, a pediatric researcher at the University of Washington and the Seattle Children's Research Institute, who advised state officials when the disclosure rules were written, "Children are uniquely vulnerable to exposures given their hand-to-mouth behaviors, floor play and developing nervous and reproductive systems."<sup>18</sup>

Officials with CSPA agree with the Toy Industry Association that the presence of a substance on the Washington state list in a toy or game doesn't automatically mean there is a risk or cause for concern.<sup>19</sup> However, the new law is already driving changes in products. Some companies,

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<sup>10</sup> Minnesota Department of Health, *2013 Minnesota Chemicals of High Concern Report, Executive Summary*, p.1, <http://www.health.state.mn.us/divs/eh/hazardous/topics/toxfreekids/report2013.pdf> (last visited April 3, 2014).

<sup>11</sup> Minnesota Department of Health, *2013 Minnesota Chemicals of High Concern Report - 2013 Chemicals of High Concern Update*, p.4, <http://www.health.state.mn.us/divs/eh/hazardous/topics/toxfreekids/report2013.pdf> (last visited April 3, 2014).

<sup>12</sup> State of Washington, Department of Ecology, *Washington's Children's Safe Products Act, Executive Summary*, <http://www.ecy.wa.gov/programs/safa/rules/pdf/CSPAexcum.pdf> (last visited April 3, 2014).

<sup>13</sup> *Id.*

<sup>14</sup> Jane Kay, *EHN Special Report: 'Chemicals of high concern' found in thousands of children's products* (May 6, 2013), ENVIRONMENTAL HEALTH NEWS <http://www.environmentalhealthnews.org/ehs/news/2013/childrens-products> (last visited April 3, 2014).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

including Wal-Mart, Gap, Nike, and Johnson & Johnson have filed documents with the state stating they would eliminate some chemicals on the state's list.<sup>20</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 381.986, F.S., which provides it is the policy of the state to reduce the exposure of pregnant women and children to chemicals of high concern through the public identification of such chemicals and encourage the use of safer alternatives whenever possible. This section also contains definitions for:

- Chemical;
- Chemicals of high concern;
- Children or child;
- Consumer product;
- Credible scientific evidence; and,
- Department.

This section directs the Department of Health (department) to publish an initial list of at least 50, but no more than 100, chemicals of high concern by January 1, 2015. The department may cite lists developed by other states if funds are not available to create the list. The list would be reviewed by the department every three years and revised as needed. The initial list of chemicals of high concern would be published on the department's website and updated whenever the published list was revised.

The criteria to designate a chemical of high concern is set out in this section. The department may include a chemical that has been formally identified by another state as a priority chemical or chemical of high concern if that state's criteria is substantially equivalent to the criteria set out in the proposed legislation or has been identified by another state as being known to cause cancer, birth defects, or other reproductive harm.

Additionally, a chemical is considered a chemical of high concern if the department determines that:

- The chemical, based on credible scientific evidence, is identified by a governmental agency as being known or likely to:
  - Harm the normal development of a fetus or child or cause other developmental toxicity;
  - Cause cancer, genetic damage, or reproductive harm;
  - Damage the nervous system, immune system, hormone system, or organs or cause other systems toxicity; or
  - Be persistent, bioaccumulative, and toxic; and
- There is credible scientific evidence that the chemical has been added to, or is present in, a consumer product used or stored in around a residence, child care facility, or school.

The bill authorizes the department to join an interstate clearinghouse with other states and governmental entities to: promote use of safer chemicals in consumer products; organize chemical data; model policies related to safer alternatives to specific chemical uses; provide technical assistance to businesses and consumers regarding the use of safer chemicals; and

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<sup>20</sup> *Id.*

initiate activities in support of state programs to promote the use of safer chemicals in consumer products.

**Section 2** provides an effective date of July 1, 2014.

**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:

None.

B. Private Sector Impact:

SB 1180 directs the department to create a list of at least 50, and no more than 100, chemicals of high concern by January 1, 2015. The Toy Industry Association has pointed out that the presence of a substance found in a toy or game does not automatically imply that it is a risk or cause for concern. Without additional information, consumers may make purchasing decisions based on the presence of a chemical in a product even though it might not be harmful to human health or a violation of any safety standard.

C. Government Sector Impact:

<b>Fiscal Impact</b>	<b>Fiscal Year 2014-15</b>			
<b>Agency/program</b>	<b>FTE</b>	<b>GR</b>	<b>Trust</b>	<b>Total</b>
Public Health Toxicology Section (1.5 FTE) Environmental Epidemiology Section (1.0 FTE)	2.5	\$117,402	\$0	\$117,402
Travel/Computing Expenses		\$38,853		\$38,853
		\$885	\$0	\$885
<b>Total</b>		\$157,140	\$0	\$157,140

The department indicates that the SB 1180 requires the development and maintenance of a new website, data management, and publicly searchable access. There will be a fiscal impact of \$157,140 for the first fiscal year and a recurring impact of \$186,869 in General Revenue funds.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 381.986, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>21</sup> Florida Department of Health, *Senate Bill 1180 Analysis* (Feb. 25, 2014) (on file with the Senate Committee on Health Policy).



By Senator Sobel

33-01062-14

20141180\_\_

1 A bill to be entitled  
 2 An act relating to chemicals in consumer products;  
 3 creating s. 381.986, F.S.; providing legislative  
 4 intent; defining terms; requiring the Department of  
 5 Health to publish a list of chemicals of high concern  
 6 present in consumer products designed for use by  
 7 pregnant women and children; providing criteria for  
 8 inclusion on the list; authorizing the department to  
 9 participate with other states and governmental  
 10 entities in an interstate clearinghouse established  
 11 for specified purposes; providing an effective date.

12

13 WHEREAS, thousands of toxic chemicals intended for use by  
 14 pregnant women and children are present in consumer products  
 15 used in and around homes, daycares, and schools, and

16 WHEREAS, exposure to harmful chemicals found in products  
 17 specifically designated for use by pregnant women and children  
 18 has been linked to devastating health conditions such as  
 19 childhood cancer, asthma, premature puberty, infertility, and  
 20 learning and developmental disabilities, and

21 WHEREAS, consumers, including pregnant women, parents,  
 22 teachers, and business owners, need reliable information on  
 23 which they may base their purchasing decisions to ensure that  
 24 they are able to make healthy choices about the products they  
 25 buy, and

26 WHEREAS, abundant reliable, peer-reviewed scientific data  
 27 currently exists regarding the health and safety concerns of  
 28 toxic chemicals on pregnant women and children, and

29 WHEREAS, several states, including Maine, Washington, and

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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20141180\_\_

30 Minnesota, have used available peer-reviewed scientific data to  
 31 produce lists of "chemicals of high concern" to inform the  
 32 public about important public safety information regarding toxic  
 33 chemicals, NOW, THEREFORE,  
 34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Section 381.986, Florida Statutes, is created to  
 38 read:

39 381.986 Chemicals of high concern in consumer products.-  
 40 (1) It is the policy of this state, consistent with its  
 41 duty to protect the health, safety, and welfare of its citizens,  
 42 to reduce the exposure of pregnant women and children to  
 43 chemicals of high concern by publicly identifying such chemicals  
 44 and encouraging substitution with safer alternatives whenever  
 45 feasible.

46 (2) As used in this section, the term:

47 (a) "Chemical" means any element, compound, or mixture of  
 48 elements or compounds including breakdown products formed  
 49 through decomposition, degradation, or metabolism.

50 (b) "Chemical of high concern" means a chemical identified  
 51 by the department which meets the criteria established in  
 52 subsection (4) or subsection (5).

53 (c) "Children" or "child" means a person younger than 18  
 54 years of age.

55 (d) "Consumer product" means an item designed or primarily  
 56 intended for use by pregnant women or children, including  
 57 component parts and packaging, sold for indoor or outdoor use in  
 58 or around a residence, child care facility, or school.

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 (e) "Credible scientific evidence" means the results of a  
 60 study, the experimental design and conduct of which have  
 61 undergone independent scientific peer review, which are  
 62 published in a peer-reviewed journal, or in a publication of an  
 63 authoritative federal or international governmental agency,  
 64 including, but not limited to, the United States Department of  
 65 Health and Human Services National Toxicology Program, the  
 66 National Institute of Environmental Health Sciences, the United  
 67 States Food and Drug Administration, the Centers for Disease  
 68 Control and Prevention, the United States Environmental  
 69 Protection Agency, the World Health Organization, and the  
 70 European Chemicals Agency of the European Union.

71 (f) "Department" means the Department of Health.

72 (3) By January 1, 2015, the department, in consultation  
 73 with other state agencies, shall publish an initial list of at  
 74 least 50, but not more than 100, chemicals of high concern. If  
 75 funds are not available to create the list, the department may  
 76 cite lists developed by other states.

77 (a) The department shall review the list at least every 3  
 78 years and revise it as needed.

79 (b) The department shall publish the initial list of  
 80 chemicals of high concern on its website and update the website  
 81 whenever the published list is revised.

