

By the Committee on Health Care and Senator Brown-Waite

317-678B-98

1 A bill to be entitled
2 An act relating to transitional living
3 facilities for brain-injured and
4 spinal-cord-injured persons; amending s.
5 400.805, F.S.; providing for the regulation of
6 transitional living facilities; providing for
7 right of entry and inspection; providing for
8 injunctive proceedings; providing for a
9 moratorium on admissions; amending s. 413.49,
10 F.S.; providing duties of transitional living
11 facilities to provide certain therapies and
12 plans; amending s. 413.605, F.S.; providing
13 additional duties of the advisory council on
14 brain and spinal cord injuries; providing an
15 effective date.

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

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19 Section 1. Present subsection (7) of section 400.805,
20 Florida Statutes, is redesignated as subsection (10) and new
21 subsections (7), (8), and (9) are added to that section to
22 read:

23

400.805 Transitional living facilities.--

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25 (7) Any designated officer or employee of the agency,
26 of the state or of the local fire marshal, may enter
27 unannounced upon and into the premises of any facility
28 licensed under this section in order to determine the state of
29 compliance with this section and the rules or standards in
30 force under this section. The right of entry and inspection
31 also extends to any premises that the agency has reason to
 believe are being operated or maintained as a facility without

1 a license; but such an entry or inspection may not be made
2 without the permission of the owner or person in charge of the
3 facility unless a warrant that authorizes the entry is first
4 obtained from the circuit court. The warrant requirement
5 extends only to a facility that the agency has reason to
6 believe is being operated or maintained as a facility without
7 a license. An application for a license or renewal thereof
8 which is made under this section constitutes permission for,
9 and acquiescence in, any entry or inspection of the premises
10 for which the license is sought, in order to facilitate
11 verification of the information submitted on or in connection
12 with the application; to discover, investigate, and determine
13 the existence of abuse or neglect; or to elicit, receive,
14 respond to, and resolve complaints. A current valid license
15 constitutes unconditional permission for, and acquiescence in,
16 any entry or inspection of the premises by authorized
17 personnel. The agency retains the right of entry and
18 inspection of facilities that have had a license revoked or
19 suspended within the previous 24 months, to ensure that the
20 facility is not operating unlawfully. However, before the
21 facility is entered, a statement of probable cause must be
22 filed with the director of the agency, who must approve or
23 disapprove the action within 48 hours. Probable cause
24 includes, but is not limited to, evidence that the facility
25 holds itself out to the public as a provider of personal
26 assistance services, or the receipt by the advisory council on
27 brain and spinal cord injuries of a complaint about the
28 facility.

29 (8) The agency may institute injunctive proceedings in
30 a court of competent jurisdiction for temporary or permanent
31 relief to:

1 (a) Enforce this section or any minimum standard,
2 rule, or order issued pursuant thereto if the agency's effort
3 to correct a violation through administrative fines has failed
4 or when the violation materially affects the health, safety,
5 or welfare of residents; or

6 (b) Terminate the operation of a facility if a
7 violation of this section or of any standard or rule adopted
8 pursuant thereto exists which materially affects the health,
9 safety, or welfare of residents.

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11 The Legislature recognizes that, in some instances, action is
12 necessary to protect residents of facilities from immediately
13 life-threatening situations. In such a case, the court may
14 allow a temporary injunction even if bond or proper proof has
15 not been made. If it appears by competent evidence or a sworn,
16 substantiated affidavit that a temporary injunction should
17 issue, the court, pending the determination on final hearing,
18 shall enjoin operation of the facility.

19 (9) The agency may impose an immediate moratorium on
20 admissions to a facility when the agency determines that any
21 condition in the facility presents a threat to the health,
22 safety, or welfare of the residents in the facility. If a
23 facility's license is denied, revoked, or suspended, the
24 facility may be subject to the immediate imposition of a
25 moratorium on admissions to run concurrently with licensure
26 denial, revocation, or suspension.

27 Section 2. Section 413.49, Florida Statutes, is
28 amended to read:

29 413.49 Duties and responsibilities of the division, of
30 transitional living facilities, and of residents.--Consistent
31 with the mandate of s. 413.46, the division shall develop and

1 administer a multilevel treatment program for persons who have
2 brain or spinal cord injuries and who are referred to the
3 brain and spinal cord injury program.

4 (1) Within 15 days after any report of a person who
5 has a brain or spinal cord injury, the division shall notify
6 the individual or the most immediate available family members
7 of their right to assistance from the state, the services
8 available, and the eligibility requirements.

9 (2) The division shall refer persons who have brain or
10 spinal cord injuries to other state agencies to assure that
11 rehabilitative services, if desired, are obtained by that
12 person.

13 (3) The division, in consultation with emergency
14 medical service, shall develop standards for an emergency
15 medical evacuation system that will ensure that all persons
16 who sustain traumatic brain or spinal cord injuries are
17 transported to a division-approved trauma center that meets
18 the standards and criteria established by the emergency
19 medical service and the acute-care standards of the brain and
20 spinal cord injury program.

21 (4) The division shall develop standards for
22 designation of rehabilitation centers to provide
23 rehabilitation services for persons who have brain or spinal
24 cord injuries.

