

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 Appropriations

BILL: SB 1486

INTRODUCER: Senator Garcia

SUBJECT: Transitional Living Facilities

DATE: April 23, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

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 for 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.

The bill may have an indeterminate, but likely insignificant, fiscal impact on the Agency for Health Care Administration.

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. Swelling of the spinal cord after the injury can cause further 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 may include any combination of the

following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel or bladder dysfunction.¹

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

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. The program also employs regional managers who supervise staff in their regions and who oversee the local 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. The program 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's Division of Vocational Rehabilitation.

Section 381.76, F.S., requires that an individual receiving services must be a legal Florida resident who has sustained a brain or spinal cord injury meeting the state's definition of such injuries;³ has been referred to the BSCIP central registry; and must be medically stable. 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 (TLFs or facility) provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to persons with spinal cord or head injuries. There are currently 13 facilities located in the state.⁴ 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

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

² 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).

³ 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.

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

oversees TLFs under part II of ch. 408, F.S., part V of ch. 400, F.S., and Rule 59A-17 of the Florida Administrative Code. The current licensure fee is \$4,588 plus a \$90 per-bed fee per biennium.⁵

The AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH to monitor services provided for persons with traumatic brain and spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.⁶

Section 400.805, F.S., provides requirements for TLFs. Section 400.805(2), F.S., sets licensure requirements and fees for operation of a 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 TLFs.⁷

The Brain and Spinal Cord Injury Advisory Council has the right to enter and inspect transitional living facilities.⁸ In addition, designated representatives of the AHCA, the local fire marshal, and other agencies have access to the facilities and clients.⁹

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.¹⁰ The report stated that three former employees face criminal charges for abusing clients. Subsequent news reports stated the facility and three affiliated corporations filed Chapter 11 bankruptcy in U.S. Bankruptcy Court in Tampa.¹¹ 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.”

Under s. 400.997, F.S., the bill provides legislative intent that transitional living facilities (TLFs) are to assist persons with brain and spinal cord injuries to achieve independent living and return to the community.

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

⁶ *Supra* n. 5

⁷ *Supra* n. 5

⁸ Section 400.805(4), F.S.

⁹ *Supra* n. 5

¹⁰ 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)

¹¹ 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)

Under s. 400.9971, F.S., the bill 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 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 which cannot easily be removed and restricts freedom of movement or normal access to one’s own body; and
- “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, while not meaning isolation due to a person’s medical condition or symptoms.

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

Under s. 400.9972, F.S., the bill provides licensure requirements and application fees for TLFs. The bill codifies the current license fee of \$4,588 and the per-bed fee of \$90.¹² The bill requires certain information from the licensure 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 a 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

Under s. 400.9973, F.S., the bill sets standards that TLFs must meet for client admission, transfer, and discharge from the facility. The facility is required to establish 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 be admitted to the facility only 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 nursing supervision on a 24-hour basis or who are bedridden.

¹² 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.

A 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 a client's admission to the facility. An initial treatment plan must be implemented within four days of admission. A facility must also develop, and update at least 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. A facility must provide at least 30 days' notice to the client before transferring or discharging him or her.

Client Plans and Evaluation

Under s. 400.9974, F.S., the bill requires that a facility must develop a comprehensive treatment plan for each client within 30 days after an 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 rehabilitation 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.

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

Under s. 400.9975, F.S., the bill provides for certain rights of each client. Specifically, a 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; and
- 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
 - Present grievances and recommend changes in policies, procedures, and services.

A 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

Under s. 400.9976, F.S., the bill requires the TLF 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.

Under s. 400.9977, F.S., the bill provides that unlicensed direct care services staff may assist residents¹³ with repackaged medications that are prescribed, prepackaged, and premeasured. The bill requires that the facility must provide training, develop procedures, and maintain records regarding 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.

Under s. 400.9979, F.S., the bill requires that physical and chemical restraints must be ordered for clients before such restraints may be used by a facility. The bill requires that an order for restraints 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 need for the medication;
- Level of the medication in client's blood; and
- The need to adjust the prescription.

A 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

Under s. 400.9978, F.S., the bill 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:

¹³ In both TLF and assisted living facilities.

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;
- Train employees through orientation and ongoing 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;
- 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 internal reporting and the 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.

Under s. 400.998, F.S., the bill requires all TLF personnel to complete a level 2 background screening and requires the facility to 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 a 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 that complies with standard medical and business practices and which is available for submission to the AHCA upon request. The records must include:
 - A daily census record;
 - A report of all accidental 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.

Under s. 400.9981, F.S., the bill 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 the client's behalf and a copy of such statement must be given to the client and retained in the client's file and be available for inspection by the AHCA.

The bill states that a facility, upon consent of 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, a TLF must 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 authorizes 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.

Under s. 400.9982, F.S., the bill 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.

Under s. 400.9983, F.S., the bill revises penalties for violations. Current law requires the AHCA to determine if violations in health care related facilities are isolated, patterned, or widespread.¹⁴ The penalties in the bill take into account the frequency of the problems within the facility as 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.¹⁵

Under the bill, fines for violations will be levied at the following amounts, but fines for Class III and Class IV violations will not be levied if the violations are corrected within timeframes specified by the AHCA:

Class of Violation/Correction	Isolated	Patterned	Widespread
I - Regardless of correction	\$5,000	\$7,500	\$10,000
II - Regardless of correction	\$1,000	\$2,500	\$5,000
III - Only if uncorrected	\$500	\$750	\$1,000
IV - Only if uncorrected	Fines for Class IV violations may range from \$100 to \$200.		

Under s. 400.9984, F.S., the bill authorizes the AHCA to petition a court for the appointment of a receiver for TLFs using the provisions of s. 429.22, F.S.

Under s. 400.9985, F.S., the bill 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 that relevant information pertaining to the regulation of TLFs 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.

Section 2 repeals s. 400.805, F.S. This section of law contains the current regulations for TLFs. 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 statutory part for such facilities.

Section 4 amends s. 381.745, F.S., to conform to changes in the definition of a TLF.

Section 5 amends s. 381.75, F.S., to eliminate a reference to the responsibility of the DOH to develop rules with the AHCA, for the regulation of transitional living facilities. Provisions in this statutory section are moved and revised in the newly-created sections 400.997 through 400.9984, F.S.

¹⁴ See s. 408.813(2), F.S.

¹⁵ See s. 408.813, 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 TLFs. These duties are duplicative of the regulation by the AHCA under the bill and, as a result, are removed.

Section 7 amends s. 400.93, F.S., to conform a reference to TLFs.

Section 8 amends s. 408.802, F.S., to conform a reference to TLFs.

Section 9 amends s. 408.820, F.S., to conform a reference to TLFs.

Section 10 creates a non-statutory section of Florida law requiring that transitional living facilities that were licensed prior to the effective date of the bill must be licensed under the new requirements of the bill no later than 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 experience costs associated with rulemaking that may be absorbed within existing resources. The AHCA may experience 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 an 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 undesignated section of Florida law.

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.