82 (4) A chemical may be designated as a chemical of high  
 83 concern if the department determines that:

84 (a) The chemical, based on credible scientific evidence, is  
 85 identified by a governmental agency as being known or likely to:

86 1. Harm the normal development of a fetus or child or cause  
 87 other developmental toxicity;

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88 2. Cause cancer, genetic damage, or reproductive harm;

89 3. Damage the nervous system, immune system, hormone  
 90 system, or organs or cause other systemic toxicity; or

91 4. Be persistent, bioaccumulative, and toxic; and

92 (b) There is credible scientific evidence that the chemical  
 93 has been added to, or is present in, a consumer product used or  
 94 stored in or around a residence, child care facility, or school.

95 (5) In lieu of meeting the requirements of subsection (4),  
 96 a chemical may be designated as a chemical of high concern if  
 97 the department determines that:

98 (a) Based upon criteria that are substantially equivalent  
 99 to those in subsection (4), the chemical has been formally  
 100 identified by another state as a priority chemical or a chemical  
 101 of high concern; or

102 (b) One or more of the criteria in paragraph (4)(b) are met  
 103 and the chemical has been formally identified by another state  
 104 as being known to cause cancer, birth defects, or other  
 105 reproductive harm.

106 (6) The department may participate with other states and  
 107 governmental entities in an interstate clearinghouse in order  
 108 to:

109 (a) Promote the use of safer chemicals in consumer  
 110 products.

111 (b) Organize and manage available data on chemicals,  
 112 including information on uses, hazards, disposal, and  
 113 environmental concerns.

114 (c) Produce and inventory information on safer alternatives  
 115 to specific uses of chemicals of high concern and model policies  
 116 and programs related thereto.

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117       (d) Provide technical assistance to businesses and  
118       consumers related to the use of safer chemicals.  
119       (e) Initiate other activities in support of state programs  
120       to promote the use of safer chemicals in consumer products.  
121       Section 2. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ELEANOR SOBEL  
33rd District

COMMITTEES:  
Children, Families, and Elder Affairs, *Chair*  
Ethics and Elections, *Vice Chair*  
Health Policy, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Regulated Industries  
Rules

SELECT COMMITTEE:  
Select Committee on Patient Protection  
and Affordable Care Act, *Vice Chair*

March 28, 2014

Senator Aaron Bean, Chair  
Health Policy Committee  
302 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Bean:

This letter is to request that **SB 1180** relating to **Chemicals in Consumer Products** be placed on the agenda of the next scheduled meeting of the Health Policy Committee.

This bill would require the Florida Department of Health to publish a list of 50 - 100 chemicals of high concern in consumer products. The list will be based on credible scientific evidence of a chemical's hazards and potential exposure to children and pregnant women in the home, school, or daycare. Hundreds of toxic chemicals linked to cancer and other chronic diseases are found in the products that children and families use every day. The bill will simply give pregnant women and families a tool to learn more about dangerous toxics that might impact their health and safety. Consumers will be free to research and make choices based on the best available data.

Thank you for your consideration of this request.

With best regards,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Senator Eleanor Sobel

cc: Celia Georgiades, Committee Administrative Assistant

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore





Representing Household & Institutional Products

Aerosol - Air Care - Cleaners - Polishes  
Automotive Care - Antimicrobial - Pest Management

Testimony of the  
**CONSUMER SPECIALTY PRODUCTS ASSOCIATION**  
*In opposition to*  
**SENATE BILL 1180**

*AN ACT RELATING TO CHEMICALS IN CONSUMER PRODUCTS*

*Submitted to the*

**SENATE COMMITTEE ON HEALTH POLICY**

**STATE OF FLORIDA**

**APRIL 8, 2014**

Submitted by: Owen Caine, Manager, State Affairs – East Region

Chair Bean, Vice-Chair Sobel and distinguished members of the Senate Committee on Health Policy, my name is Owen Caine and I am Manager of State Affairs for the Eastern United States at the Consumer Specialty Products Association (CSPA). CSPA appreciates this opportunity to submit testimony **in Opposition to Senate Bill 1180**, *an act relating to chemicals in consumer products*.

The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$100 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers and candles that eliminate odors; pest management products for home, lawn and garden, and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care®, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products. For more information, please visit [www.cspa.org](http://www.cspa.org).

CSPA members are committed to manufacturing and marketing safe, innovative and sustainable products that provide essential benefits to consumers while protecting human health and the environment. CSPA member products improve the quality of human life and are necessary to protect the public health against dangerous diseases, infestation and unsanitary conditions. CSPA members are committed to providing products that are thoroughly evaluated for human and environmental safety and go through rigorous safety-based assessments before they are brought to market. CSPA members are also committed to clear and meaningful labeling on consumer products, *i.e.*, easily understood information to ensure safe and effective use and disposal. CSPA has a product stewardship program called Product Care® that assists members in meeting these commitments. In addition, CSPA members routinely apply green chemistry and

green engineering principles in their operations and have been honored with awards for their efforts.

Within SB 1180, state agencies are tasked with identifying chemicals of high concern. These agencies are instructed to consider various criteria, including, whether the chemical is added to or present in a consumer product, present in the home. The mere presence of a chemical in a given product does not indicate harm. It is important that highly experienced experts make scientific safety assessments to ensure products may be used safely, and that product ingredients do not present unreasonable risk to humans or the environment.

Additionally, the process outlined in SB 1180 appears woefully inadequate for making proper scientific judgments on the safe use of chemicals in specific products.

CSPA's member companies are staffed with highly experienced experts who effectively assess chemical hazard, know exposure and can successfully assess the risk of chemical usage in consumer products. Years of training and experience are required in order to become well versed in consumer product safety assessment. CSPA's member companies employ toxicologists that are highly qualified to make decisions about the appropriate use of chemicals in products. These professionals are masters and PhD-level scientists within our companies. CSPA's members know what chemicals are safe under foreseeable conditions of product use and misuse.

CSPA is also very concerned that the state does not have the requisite resources and personnel in order to even attempt to collect and process the required information for what will likely amount to thousands of products, much less, make appropriate product safety assessments for such a broad range of products to recommend product specific labeling requirements or potential bans. Furthermore, there is inadequate opportunity for industry or other third-party stakeholders to provide input into this process and the determinations made by the agencies.

Finally, the decisions made by the state could result in regulations differing from other states causing an expensive and unpredictable regulatory environment for Florida manufacturers.

## **Conclusion**

CSPA members are committed to manufacturing and marketing safe products that are protective of human health and the environment while providing essential benefits to consumers. SB 1180 would establish an expensive regulatory system, duplicative of other state and federal efforts at no benefit to Florida consumers. For the reasons detailed above, we urge the members of the committee to ***oppose SB 1180***.

I thank you for the opportunity express our concerns and appreciate you all taking the time to hear our thoughts.



TESTIMONY OF  
TOY INDUSTRY ASSOCIATION (TIA)  
*SUBMITTED TO*  
SENATE COMMITTEE ON HEALTH POLICY  
**‘AN ACT RELATING TO CHEMICALS IN CONSUMER PRODUCTS’  
&  
SENATE BILL 1180**

APRIL 8, 2014

[www.toyassociation.org](http://www.toyassociation.org)

Chairman Bean and members of the Senate Committee on Health Policy, the Toy Industry Association (TIA) appreciates this opportunity to provide testimony in opposition to Senate Bill 1180, regulating chemicals in consumer products. TIA is the not-for-profit trade association for inventors, producers, importers, and retailers of toys and youth entertainment products sold in North America. The Association represents more than 600 companies – both large and small in size – that account for approximately 85% of domestic toy sales. There are more than 540 toy companies located in Florida, and overall the toy industry supports more than 17,000 jobs in Florida.

TIA commends Senate Bill 1180's sponsors interest in assuring that consumer products are safe ... the Association and its members share this interest. TIA's mission is to bring fun and joy to children's lives and in that mission the safety of young consumers is our industry's number-one priority. As such, TIA and its members have long been leaders in the establishment of toy safety requirements at the federal level. In developing these requirements TIA works in partnership with government, consumer organizations, and medical experts to develop stringent toy safety standards that have been mandated in the United States and are used in countries around the globe.

TIA supports appropriate and strong children's safety and chemical regulations at the federal level. However, we have some serious concerns with unique state chemical regulations such as the framework envisioned by Senate Bill 1180. These types of proposals do not consider the existing robust safety system for toys sold in this country and will create an unnecessary stigma and burden on companies doing business in Florida – with no measurable increase in safety. Senate Bill 1180 will also burden the State, which will be required to implement a chemical assessment system.

### **Toys are Already Highly Regulated and Reviewed for Safety**

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**Safety is the number-one priority for toy manufacturers.** TIA's members perform rigorous safety assessments prior to the marketing of any product and take into consideration potential impacts on a consumer or child. In addition to meeting stringent internal product safety requirements, toys sold in the U.S. must also comply with numerous federal safety and environmental regulations under a variety of laws and regulations including:

- The Consumer Product Safety Improvement Act (CPSIA) signed into law in 2008,
- The Consumer Product Safety Act (CPSA),
- The Child Safety Protection Act (CSPA),
- The Federal Hazardous Substances Act (FHSA),
- The ASTM Safety Specification on Toys (which was adopted as a mandatory federal standard on February 10, 2009), and
- The Toxic Substances Control Act.

Under this network of requirements, it is illegal to sell toys or children's products containing various substances known to be harmful to children and to which children might be exposed. TIA continues to support strong regulations for toys but they must be safety-based and national in scope to allow for consistently safe products across the nation.

