

STORAGE NAME: h1721a.LTC

DATE: April 9, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs & Long Term Care
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1721

RELATING TO: Assisted Living Facilities

SPONSOR(S): Representative Hafner

STATUTE(S) AFFECTED: 400.402, 400.407, 400.4075, 400.426, 394.455, 394.4574, 651.011, 651.118, F.S.

COMPANION BILL(S): SB 1830 and SB 1804

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Elder Affairs & Long Term Care YEAS 6 NAYS 0
- (2) Finance & Taxation
- (3) Health & Human Services Appropriations
- (4)
- (5)

I. SUMMARY:

HB 1721 does the following things:

1. The definition of mental health resident is modified and limited to persons who receive social security disability income (SSDI) or supplemental security income (SSI) for a mental health disability and receive optional state supplementation (OSS).
2. Deletes the extra fee prescribed in current law to obtain a limited mental health license in addition to the basic license required of all assisted living facilities (ALFs).
3. Provides that a facility must serve three or more mental health residents to be required to obtain the specialized license.
4. The responsibilities of an ALF with a limited mental health license are modified and primary responsibility for the behavioral health needs of those residents is assigned to the Department of Children and Family Services (DCFS).
5. The DCFS must provide the ALF administrator with written documentation that the resident is able to live in a community ALF. (Administrators continue to have final decision making authority for accepting a new resident.)
6. The bill provides that an assessment completed through the Comprehensive Assessment and Review for Long Term Care Services (CARES) program may fulfill the requirement for a medical examination.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Assisted Living Facilities (ALFs) provide housing, meals, and personal assistance to individuals with physical and mental disabilities who need support to live in the community but do not require institutionalization. In November, 1996, there were 1,914 licensed ALFs in Florida, with a total of 62,202 beds. The Agency for Health Care Administration (agency or AHCA) is responsible for licensing and monitoring these facilities. The Department of Elderly Affairs (department or DOEA) is responsible for adopting rules related to ALFs and for ensuring the provision of training for the administrators of these facilities. ALFs are licensed for two years.

The Alcohol, Drug Abuse and Mental Health Program Office is responsible for all alcohol, drug abuse, and mental health programs operated by the Department of Children and Family Services (s. 20.19(4)(a)4., F.S., 1996 Supplement). This includes voluntary and involuntary mental health treatment and mental health services. It is important to note that unless an individual has been ordered by the court to receive mental health services, the person has the right to participate in treatment or to refuse services.

In 1989, the Legislature established an optional license for ALFs that serve mental health residents. This optional license was intended to develop facilities with an enhanced capability of serving mentally ill residents by improving the knowledge and skills of facility staff and administrators. Only two ALFs ever applied for the optional license. In 1995, the Legislature repealed the optional license and enacted another law (ch. 95-418, L.O.F.) requiring all ALFs that serve residents with mental illnesses to obtain a limited mental health license in addition to the standard ALF license.

In current law, "mental health resident" means an individual who:

- is a member of a specified population group having priority for district alcohol, drug abuse, and mental health services as provided in s. 394.75(4), F.S.; and,
- has been determined to be in need of primary care services as provided in s. 394.675(1)(a), F.S.

A list of population groups who require primary care services is codified at section 394.75(4), F.S. The groups include, among others:

- chronic public inebriates;
- acutely mentally ill individuals;
- chronically mentally ill individuals; and,
- individuals returned to the community from a state mental health treatment facility.

Section 394.675(1)(a), F.S., defines "primary care services" as those services which, at a minimum, must be made available in each service district to persons who are in the population groups listed in s. 394.75(4), F.S.

These services include, but are not limited to,

- emergency-stabilization services,
- detoxification services, inpatient services,
- residential services, and
- case management services.

Pursuant to current law, an assisted living facility that serves one or more mental health residents must obtain a limited mental health license in addition to a standard license. The administrative code for ALFs (chapter 58A-5, F.A.C.) applies this requirement only to residents who are receiving or are eligible to receive case management services through a publicly-funded community mental health center.

According to a recent study by the Office of Program Policy Analysis and Government Accountability (OPPAGA), about one-fourth of the ALFs now serving residents with mental illnesses either will not qualify for the special license because they have been sanctioned by the agency in the past, or they have decided not to apply for the special license. This could result in more than 550 mentally ill residents being displaced.

Under the implementing rules for 95-418, L.O.F., ALFs serving persons with mental illness were to apply for a limited mental health license by October 2, 1996. However, due to concerns about the potential impact of the new law (in particular displacement of residents mentioned above), and in accordance with the provisions of s. 400.451, F.S., which provides that existing facilities may be given a reasonable time, not to exceed six months, within which to comply with new rules and standards, the Secretary of the Department of Elderly Affairs postponed the license application deadline until April 2, 1997, to allow the Legislature time to address those concerns.

B. EFFECT OF PROPOSED CHANGES:

The proposed legislation is intended to improve the interface between the mental health system and ALFs as a housing option for persons with mental illness. Responsibilities related to mental health residents living in ALFs are assigned to the mental health system, through the Department of Children and Family Services. The licensing standards for a limited mental health license are modified to eliminate the concern that about one-fourth of the facilities serving mental health residents will not apply or will not qualify for the license. The modifications also clarify that the ALF is primarily a residence, a housing choice, *not* a mental health treatment facility.