25 (5) The division shall determine the appropriate
26 number of designated acute-care facilities, inpatient
27 rehabilitation centers, and outpatient rehabilitation centers,
28 needed based on incidence, volume of admissions, and other
29 appropriate criteria.

30 (6) The division shall develop standards for
31 designation of transitional living facilities to provide

1 individuals the opportunity to adjust to their disabilities
2 and to develop physical and functional skills in a supported
3 living environment.

4 (a) The Agency for Health Care Administration, in
5 consultation with the division, shall develop rules for the
6 licensure of transitional living facilities for persons who
7 have brain or spinal cord injuries.

8 (b) The goal of a transitional living program for
9 persons who have brain or spinal cord injuries is to assist
10 each person who has such a disability to achieve a higher
11 level of independent functioning and to enable that person to
12 reenter the community. The program shall be focused on
13 preparing participants to return to community living.

14 (c) A transitional living facility for a person who
15 has a brain or spinal cord injury shall provide to such
16 person, in a residential setting, a ~~time-limited,~~
17 goal-oriented treatment program designed to improve the
18 person's physical, cognitive, communicative, behavioral,
19 psychological, and social functioning, as well as to provide
20 necessary support and supervision. A transitional living
21 facility shall offer at least the following therapies:
22 physical, occupational, speech, neuropsychology, independent
23 living skills training, behavior analysis for programs serving
24 brain-injured persons, health education, and recreation.

25 (d) All residents shall use the transitional living
26 facility as a temporary measure and not as a permanent home or
27 domicile. The transitional living facility shall develop an
28 initial treatment plan for each resident within 3 days after
29 the resident's admission. The transitional living facility
30 shall develop a comprehensive plan of treatment and a
31 discharge plan for each resident as soon as practical but no

1 later than 30 days after the resident's admission. Each
2 comprehensive treatment plan and discharge plan must be
3 reviewed and updated as necessary but no less often than
4 quarterly. This subsection does not require the discharge of
5 an individual who continues to require specialized services or
6 who is making measurable progress in accordance with that
7 individual's comprehensive treatment plan. The transitional
8 living facility shall discharge any individual who has an
9 appropriate discharge site and who has achieved the goals of
10 his or her discharge plan or who is no longer making progress
11 toward the goals established in the comprehensive treatment
12 plan and the discharge plan. The discharge location must be
13 the least restrictive environment in which an individual's
14 health, well-being, and safety is preserved.

15 (7) Recipients of services, under this section, from
16 any of the facilities referred to in this section shall pay a
17 fee based on ability to pay.

18 Section 3. Subsection (4) of section 413.605, Florida
19 Statutes, is amended to read:

20 413.605 Advisory council on brain and spinal cord
21 injuries.--

22 (4) The council shall:

23 (a) Provide advice and expertise to the division in
24 the preparation, implementation, and periodic review of the
25 brain and spinal cord injury program as referenced in s.
26 413.49.

27 (b) Annually appoint a five-member committee composed
28 of one person who has a brain injury or has a family member
29 with a brain injury, one person who has a spinal cord injury
30 or has a family member with a spinal cord injury, and three
31 members who shall be chosen from among these representative

1 groups: physicians, other allied health professionals,
2 administrators of brain and spinal cord injury programs, and
3 representatives from support groups with expertise in areas
4 related to the rehabilitation of persons who have brain or
5 spinal cord injuries, except that one and only one member of
6 the committee shall be an administrator of a transitional
7 living facility. Membership on the council is not a
8 prerequisite for membership on this committee.

9 1. The committee shall perform onsite visits to those
10 transitional living facilities identified by the Agency for
11 Health Care Administration as being in possible violation of
12 the statutes and rules regulating such facilities. The
13 committee members have the same rights of entry and inspection
14 granted under s. 400.805(7) to designated representatives of
15 the agency.

16 2. Factual findings of the committee resulting from an
17 onsite investigation of a facility pursuant to subparagraph 1.
18 shall be adopted by the agency in developing its
19 administrative response regarding enforcement of statutes and
20 rules regulating the operation of the facility.

21 3. Onsite investigations by the committee shall be
22 funded by the Health Care Trust Fund.

23 4. Travel expenses for committee members shall be
24 reimbursed in accordance with s. 112.061. Members of the
25 committee shall recuse themselves from participating in any
26 investigation that would create a conflict of interest under
27 state law, and the council shall replace the member, either
28 temporarily or permanently.

29 Section 4. This act shall take effect October 1, 1998.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 188

Provides explicit authority for the Agency for Health Care Administration to enter and inspect the premises of licensed transitional living facilities and the premises of other entities that may be operating as unlicensed transitional living facilities. The agency is authorized to petition for injunctive relief and to impose a moratorium on admissions to transitional living facilities to enhance its ability to enforce licensure regulations. The Advisory Council on Brain and Spinal Cord Injuries under the Division of Vocational Rehabilitation is required to appoint a five-member committee to assist the agency in its regulatory oversight responsibilities. The programmatic requirements relating to services provided to residents of transitional living facilities are expanded and the treatment focus is changed from "time limited" to one of comprehensive treatment planning and discharge planning, as specified.

Other regulatory requirements have been deleted. Additionally, provisions relating to changes in reimbursement and compensation of councils established under the Division of Vocational Rehabilitation have been deleted.