### **Legislation Must Rely on a Scientific Approach**

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Senate Bill 1180 is flawed because it lacks appropriate in-state scientific resources, lacks a safety-based decision framework, and would establish a chemical regulatory structure that could have significant unintended impacts on all consumer products in commerce. Specifically, Senate Bill 1180 would require the Department of Health to identify "priority chemicals" via flawed hazard-based criteria that could negatively impact consumer and children's products without a proper safety assessment.



This approach to chemicals management is based on the premise that the mere presence of a chemical with certain hazardous traits creates a safety concern. Rather, safety assessments that consider exposure and harm are the key to ensuring that products are safe when used by children and consumers. Safety assessments are necessary to ensure that toys are safe for use and existing federal and international regulatory structures already ensure that toys are reviewed in this manner. Additionally, toy manufacturers have extensive knowledge of their products' use patterns and physical requirements, allowing them to make safety and the protection of human health an essential element of product development.

Policies that seek to priorities or restrict the use of certain chemicals or products must be based on credible, safety-based science and should include full consideration of the level of exposure and harm.

Within the chemical prioritization required by Senate Bill 1180, no evaluation of safety or exposure is considered and specifically, there is no allowance for situations where there is little or no route of exposure to a "priority chemical" and the risks from a substance are adequately controlled. The structure of this law is likely to result in flawed prioritizations and negative impacts since the bill does not establish a clear criterion that prioritizes chemicals upon actual demonstrated exposure and safety concerns from a substance in a consumer product.

### **Immense Cost to Businesses and the State of Florida**

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Legislation to regulate "chemicals of concern" in consumer products and toys places an immense burden on manufacturers and government agencies. State-based standards that are inconsistent with international, federal or other state requirements make compliance difficult and costly, threatening the viability of toy manufacturers, distributors and retailers in Florida. In other states that are attempting to implement legislation addressing similar issues, there have been significant costs for both the government and businesses

In California, where similar legislation passed in 2008, it is estimated that **it will cost the State \$7.3 million over the first five years to implement a similar program**<sup>1</sup>. In Maine, estimates show that the hidden fiscal burden associated with the implementation of an identical program would be **\$900,000 to \$1.6 million** in initial start-up costs and an additional **\$900,000 to \$2.2 million** annually<sup>2</sup>. In Maryland, the estimated cost of similar legislation considered this year would be more than **\$500,000** per year<sup>3</sup> in addition to proposed fees on industry.

Finally, in Washington State, a chemical reporting program will **cost businesses up to \$27.6 million** in the first year and **up to \$69.5 million** over the first 20-years<sup>4</sup> just for testing data needed to comply with the program. Additionally, Washington State notes that over the course of the program it would only equate to "three (3) avoided cases of CHCC content resulting in recalls, litigation, or children's health impacts of a minor degree."

Ensuring compliance with the new requirements of these types of proposals could mandate the creation of extensive data collection and submission systems, by companies and additional product testing, and extensive staff planning. The resource burden of this program would also escalate over time to continually review and certify products for sale in Florida and could jeopardize the viability of many businesses in Florida and around the country. For product manufacturers – especially small and medium sized companies – this state-based compliance burden could become costly and *will not* result in measurable improvements to public health.

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<sup>1</sup> California State House Appropriations Committee Fiscal Summary, AB 283. Available at: [http://info.sen.ca.gov/pub/07-08/bill/asm/ab\\_1851-1900/ab\\_1879\\_cfa\\_20080807\\_131956\\_sen\\_comm.html](http://info.sen.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080807_131956_sen_comm.html)

<sup>2</sup> *Considerations and Potential Costs Associated with Implementing Maine LD 2048*. Prepared by ICF International, March 31, 2008 for American Chemistry Council.

<sup>3</sup> Maryland Department of Legislative Services, *Fiscal and Policy Note – SB 637*. See: <http://mlis.state.md.us/2011rs/billfile/sb0637.htm>

<sup>4</sup> Washington Council of Ecology, *Preliminary Cost-Benefit and Least Burdensome Alternative Analysis*, Pages 8-11. 10-01-035.

## Lack of Adequate Stakeholder Input

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Senate Bill 1180 also does not provide for adequate stakeholder input into the designation of priority chemicals or the development of this program. The lack of such processes undermines an adequate dialogue and sharing of relevant scientific data, likely resulting in arbitrary and misguided chemical designations and puts in place a framework for elimination of valuable products without justifiable cause. Fully informed decision-making is absolutely essential to ensuring safe products remain on the market and are not unnecessarily stigmatized as a consequence of this program.

## Conclusion

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The Toy Industry Association and its members have always recognized the special relationship we have with children ... their safety and well-being is always our top priority. As an industry devoted to bringing joy through safe and fun play to children, we share your interest in the safety of toys and urge you to carefully consider the unintended consequences of the provisions proposed in Senate Bill 1180.

Please consider how this bill could stigmatize those doing business in Florida at no measurable increase to product safety. **We respectfully request that you oppose the passage of Senate Bill 1180 and refrain from recommending similar state-specific chemical regulation programs.**

On behalf of the more than 600 members of Toy Industry Association, including the more than 540 toy companies in Florida, we thank you for your consideration of these concerns. TIA would be happy to address any questions that you and the members of the Committees might have with regard to our concerns on this topic and legislation.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic CHEMICALS OF HIGH CONCERN Bill Number 1180  
(if applicable)

Name DAVID CULLEN Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 1674 UNIVERSITY PKWY #296 Phone CULLEN@AOL.COM  
Street  
SIERRA FL 34283 E-mail 941-323-2484  
City State Zip

Speaking:  For  Against  Information

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14

Meeting Date

Topic CHEMICALS IN CONSUMER PRODUCTS Bill Number 1180  
*(if applicable)*

Name LANCE PIERLE Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title ASST. DIRECTOR, STATE LEGISLATIVE AFFAIRS

Address 315 S. CALHOUN ST Phone 228-2557

Street

TALLAHASSEE

City

FL  
State

32301  
Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FLORIDA FARM BUREAU

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic CHEMICALS IN CONSUMER PRODUCTS

Bill Number 1180  
*(if applicable)*

Name NANCY STEPHENS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 1625 SUMMIT LAKE DR, SUITE 300  
*Street*

Phone 850 402 2954

TALLAHASSEE FL 32317  
*City State Zip*

E-mail nancy@mafmta.com

Speaking:  For  Against  Information

Representing MANUFACTURERS ASSOCIATION OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-2014  
Meeting Date

Topic Chemicals of High Concern

Bill Number SB 1180  
*(if applicable)*

Name SHARON NESVIG

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Gov. Relations

Address 213 S ADAMS  
*Street*

Phone \_\_\_\_\_

TALLAHASSEE FL 32301  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FLORIDA EDUCATION ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic Chemicals in Consumer Products Bill Number SB 1180  
Name Michael Power Amendment Barcode \_\_\_\_\_  
*(if applicable)*  
*(if applicable)*

Job Title manager State Government Affairs

Address 1995 N. Park Pl. Suite 240 Phone 770-421-2991  
*Street*  
Atlanta GA 30339 E-mail Michael-Power@  
*City State Zip* americanchemistry.com

Speaking:  For  Against  Information

Representing American Chemistry Council

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-14  
Meeting Date

Topic Chemicals in Consumer Products

Bill Number SB 1180  
(if applicable)

Name Tim Cerio

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Gray Robinson

Address 301 S. Bronough  
Street

Phone 577-6954

Tallah FL 32301  
City State Zip

E-mail tim.cerio@gray-robinson.com  
Network

Speaking:  For  Against  Information

Representing American Cancer Society - Cancer Action ~~Meeting~~

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic Chemicals of Concern

Bill Number SB1180  
*(if applicable)*

Name Kelsey Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director, State Affairs

Address 1350 I St NW Suite #300  
*Street*

Phone 651.402.2475

Washington D.C. 20005  
*City State Zip*

E-mail Kjohnson@gmaonline.org

Speaking:  For  Against  Information

Representing Grocery Manufacturers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14

Meeting Date

Topic Chemicals in Products

Bill Number SB 1180  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 136 S Bronough St  
*Street*

Phone 521-1235

Tallahassee

*City*

*State*

*Zip*

E-mail Cjohnson@  
flchamber.com

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

Last

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-14

Meeting Date

Topic Chemicals of High Concern

Bill Number SB 1180 (if applicable)

Name Stephanie Kunkel

Amendment Barcode (if applicable)

Job Title

Address 1143 Albratton DR

Phone 850-320-4208

Street

Tallahassee FL 32301

City

State

Zip

E-mail Stef.Kunkel@gmail.com

Speaking: [X] For [ ] Against [ ] Information

Representing Clean Water Action

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: CS/CS/SB 1580

INTRODUCER: Health Policy; Banking and Insurance Committee; and Senator Hays

SUBJECT: Workers' Compensation Cost Task Force

DATE: April 8, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1580 creates the Workers' Compensation Cost Task Force, which is composed of 17 members. The Chief Financial Officer or his or her designee will serve as chair of the task force. The purpose of the task force is to analyze workers' compensation costs. Specifically, the task force is required to:

- Review and analyze the recommendations of the *Three-Member Panel 2013 Biennial Report* in the context of reducing workers' compensation costs.
- Develop a report that includes its findings and recommendations to the Legislature regarding a new payment methodology for hospital inpatient and outpatient reimbursements in workers' compensation cases, which would reward efficiency, quality, and outcomes.
- Address other factors related to workers' compensation costs, including, but not limited to, the volume of inpatient and outpatient services, the number of accidents and workers' compensation claims, fraud, the cost per claim and treatment, and tort costs related to workers' compensation care.