The definition of the term "mental health resident" is modified to mean an individual who receives supplemental security income or social security disability income due to a mental disorder and also receives optional state supplementation.

The bill adds the terms "community living support plan" and "cooperative agreement" to s. 400.402, F.S. The community living support plan is a written document prepared by a mental health resident and that person's case manager in consultation with the administrator of the assisted living facility in which the mental health resident lives. The plan must include information about the supports, services, and special needs of the resident that enable that person to live in the assisted living facility, and a copy of the plan must be provided to the administrator.

The cooperative agreement is a written statement of understanding between a mental health care services provider designated by the Department of Children and Family Services and the administrator of the assisted living facility with a limited mental health license in which a mental health resident is living. The agreement specifies directions for accessing emergency and after-hours care for the mental health resident and a method for the staff of the facility to recognize and respond to the signs and symptoms particular to that mental health resident that indicate the need for professional services. This agreement may be a component of the community living support plan. The facility has minimal responsibility for mental health services, thus the number of mental health residents for whom the facility can provide limited mental health services is no longer required to be on the license.

These provisions place more responsibility on the Department of Children and Family Services and on the mental health provider system, as it relates to mental health residents of ALFs, than is currently the case.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No, a fee is repealed.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

Yes, the licensure fee is repealed.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, facilities with less than three mental health residents are not required to be licensed.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A.

- (2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

Section 1. Amends section 400.402, F.S. to add definitions for the following terms:

- “Community living support plan” is a written document prepared by the case manager, the mental health resident and the ALF. The document is to include information about the supports, services, and special needs of the resident that enable the resident to live in the ALF.
- “Cooperative agreement” is a written statement of understanding between the mental health services provider designated by the Department of Children and Family Services and the ALF. The agreement provides specific directions for accessing emergency and after-hours care, information to help staff recognize and respond to the signs and symptoms of clinical decline in a particular resident that indicates the need for professional services.
- “Mental Health resident” for purposes of this section is limited to persons who receive social security disability income (SSDI) or supplemental security income (SSI) due to a mental disorder and receive optional state supplementation (OSS).

Section 2. Deletes the requirement that facilities pay an additional fee to apply for a limited mental health license. Makes other technical and conforming changes.

Section 3. Provides that an ALF that serves three or more residents who meet the definition of “mental health resident” must obtain a mental health license. To obtain a mental health license a facility must have a standard ALF license, and staff must receive prescribed training within six months after receiving the license. A facility with a limited mental health license must have a copy of each resident’s community support living plan, documentation from DCFS that the resident is able to live in an ALF, assist the resident in carrying out the activities on the support plan, and allow persons with a lawful basis for doing so to inspect the support plan.

Deletes the requirement that facilities with a limited mental health license have a “mental health plan” for each resident, and a written agreement with the nearest publicly funded community mental health facility. HB 1721 removes the requirement that DCFS establish standards for the format and content of the mental health plan.

Section 4. Amends section 400.426, F.S. HB 1721 provides that an assessment done through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program meets the requirements for a medical examination.

Section 5. Amends section 394.455 to provide definitions in the mental health chapter.

Section 6. Creates section 394.4574 to prescribe the department's responsibilities for a mental health resident who lives in an ALF.

Section 7. Amends 651.011 to correct cross references.

Section 8. Amends 651.118 to correct cross references.

Section 9. Provides that the bill will take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The DCFS reports that there are some individuals living in ALFs who meet the definition of "mental health resident", but who are not currently receiving case management purchased by the office of Alcohol, Drug Abuse, and Mental Health. The DCFS has prepared a cost projection of approximately \$200,000 per year.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Facilities which serve three or more mental health residents will have to ensure that staff receive six hours of training. Consultations with the office of the Commissioner of Insurance provided no evidence that liability costs would increase because of this licensure.

2. Direct Private Sector Benefits:

None projected.

3. Effects on Competition, Private Enterprise and Employment Markets:

None projected.

D. FISCAL COMMENTS:

The Department of Children and Family Services considers the persons who are defined as "mental health resident" in the bill are a part of their "priority" or "target" group under performance based program budgeting. Since s. 394.675(1)(a) lists case management as a primary care service that must be available to persons in the population groups listed in s. 394.75(4), funds should already be appropriated and available for this purpose. Providing access to case management to these persons, thus, may involve redirecting some present resources.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The term "mental health resident" in the bill is more narrowly defined than what exists in current law. The proposed definition describes a majority of the individuals who currently reside in ALFs and receive mental health services funded through the Department of Children and Family Services. The phrase "due to a mental disorder" is consistent with 20 CFR Pt. 404, Subpt.P, App. I.12.00, the regulation related to disability determination by the Social Security Administration due to a mental disorder.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee reported favorably one amendment which would strike everything after the enacting clause and a title amendment.

The bill as amended differs from the original bill in the following ways:

- The provisions of law and the administrative rule providing for the limited mental health license as passed by the 1995 Legislature are suspended until July 1, 1997.
- The number of visits required annually for ALFs licensed as extended congregate care facilities (E.C.C.) are reduced from three to two.
- DOEA is directed to work with other named groups to consider the need for and training of certified medication technicians. DOEA is to make recommendations to the Legislature.
- A facility with a limited mental health license may enter into a cooperative agreement with a private mental health provider. For purposes of this section, the private mental health provider may act as the case manager.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

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