The task force is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2015.

The bill provides that the Department of Financial Services (DFS) will provide administrative and staff support services for the task force. Members of the task force are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S. The DFS estimates the total costs associated with the task force would be \$38,320.98.

The Office of Insurance Regulation (OIR), in consultation with the task force, shall prepare a report analyzing the use of negotiated workers' compensation premium provisions within retrospective rating plans. The bill provides the specific review elements for the report. The report is due to the task force for approval by September 1, 2014, and must be delivered to the Senate President and Speaker of the House of Representatives by November 1, 2014.

## II. Present Situation:

### Florida's Workers Compensation Law

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the DFS is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment. Section 440.13, F.S., provides that fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, generally may not exceed the applicable fee schedules adopted by the three-member panel or authorized in this section.

The three-member panel (panel) consists of the Chief Financial Officer, or his or her designee, and two members appointed by the Governor, subject to confirmation by the Senate, one member who is a representative of employers and another member who is a representative of employees. The panel determines statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. In addition to establishing reimbursement allowances, the panel is required to submit recommendations biennially to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

In 2013, the three-member panel report<sup>1</sup> included the following recommendations that have not been addressed by the Legislature:

- Remove the statutory mandate in s. 440.13(12)(a), F.S., that requires reimbursement for outpatient hospital services to be based on a percent of "usual and customary charges" and fix the reimbursement amounts to 120 percent or 140 percent of Medicare's payments under its Outpatient Prospective Payment System; or, in the alternative;
  - If a change in the methodology for hospital outpatient reimbursement services is not adopted, define "usual and customary charge" in a manner so that all stakeholders are aware of its intended meaning and when it is to be used in determining reimbursement for medically necessary treatment, care and attendance provided in an outpatient hospital setting.
- Remove the statutory mandate in s. 440.13(12)(a), F.S., that requires reimbursement for inpatient hospital services to be based on per diem and fix the reimbursement amounts to

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<sup>1</sup> See The Three-Member Panel 2013 Biennial Report, *available at* [http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/3MP\\_Report\\_2013.pdf](http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/3MP_Report_2013.pdf). (last visited April 4, 2014).

120 percent or 140 percent of Medicare's payments under its Inpatient Prospective Payment System.<sup>2</sup>

### **Retrospective Rating Plans**

Current Florida law and the rating plans approved by OIR allow for insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred during the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.<sup>3</sup>

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over \$1,000,000 in standard premium. The Department of Insurance (predecessor of the OIR) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.<sup>4</sup> Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.<sup>5</sup> The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

Currently, the LRARO plans are available in a majority of states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.<sup>6</sup> The NCCI retrospective rating plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually, or in any combination with any other commercial casualty lines of insurance, exceeds an annual standard premium eligibility threshold of \$500,000 for the term of a retrospective rating plan.

### **III. Effect of Proposed Changes:**

The bill creates the Workers' Compensation Cost Task Force. The DFS will provide administrative and staff support services relating to the functions of the task force. The bill

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<sup>2</sup> The three other recommendations were addressed by the Legislature in 2013 (Chapter 2013-131, s.1, Laws of Fla., and Chapter 2013-141, s. 6, Laws of Fla.).

<sup>3</sup> OIR, *Senate Bill 952 Agency Analysis*, (Feb. 27, 2014) (on file with the Senate Committee on Health Policy).

<sup>4</sup> See *Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance*, Case No. 94-0892 (Fla. DOAH 1994).

<sup>5</sup> *Id.*

<sup>6</sup> E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).

requires the task force to organize by July 1, 2014. The bill provides that the task force shall be composed of the following 17 members:

- The Chief Financial Officer, or his or her designee, who shall serve as chair of the task force.
- An attorney who practice workers' compensation law, appointed by the Speaker of the House of Representatives.
- The Insurance Consumer Advocate.
- The Secretary of the Department of Health, or his or her designee.
- The employee member of the three-member panel.
- One member who represents a critical access hospital, appointed by the Speaker of the House of Representatives.
- One member who represents a rural hospital, appointed by the President of the Senate.
- Five members appointed by the President of the Senate and five members appointed by the Speaker of the House of Representatives, which must each include:
  - A member of the Legislature;
  - An owner or representative of a hospital system that has over 2,000 beds and provides services to a significant number of workers' compensation claims;
  - An owner or representative of a business that employs more than 500 employees;
  - An owner or representative of a business that employs less than 25 employees; and
  - A representative from an insurer that provides workers' compensation insurance.

The purpose of the task force is to analyze workers' compensation costs. The task force will review and analyze the recommendations of the *Three-Member Panel 2013 Biennial Report* in the context of reducing workers' compensation costs. The task force is required to develop a report that includes its findings and legislative recommendations regarding a new payment methodology for hospital inpatient and outpatient reimbursements in workers' compensation cases, which will reward efficiency, quality, and outcomes. The task force must address other factors related to workers' compensation costs, including, but not limited to: the volume of inpatient and outpatient services; the number of accidents and workers' compensation claims; fraud; the cost per claim and treatment; and, tort costs related to workers' compensation care. The task force is required to submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2015.

Members of the task force will serve without compensation. However, they are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.

The bill also directs the OIR, in consultation with the task force, to prepare a report analyzing the use of negotiated workers' compensation premium provisions within retrospective rating plans. The report must examine the use of such provisions in neighboring and competitive states, including the potential for savings or inequities to Florida's employers due to the lack of such provisions in this state, including for employers that have exposure in more than one state at varying premium levels.

The report on retrospective rating plans is due to the task force for approval by September 1, 2014, and the approved report must be delivered to the President of the Senate and the Speaker of the House of Representatives by November 1, 2014.

The bill repeals this subsection with the task force and report requirements on June 30, 2015.

The bill takes effect upon becoming a law.

**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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 1580 requires the DFS to provide administrative and staff support services for the task force. Members of the task force are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S. The task force is required to organize by July 1, 2014, and submit a report by January 1, 2015. The DFS estimates the following costs of the task force, based on a similar task force:<sup>7</sup>

Item	Amount
Travel	\$18,331.80
Court Reporter	12,828.26
Meeting Room	7,029.25
Florida Administrative Weekly Notice	131.67
Total Expenditures	\$38,320.98

The bill also requires the OIR to produce a report on retrospective rating plans. The OIR does not currently collect the information required under the bill and would need to seek

<sup>7</sup> E-mail from L. MaFaddin, Director of Legislative Affairs, Department of Financial Services (April 2, 2014) (on file with Senate Committee on Banking and Insurance).



the data from other sources. The data collection costs will either be absorbed by the OIR if the information is available from NCCI or other similar resources or by the affected companies if a market investigation must be conducted.<sup>8</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 440.13 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Health Policy on April 8, 2014:**

The CS reduced the size of the Workers' Compensation Cost Task Force to 17 members and modified its composition to remove representatives from the Florida Chamber of Commerce, Associated Industries of Florida, and the Florida Hospital Association. An attorney who practices workers' compensation law, the Insurance Consumer Advocate and the employee member of the three-member panel were named to the task force.

The CS requires the OIR, in consultation with the task force, to prepare a report analyzing the use of negotiated workers' compensation premium provisions within retrospective rating plans. The OIR must consider such provisions in neighboring and competitive states and the impact the lack of such authority has in this state on employers, including those with exposure in more than one state at varying premium levels. The report is due to the task force by September 1, 2014. A task force approved report must be delivered to the President of the Senate and the Speaker of the House of Representatives by November 1, 2014.

**CS by Banking and Insurance on April 1, 2014:**

The CS eliminates provisions which would have revised the workers' compensation reimbursement allowances for hospital care.

The CS creates the Workers' Compensation Cost Task Force, which is composed of 18 members. The DFS will provide administrative and staff support services for the task force. The purpose of the task force is to analyze workers' compensation costs and to

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<sup>8</sup> Telephone conversation with Rebecca Matthews, Office of Insurance Regulation (OIR) (April 9, 2014).

submit a report containing findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2015.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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877048

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2014	.	
	.	
	.	
	.	

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The Committee on Health Policy (Brandes) recommended the following:

**Senate Amendment**

Delete lines 23 - 38  
and insert:  
17 members:

1. The Chief Financial Officer, or his or her designee, who shall serve as chair of the task force.
2. An attorney who practices workers' compensation law.
3. The Insurance Consumer Advocate.
4. The Secretary of the Department of Health, or his or her



877048

11 designee.

12 5. One member of the three-member panel, created under  
13 subsection (12).

14 6. One member that represents a critical access hospital,  
15 appointed by the Speaker of the House of Representatives.

16 7. One member who represents a rural hospital, appointed by  
17 the President of the Senate.

18 8. Five members appointed by the President of the Senate



174866

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/08/2014	.	
	.	
	.	
	.	

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The Committee on Health Policy (Brandes) recommended the following:

**Senate Amendment to Amendment (877048)**

Delete lines 8 - 13

and insert:

2. An attorney who practices workers' compensation law, appointed by the Speaker of the House of Representatives.

3. The Insurance Consumer Advocate.

4. The Secretary of the Department of Health, or his or her designee.

5. One member of the three-member panel, created under



174866

11 subsection (12), appointed by the President of the Senate.



811600

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2014	.	
	.	
	.	
	.	

---

The Committee on Health Policy (Joyner) recommended the following:

1           **Senate Substitute for Amendment (174866) to Amendment**  
2 **(877048)**

3  
4           Delete lines 8 - 13  
5 and insert:

6           2. An attorney who practices workers' compensation law,  
7 appointed by the Speaker of the House of Representatives.

8           3. The Insurance Consumer Advocate.

9           4. The Secretary of the Department of Health, or his or her  
10 designee.



811600

11           5. The employee member of the three-member panel, created  
12 under subsection (12). Senate.





234522

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2014	.	
	.	
	.	
	.	

---

The Committee on Health Policy (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 70

and insert:

(d) The Office of Insurance Regulation, in consultation with the Workers' Compensation Cost Task Force, shall prepare a report analyzing the use of negotiated workers' compensation premium provisions within retrospective rating plans. The report shall examine the use of such provisions in neighboring and competitive states, specifically as to savings in the actual



234522

11 premium if a retrospective rating deviation is applied compared  
12 to the standard workers' compensation premium, and as to the  
13 potential inequity for Florida's employers due to the lack of  
14 such authorization in this state. The report must examine the  
15 potential savings to Florida's employers as a result of  
16 implementation of negotiated premiums for employers that have  
17 exposure in more than one state and an estimated annual  
18 countrywide standard premium of at least \$250,000, \$500,000, and  
19 \$750,000. This report shall be delivered to the task force for  
20 approval by September 1, 2014, and the approved report shall be  
21 delivered to the President of the Senate and the Speaker of the  
22 House of Representatives by November 1, 2014.

23 (e) This subsection shall be repealed June 30, 2015.

24  
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete lines 6 - 8

28 and insert:

29 to submit a report to the Governor and the Legislature  
30 by a specified date; requiring the Office of Insurance  
31 Regulation to consult with the Workers' Compensation  
32 Cost Task Force to prepare a report; requiring the  
33 report to be delivered to the task force and the  
34 Legislature by specified dates; providing an

By the Committee on Banking and Insurance; and Senator Hays

597-03580-14

20141580c1

1 A bill to be entitled  
 2 An act relating to the Workers' Compensation Cost Task  
 3 Force; amending s. 440.13, F.S.; creating the Workers'  
 4 Compensation Cost Task Force; providing for  
 5 membership; providing duties; requiring the task force  
 6 to submit a report to the Governor, the President of  
 7 the Senate, and the Speaker of the House of  
 8 Representatives by a specified date; providing an  
 9 expiration date; providing an effective date.

10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Subsection (17) is added to section 440.13,  
 12 Florida Statutes, to read:

13 440.13 Medical services and supplies; penalty for  
 14 violations; limitations.—  
 15 (17) WORKERS' COMPENSATION COST TASK FORCE.—  
 16 (a) The Workers' Compensation Cost Task Force is created.  
 17 The Department of Financial Services shall provide  
 18 administrative and staff support services relating to the  
 19 functions of the task force. The task force shall organize by  
 20 July 1, 2014. The task force shall be composed of the following  
 21 18 members:  
 22 1. The Chief Financial Officer, or his or her designee, who  
 23 shall serve as chair of the task force.  
 24 2. Three members of the task force who shall be the  
 25 president or chief executive officer, or his or her designee, of  
 26 the Florida Chamber of Commerce, Associated Industries of  
 27 Florida, and the Florida Hospital Association.

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-03580-14

20141580c1

30 3. The Secretary of the Department of Health, or his or her  
 31 designee.  
 32 4. One member of the three-member panel, created under  
 33 subsection (12).  
 34 5. One member that represents a critical access hospital,  
 35 appointed by the Speaker of the House of Representatives.  
 36 6. One member who represents a rural hospital, appointed by  
 37 the President of the Senate.  
 38 7. Five members appointed by the President of the Senate  
 39 and five members appointed by the Speaker of the House of  
 40 Representatives which must each include:  
 41 a. A member of the Legislature;  
 42 b. An owner or representative of a hospital system that has  
 43 over 2,000 beds and provides services to a significant number of  
 44 workers' compensation claims;  
 45 c. An owner or representative of a business that employs  
 46 more than 500 employees;  
 47 d. An owner or representative of a business that employs  
 48 less than 25 employees; and  
 49 e. A representative from an insurance company that provides  
 50 workers' compensation insurance.  
 51 (b) Members of the task force shall serve without  
 52 compensation, but are entitled to reimbursement for per diem and  
 53 travel expenses pursuant to s. 112.061.  
 54 (c) The purpose of the task force is to analyze workers'  
 55 compensation costs. The task force shall review and analyze the  
 56 recommendations of the Three-Member Panel 2013 Biennial Report  
 57 in the context of reducing workers' compensation costs. The task  
 58 force shall develop a report that includes its findings and

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-03580-14

20141580c1

59 recommendations for legislative action regarding a new payment  
60 methodology for hospital inpatient and outpatient reimbursements  
61 in workers' compensation cases which will reward efficiency,  
62 quality, and outcomes. The task force must address other factors  
63 related to workers' compensation costs, including, but not  
64 limited to, the volume of inpatient and outpatient services, the  
65 number of accidents and workers compensation claims, fraud, the  
66 cost per claim and treatment, and tort costs related to workers  
67 compensation care. The task force shall submit the report to the  
68 Governor, the President of the Senate, and the Speaker of the  
69 House of Representatives by January 15, 2015.

70 (d) This subsection shall be repealed June 30, 2015.

71 Section 2. This act shall take effect upon becoming a law.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ALAN HAYS**  
11th District

**COMMITTEES:**  
Appropriations Subcommittee on General Government, *Chair*  
Children, Families, and Elder Affairs, *Vice Chair*  
Governmental Oversight and Accountability, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Criminal and Civil Justice  
Banking and Insurance  
Commerce and Tourism

**JOINT COMMITTEES:**  
Joint Select Committee on Collective Bargaining, *Co-Chair*  
Joint Legislative Auditing Committee  
Joint Legislative Budget Commission

## MEMORANDUM

**To:** Senator Aaron Bean, Chair  
Health Policy Committee  
CC: Sandra Stovall, Staff Director  
Celia Georgiades, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 1580 – Reimbursement Allowances for Hospital Care

**Date:** April 1, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD  
State Senator, District 11

**REPLY TO:**

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3877

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



**ENTERED**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.8.14

Meeting Date

Topic workers' comp rate rating

Bill Number 1580

Name Ashley Mayer

Amendment Barcode 234522  
(if applicable)

Job Title lobbyist

Address 101 E. College Ave, Suite 502

Phone 222.9075

Tallahassee FL 32301  
City State Zip

E-mail amayer@compact.com

Speaking:  For  Against  Information

Representing American Insurance Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-14  
Meeting Date

Topic WORKERS' COMPENSATION

Bill Number CS/SB 1580  
(if applicable)

Name CAM FENTRISS

Amendment Barcode 877048  
(if applicable)

Job Title LEGISLATIVE COUNSEL

174866

Address 1400 VILAGE SQ # 3-243

Phone 850-222-2772

Street

JALL

FL

32312

City

State

Zip

E-mail AFENTRISS@AOL.COM

Speaking:  For  Against  Information

Representing FLA. ROOFING, SHEET METAL & AC CONTRACTORS ASSN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Woburn Comp Bill Number CS 1580

Name Richard Watson Amendment Barcode 877048 (if applicable)

Job Title Legislative Counsel 174866 (if applicable)

Address P.O. Box 10038 Phone 850 222-0800

Street Tallahassee FL 32302 E-mail rick@vwest.com

City Tallahassee State FL Zip 32302 amb@cs.com

Speaking:  For  Against  Information

Representing Associated Builders & Contractors of FL

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/14  
Meeting Date

Topic W/C TASK FORCE

Bill Number SB 1580  
*(if applicable)*

Name PAUL ANDERSON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title ATTORNEY

Address 1584 METROPOLITAN BLVD.

Phone 850-894-3000

*Street*

TALL.  
*City*

FL.  
*State*

32302  
*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FLORIDA JUSTICE ASS. + W/C SECTION FLA. BAR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic WORKERS COMP TASK FORCE

Bill Number S 1580  
*(if applicable)*

Name NANCY STEPHENS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 1625 SUMMIT LAKE DRIVE

Phone 850 402 2954

*Street*

TALLAHASSEE FL 32317

*City*

*State*

*Zip*

E-mail nancy@wafmfg.com

Speaking:  For  Against  Information

Representing MANUFACTURERS ASSOCIATION OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic Workers' Comp

Bill Number SB 1580  
*(if applicable)*

Name David Hart

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Vice President

Address 130 S Bronough St  
*Street*  
Tallahassee  
*City* *State* *Zip*

Phone 521-1200

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14

Meeting Date

Topic Workers Comp

Bill Number 1580  
*(if applicable)*

Name Tammy Perdue

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title General Counsel

Address 5110 N Adams St

Phone 850-224-7173

Street

Tallahassee FL

City

State

Zip

E-mail tperdue@aif.com

Speaking:  For  Against  Information

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1580  
*(if applicable)*

Name Logan McFaddin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director, Legislative Affairs

Address 400 N Monroe St  
*Street*  
Tallahassee FL 32399  
*City State Zip*

Phone 850-413-2863

E-mail logan.mcfaddin@myfloridaleg.com

Speaking:  For  Against  Information

Representing CFOS office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**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 Health Policy

---

BILL: SB 436

INTRODUCER: Senators Altman and Soto

SUBJECT: Payment for Services Provided by Licensed Psychologists

DATE: April 4, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<b>Favorable</b>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 436 adds psychologists to the list of non-network providers to whom an insurer must make direct payment for medical services when authorized by an insured. The bill adds psychologists and school psychologists to the list of health care providers who are protected by a shorter timeframe during which health insurers or health maintenance organizations (HMOs) can file a claim for overpayment and who are subject to a 12-month time period for submitting claims for underpayment against health insurers or HMOs.

**II. Present Situation:**

**Claims of Overpayment and Underpayment**

Sections 627.6131 and 641.3155, F.S., respectively, set forth required provisions for contracts between a health insurer or health maintenance organization (HMO), and a health care provider related to payment of claims. By contract, a health insurer or HMO must submit any claim for overpayment to a health care provider within 30 months from the date of payment. The provider then has 40 days to pay, deny, or contest the claim. However, claims for overpayment against physicians, chiropractors, podiatrists, and dentists are excepted from the 30-month timeframe and must be submitted instead within 12 months after payment.<sup>1</sup> The law also requires these same providers to submit a claim of underpayment 12 months after receiving payment.<sup>2</sup>

**Assignment of Benefits for Health Insurance Claims**

Prior to the 2009 Legislative Session, s. 627.638(2), F.S., required that, when specifically authorized by the insured, a health insurer was required to make direct payment to any

---

<sup>1</sup> Sections 627.6131(18) and 641.3155(16), F.S.

<sup>2</sup> Sections 627.6131(19) and 641.3155(17), F.S.

recognized hospital, licensed ambulance provider, physician, or dentist, “unless otherwise provided in the insurance contract.” An insurance contract could not, however, prohibit direct payment for emergency services or emergency medical transportation services by an out-of-network provider.

In 2009, the Legislature amended s. 627.638(2), F.S., to remove the qualifying language “unless otherwise provided in the insurance contract” and to add “other person[s] who provided the services in accordance with the provisions of the policy” to the list of specified professionals who are entitled to direct payment for services when directed by the insured. The law also removed the distinction between emergency and non-emergency services.<sup>3</sup> The effect of this legislation was to require an insurer to make direct payment to any provider not under contract if the insured makes a written assignment of benefits.

### **Practice of Psychology**

Chapter 490, F.S., sets forth the provisions for the regulation of the practice of psychology and school psychology by the Board of Psychology. “Practice of psychology” means the observation, description, evaluation, interpretation, and modification of human behavior by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior, and of enhancing interpersonal behavioral health and mental or psychological health.<sup>4</sup> “Practice of school psychology” means the rendering or offering to render to an individual, a group, an organization, a government agency, or the public any of the following services—assessment, counseling, consultation, and development of programs.<sup>5</sup> To become licensed as a psychologist or school psychologist, a person must submit a completed application form and required fees; provide proof of completing the required education and meeting the experience requirement; and pass the required portions of the examination.<sup>6</sup>

### **III. Effect of Proposed Changes:**

The bill amends ss. 627.6131 and 641.355, F.S., to add psychologists and school psychologists in the list of health care providers:

- To whom an insurer or HMO must submit a claim for overpayment within 12 months after payment of the claim; and,
- Who must submit a claim for underpayment to an insurer or HMO within 12 months after receipt of payment of the claim.

The bill amends s. 627.638, F.S., to include psychologists in the list of specifically named providers not under contract to whom an insurer must make direct payment when authorized by the patient.

---

<sup>3</sup> Chapter 2009-124, s. 2, Laws of Fla.

<sup>4</sup> Section 490.003(4), F.S.

<sup>5</sup> Section 490.003(5), F.S.

<sup>6</sup> Sections 490.005 and 490.006, F.S., provide for licensure by examination or endorsement, respectively. An applicant for licensure by endorsement must still pass those portions of the examination pertaining to the Florida rules and laws governing the practice of psychology or school psychology.

The bill has an effective date of July 1, 2014.

**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:

None.

B. Private Sector Impact:

SB 436 reduces the “look back” period for an insurer or HMO to submit claims to psychologists and school psychologists for overpayment. This should help these practitioners to manage cash flow and may result in fewer claims.

Health insurance carriers and HMOs will incur some administrative costs for revising health insurance forms to allow for the selection of a psychologist for direct payment for services rendered for hospital and emergency medical services

C. Government Sector Impact:

When identical legislation was considered by the Legislature during the 2013 Session, the Office of Insurance Regulation anticipated an increase in health form review as a result of the additional category of providers eligible for direct payment on any health insurance form, but indicated that the increased form review costs could be absorbed within current resources.<sup>7</sup> The office has not submitted a fiscal analysis of SB 436.

**VI. Technical Deficiencies:**

None.

---

<sup>7</sup> Office of Insurance Regulation, *Senate Bill 144 Analysis* (Feb. 6, 2013) (on file with the Senate Committee on Health Policy).



**VII. Related Issues:**

Section 627.638(2), F.S., requires that, if specifically authorized by the insured, a health insurer must directly pay all licensed hospitals, licensed ambulance providers, physicians, dentists, and “other person[s] who provide services” in accordance with the provisions of the insurance policy. The term “other person who provided the services” appears to be a catch-all provision that covers all health care providers, including psychologists and school psychologists.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.6131, 641.3155, and 627.638.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Altman

16-00288-14

2014436\_\_

A bill to be entitled

An act relating to payment for services provided by licensed psychologists; amending ss. 627.6131 and 641.3155, F.S.; adding licensed psychologists to the list of health care providers who are protected by a limitations period from claims for overpayment being sought by health insurers or health maintenance organizations; adding licensed psychologists to the list of health care providers who are subject to a limitations period for submitting claims to health insurers or health maintenance organizations for underpayment; amending s. 627.638, F.S.; adding licensed psychologists to the list of health care providers who are eligible for direct payment for medical services by a health insurer under certain circumstances; making technical and grammatical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (18) and (19) of section 627.6131, Florida Statutes, are amended to read:

627.6131 Payment of claims.—

(18) Notwithstanding the 30-month period provided in subsection (6), all claims for overpayment submitted to a provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, ~~or~~ chapter 466, or chapter 490 must be submitted to the provider within 12 months after the health insurer's payment of the claim. A claim for overpayment is ~~may~~ not be permitted

Page 1 of 3

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16-00288-14

2014436\_\_

~~beyond~~ 12 months after the health insurer's payment of a claim, except that claims for overpayment may be sought after ~~beyond~~ that time from providers convicted of fraud pursuant to s. 817.234.

(19) Notwithstanding any other provision of this section, all claims for underpayment from a provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, ~~or~~ chapter 466, or chapter 490 must be submitted to the insurer within 12 months after the health insurer's payment of the claim. A claim for underpayment is ~~may~~ not be permitted ~~beyond~~ 12 months after the health insurer's payment of a claim.

Section 2. Subsections (16) and (17) of section 641.3155, Florida Statutes, are amended to read:

641.3155 Prompt payment of claims.—

(16) Notwithstanding the 30-month period provided in subsection (5), all claims for overpayment submitted to a provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, ~~or~~ chapter 466, or chapter 490 must be submitted to the provider within 12 months after the health maintenance organization's payment of the claim. A claim for overpayment is ~~may~~ not be permitted ~~beyond~~ 12 months after the health maintenance organization's payment of a claim, except that claims for overpayment may be sought after ~~beyond~~ that time from providers convicted of fraud pursuant to s. 817.234.

(17) Notwithstanding any other provision of this section, all claims for underpayment from a provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, ~~or~~ chapter 466, or chapter 490 must be submitted to the health maintenance organization within 12 months after the health maintenance

Page 2 of 3

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16-00288-14

2014436\_\_

59 organization's payment of the claim. A claim for underpayment is  
60 ~~may not be permitted beyond~~ 12 months after the health  
61 maintenance organization's payment of a claim.

62 Section 3. Subsection (2) of section 627.638, Florida  
63 Statutes, is amended to read:

64 627.638 Direct payment for hospital, medical services.—

65 (2) ~~If whenever~~, in any health insurance claim form, an  
66 insured specifically authorizes payment of benefits directly to  
67 ~~a any~~ recognized hospital, licensed ambulance provider,  
68 physician, dentist, psychologist, or other person who provided  
69 the services in accordance with ~~the provisions of~~ the policy,  
70 the insurer shall make such payment to the designated provider  
71 of such services. The insurance contract may not prohibit, and  
72 claims forms must provide an option for, the payment of benefits  
73 directly to a licensed hospital, licensed ambulance provider,  
74 physician, dentist, psychologist, or other person who provided  
75 the services in accordance with ~~the provisions of~~ the policy for  
76 care provided. The insurer may require written attestation of  
77 assignment of benefits. Payment to the provider from the insurer  
78 may not be more than the amount that the insurer would otherwise  
79 have paid without the assignment.

80 Section 4. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR THAD ALTMAN**  
16th District

**COMMITTEES:**  
Military Affairs, Space, and Domestic Security, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Criminal Justice  
Environmental Preservation and Conservation

**SELECT COMMITTEE**  
Indian River Lagoon and Lake Okeechobee

**JOINT COMMITTEE:**  
Joint Administrative Procedures Committee

April 2, 2014

The Honorable Aaron Bean  
Senate Committee on Health Policy, Chair  
530 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Bean:

I respectfully request that SB 436, related to *Payment for Services Provided by Licensed Psychologists*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Thad Altman".

Thad Altman

cc: Sandra Stovall, Staff Director, 530 Knott Building  
Celia Georgiades, Committee Administrative Assistant

TA/svb

**REPLY TO:**

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-14

Meeting Date

Topic Payment of Services

Bill Number 436  
*(if applicable)*

Name Carole Green

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lobbyist

Address PO Box 07463

Phone 850-590-2206

Street

Ford Myers, FL 33919

City

State

Zip

E-mail Carole@capitolstrategiesinc.com

Speaking:  For  Against  Information

Representing Florida Psychological Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1154

INTRODUCER: Senator Soto

SUBJECT: Nursing Home Guide Watch List

DATE: April 4, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Favorable</b>
2.			CA	
3.			CF	
4.			RC	

---

**I. Summary:**

SB 1154 requires that any nursing home that is placed on the Agency for Health Care Administration's (AHCA) nursing home guide watch list to clearly and conspicuously post a sign indicating that the facility is on the watch list at every entrance. If the AHCA determines that the facility violated the posting requirement, the AHCA must cite the facility for a class I violation and place the facility on a 6-month inspection visit cycle. The bill also requires any facility placed on the watch list to provide written or electronic notification to the primary familial contact of each resident that the facility is on the watch list.

**II. Present Situation:**

Nursing homes provide 24 hours a day nursing care; case management; health monitoring; personal care; nutritional meals and special diets; physical, occupational, and speech therapy; social activities; and respite care for those who are ill or physically infirm. Nursing homes are regulated under part II of ch. 400, F.S., by the AHCA.<sup>1</sup>

**The Nursing Home Guide Watch List**

Section 400.191(a), F.S., requires the AHCA to publish a Nursing Home Guide Watch List in the Nursing Home Guide. The Nursing Home Guide as a whole lists nursing homes and includes facility-specific comparative information including a star ranking based upon deficiencies cited during inspections.<sup>2</sup> The Nursing Home Guide Watch List identifies nursing homes that are operating under bankruptcy protection or met the criteria for a conditional licensure status during the past 30 months. A facility's conditional licensure status indicates that a facility did not meet,

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<sup>1</sup> AHCA, *Nursing Home Care in Florida*, [http://www.floridahealthfinder.gov/reports-guides/NursingHomesFL.aspx#\\_The\\_Nursing\\_Home](http://www.floridahealthfinder.gov/reports-guides/NursingHomesFL.aspx#_The_Nursing_Home), last visited on April 7, 2014.

<sup>2</sup> AHCA, *Nursing Home Information*, [http://www.fdhc.state.fl.us/Nursing\\_Home\\_Guide/](http://www.fdhc.state.fl.us/Nursing_Home_Guide/), last visited on April 4, 2014.

or correct upon follow-up, minimum standards at the time of an inspection. Facilities may challenge a conditional license and watch list information is subject to change as these appeals are processed.

The watch list includes, among other things, a description of the deficiency causing the facility to be on the list, any corrective action taken, and the cumulative number of days and percentage of days the facility had a conditional license in the past 30 months.<sup>3</sup> The watch list information is updated by the AHCA daily.<sup>4</sup> There are currently 133 nursing homes on the Nursing Home Guide Watch List.<sup>5</sup>

### **Class I Violations and Conditional Licensure**

Nursing homes that have violated the requirements of their license are subject to the administrative penalties detailed in s. 400.23(8)(a), F.S. These penalties are divided into four categories of deficiencies ranging from class I, which are the most serious, to class IV, which are generally related to paper-work. A facility must be cited for a class I violation in a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. Section 400.23(8)(a), F.S., provides that a nursing home must be fined between \$10,000 and \$15,000 per deficiency depending on how widespread the deficiency and that the fine must also be doubled if the nursing home was previously cited for one or more class I or II deficiencies in the previous licensure inspection.

Generally, the AHCA inspects nursing homes every 9 to 15 months, or when a complaint is received that warrants an inspection. When deficiencies are found during an inspection, the AHCA will schedule a follow up inspection to ensure that the deficiencies are corrected. The AHCA must classify a nursing home's license as conditional if the facility is not in compliance with its licensure requirements at the time of an inspection due to one or more class I, II, or uncorrected class III deficiencies. The nursing home will subsequently return to full licensure if no deficiencies are found to exist during a future survey. A facility may also be placed on a 6-month survey cycle for a period of 2 years if that facility was cited for one class I deficiency, two or more class II deficiencies arising from separate surveys within a 60-day period, or has had three or more substantiated complaints within a 6-month period.<sup>6</sup>

### **III. Effect of Proposed Changes:**

SB 1154 amends s. 400.191, F.S., to require a nursing home that is placed on the Nursing Home Guide Watch List to post "NOTICE: THIS FACILITY IS CURRENTLY ON FLORIDA'S NURSING HOME GUIDE WATCH LIST" conspicuously at every facility entrance for the duration of time the facility is on the watch list. If the AHCA finds that the facility has violated

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<sup>3</sup> Section 400.191(3)(a), F.S.

<sup>4</sup> Supra n. 2

<sup>5</sup> See AHCA, *Florida Health Finder*,

<http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx?st=11&ssid=2BD5DD48-280B-42D0-AB52-8F65508AF82D>, last visited on April 4, 2014.

<sup>6</sup> Email with Bernard Hudson, AHCA Long Term Care Unit Manager, April 7, 2014, on file with Health Policy Committee staff.

this notice requirement it must cite the facility for a class I deficiency and place the facility on a 6-month inspection visit cycle.

The bill also requires a nursing home placed on the watch list to notify the primary familial contact of each resident that the facility has been placed on the watch list. The notice may be sent by mail or electronically and must include a description of the deficiency that caused the nursing home to be placed on the watch list, any corrective action taken, and the cumulative number of days and percentage of days that the facility has had a conditional license in the past 30 months.

#### **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:

None.

B. Private Sector Impact:

Nursing homes on the Nursing Home Guide Watch List may be fined between \$10,000 and \$15,000 if found to be in violation of the posting requirements of the bill. If the nursing home was previously cited for a class I or II violation the fine may be between \$20,000 and \$30,000.

C. Government Sector Impact:

The AHCA may see additional revenue from the fines imposed as a result of violations of the posting requirements in SB 1154.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

Class I deficiencies are those deficiencies that the agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused,



or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. As such, violating the posting requirement in the bill does not seem to create a situation in which immediate corrective action is necessary in order to prevent serious injury, harm, impairment, or death to a resident. It may be appropriate to lower the severity of the penalty imposed for such violations.

**VIII. Statutes Affected:**

This bill substantially amends section 400.191 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Soto

14-00627B-14

20141154\_\_

A bill to be entitled

An act relating to the Nursing Home Guide Watch List; amending s. 400.191, F.S.; requiring a nursing home facility on the list to post signs containing certain information for a specified period; specifying the content and location of signs; providing sanctions for failure to comply; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 400.191, Florida Statutes, is amended to read:

400.191 Availability, distribution, and posting of reports and records.—

(3) Each nursing home facility licensee shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. Copies of the reports shall be retained in the records for not less than 5 years following the date the reports are filed or issued.

(a) The agency shall publish in the Nursing Home Guide a "Nursing Home Guide Watch List" to assist consumers in evaluating the quality of nursing home care in Florida. The watch list must identify each facility that met the criteria for a conditional licensure status and each facility that is operating under bankruptcy protection. The watch list must include, but is not limited to, the facility's name, address, and ownership; the county in which the facility operates; the license expiration date; the number of licensed beds; a

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

14-00627B-14

20141154\_\_

description of the deficiency causing the facility to be placed on the list; any corrective action taken; and the cumulative number of days and percentage of days the facility had a conditional license in the past 30 months. The watch list must include a brief description regarding how to choose a nursing home, the categories of licensure, the agency's inspection process, an explanation of terms used in the watch list, and the addresses and phone numbers of the agency's health quality assurance field offices.

(b) Upon publication of each Nursing Home Guide, the agency must post a copy on its website by the 15th calendar day of the second month following the end of the calendar quarter. Each nursing home licensee must retrieve the most recent version of the Nursing Home Guide from the agency's website.

(c) Any facility placed on the watch list must clearly and conspicuously post a sign on every facility entrance that reads, "NOTICE: THIS FACILITY IS CURRENTLY ON FLORIDA'S NURSING HOME GUIDE WATCH LIST." The sign must remain posted for the duration of time that the facility remains on the watch list. If the agency determines that a facility has violated this paragraph, the agency shall cite the facility for a class I deficiency and place the facility on a 6-month inspection visit cycle.

(d) Any facility placed on the watch list must provide written or electronic notice to the primary familial contact of each of that facilities residents informing them of the facilities placement on the watch list. Notice must include a description of the deficiency causing the facility to be placed on the list, any corrective action taken, and the cumulative number of days and percentage of days the facility had a

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

14-00627B-14

20141154\_\_

59 conditional license in the past 30 months.

60 Section 2. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR DARREN SOTO**  
*Deputy Democratic Whip*  
14th District

**COMMITTEES:**  
Judiciary, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on General Government  
Community Affairs  
Environmental Preservation and Conservation  
Ethics and Elections

**SELECT COMMITTEE:**  
Select Committee on Patient Protection  
and Affordable Care Act

March 4, 2014

The Honorable Aaron Bean  
Committee on Health Policy  
302 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Chairman Bean,

I respectfully request that Senate Bill 1154, Nursing Home Guide Watch List, be placed on the agenda as soon as possible.

The Nursing Home Guide Watch List assists consumers in evaluating the quality of the nursing home care in Florida. Senate Bill 1154 requires a nursing home facility on the list to post signs, at every entrance, stating that it is on the Nursing Home Guide Watch List. The notice must remain posted for the duration of the time that the facility remains on the watch list.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: Sandra Stovall, Staff Director  
Celia Georgiades, Committee Administrative Assistant

REPLY TO:

220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



ENTERED

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic Nursing Home Guide Watchlist

Bill Number SB1154  
*(if applicable)*

Name Matthew Van Nance

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Director

Address \_\_\_\_\_  
Street

Phone 786-459-1798

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail matthew.vannance@1199.org

Speaking:  For  Against  Information

Representing 1199SEIU

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/14  
Meeting Date

Topic Nursing Home Watch List  
Name Carol Berkowitz  
Job Title \_\_\_\_\_

Bill Number 1154  
*(if applicable)*  
Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Address 307 W. Park  
*Street*  
Tallahassee, FL 32301  
*City State Zip*

Phone 850.224.3907  
E-mail cberkowitz@fhea.org

Speaking:  For  Against  Information

Representing Florida Health Care Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-14  
Meeting Date

Topic Missing Home Watch List

Bill Number 1154  
(if applicable)

Name Barbara Devane

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Ms.

Address 625 E. DeWard St  
Street

Phone 850, 222-3969

Tallahassee FL 32308  
City State Zip

E-mail barbadevane1@  
yahoo.com

Speaking:  For  Against  Information

Representing FL Services for Retired Americans

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Nursing Home Watch List

Bill Number 1154  
*(if applicable)*

Name Brian Lee

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Director

Address PO Box 982

Phone 850 224 3320

Street

RH

FL

32302

E-mail brian@familiesforbettercare.com

City

State

Zip

Speaking:  For  Against  Information

Representing Families for Better Care

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Transportation, *Chair*  
Agriculture  
Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Education  
Health Policy

## SELECT COMMITTEE:

Select Committee on Patient Protection  
and Affordable Care Act

## SENATOR JEFF BRANDES

22nd District

April 9, 2014

Senator Aaron Bean, Chair  
Committee on Health Policy  
302 Senator Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Chair Bean:

Please excuse my absence from the Committee on Health Policy, yesterday, April 8, 2014. Bills I needed to present in another committee ran longer than expected.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Brandes".

Senator Jeff Brandes  
District 22

Cc: Sandra Stovall, Staff Director

A handwritten signature in blue ink, appearing to read "Aaron Bean".

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## REPLY TO:

- 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** KN 412  
**Caption:** Senate Health Policy

**Case:**  
**Judge:**

**Type:**

**Started:** 4/8/2014 3:12:47 PM  
**Ends:** 4/8/2014 4:06:08 PM **Length:** 00:53:22

3:12:49 PM Meeting Called to Order  
3:13:23 PM Chair Bean delivers opening comments  
3:13:52 PM Roll Call  
3:14:09 PM (Tab 3)- SB 1580- Workers' Compensation Cost Task Force  
3:14:27 PM Sen. Hays explains the bill  
3:16:24 PM Barcode 877048 is explained by Chair Bean  
3:16:36 PM Amendment to Amendment Barcode 174866 is explained by Chair Bean  
3:17:03 PM Sen. Joyner comments on amendment to amendment  
3:17:31 PM Sen. Hays explains Barcode 174866  
3:18:13 PM Chair Bean asks for objection on late-filed amendment  
3:18:26 PM Sen. Joyner explains proposed substitute amendment  
3:20:20 PM Sen. Hays comments  
3:21:03 PM Chair Bean asks for debate on handwritten proposal  
3:23:30 PM The substitute amendment to amendment is adopted  
3:23:46 PM Testimony by Richard Watson, Associated Builders and Contractors of FL  
3:24:13 PM Testimony by Cam Fentriss, FL Roofing, Sheet Metal and AC Contractors  
3:26:07 PM Question by Chair Bean  
3:26:12 PM Ms. Fentriss responds  
3:26:59 PM Barcode 877048 is adopted  
3:27:10 PM Barcode 234522 is explained by Sen. Hays  
3:27:51 PM Ashley Mayer, American Insurance Assoc. -waives in support  
3:28:03 PM Barcode 234522 is adopted  
3:28:15 PM Testimony by Paul Anderson, FL Justice Ass.  
3:31:04 PM Question by Sen. Joyner  
3:31:38 PM Mr. Anderson responds  
3:32:16 PM Nancy Stephens, Manufacturers Assoc. of FL waives in support  
3:32:35 PM Testimony by David Hart, FL Chamber of Commerce  
3:34:14 PM Question by Sen. Joyner  
3:35:25 PM Mr. Hart responds  
3:35:46 PM Tammy Perdue, Associated Industries of FL  
3:37:40 PM Question by Sen. Joyner  
3:38:33 PM Ms. Perdue responds  
3:39:12 PM Follow-up question by Sen. Joyner  
3:39:36 PM Ms. Perdue responds  
3:40:20 PM Testimony by Logan McFadden, Director, Legislative Affairs  
3:41:07 PM Question by Sen. Joyner  
3:41:17 PM Ms. McFadden responds  
3:41:52 PM Sen. Flores comments in debate  
3:43:07 PM Sen. Hays closes on the bill  
3:44:19 PM Sen. Galvano moves to consider bill as committee substitute  
3:44:32 PM Roll Call on CS 1580  
3:44:46 PM Bill recorded favorably  
3:44:54 PM (Tab 1) 1486- Transitional Living Facilities  
3:45:18 PM AJ, Sen. Garcia's aide, explains the bill  
3:46:15 PM Dana Farmer, Disability Rights Florida -waives in support  
3:46:44 PM AJ waives close  
3:46:48 PM Roll call on SB 1486  
3:47:02 PM Bill recorded favorably  
3:47:08 PM (Tab 4) SB 436- Payment for Services Provided by Licensed Psychologists  
3:47:31 PM Sen. Altman's aide explains the bill  
3:48:23 PM Carole Green, FL Psychological Assoc. waives in support  
3:48:48 PM Mr. Dodge waives close

**3:48:53 PM** Roll call on SB 436  
**3:49:06 PM** Bill recorded favorably  
**3:49:11 PM** (Tab 2)- SB 1180 Chemicals in Consumer Products  
**3:49:28 PM** Mr. Sheer explains the bill  
**3:51:09 PM** David Cullen, Sierra Club FL waives in support  
**3:51:19 PM** Lance Pierce, Asst. Director, State Legislative Affairs, waives in opposition  
**3:51:40 PM** Testimony by Nancy Stephens, Executive Director, manufacturers Assoc. of FL  
**3:53:42 PM** Sharon Nesvig, FL Education Assoc. waives in support  
**3:53:57 PM** Testimony by Michael Power, American Chemistry Counsel  
**3:55:41 PM** Tim Cerio, American Cancer Society waives in support  
**3:55:59 PM** Testimony by Kelsey Johnson, Director, State Affairs  
**3:57:08 PM** Carolyn Johnson, FL Chamber of Commerce, waives in opposition  
**3:57:26 PM** Testimony by Stephanie Kunkel, Clean Water Act  
**3:58:43 PM** Mr. Sheer waives close  
**3:59:05 PM** Roll call on SB 1180  
**3:59:21 PM** Bill recorded favorably  
**3:59:28 PM** (Tab 5) SB 1154- Nursing Home Guide Watch List  
**3:59:44 PM** Ms. Biron explains the bill  
**4:00:38 PM** Barbara DeVane, FL Alliance for Retired Americans, waives in support  
**4:01:02 PM** Matthew Van Name, Legislature Director, 1199SEIU- waives in support  
**4:01:19 PM** Testimony by Brian Lee, Executive Director, Families for Better Care  
**4:02:35 PM** Testimony by Carol Berkowitz, FL Health Care Assoc.  
**4:04:58 PM** Ms. Biron waives close  
**4:05:05 PM** Roll call on SB 1154  
**4:05:24 PM** Bill recorded favorably  
**4:05:33 PM** Sen. Grimsley makes a motion to be shown favorable for SB1580, SB1486, SB436, SB1180  
**4:05:54 PM** Meeting Adjourned