

**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 Children, Families, and Elder Affairs

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BILL: SB 1486

INTRODUCER: Senator Garcia

SUBJECT: Transitional Living Facilities

DATE: March 14, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	<b>Pre-meeting</b>
2.			HP	
3.			AP	

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**I. Summary:**

SB 1486 revises regulations for transitional living facilities. The purpose of these facilities is to provide rehabilitative care in a small residential setting. Such facilities primarily serve persons with brain or spinal injuries and who need significant care and services to regain their independence. There are currently thirteen such facilities in Florida. 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.

This bill will have a minor fiscal impact on the state and has an effective date of July 1, 2014.

**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.<sup>1</sup> 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

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<sup>1</sup>Florida Spinal Cord Injury Resource Center, *Family and Survivor’s Guide*, available at <http://fscirc.com/> (last visited March 13, 2014).

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

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

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

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

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

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

### **Transitional Living Facilities**

Transitional living facilities provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. There are currently thirteen facilities located in the state.<sup>3</sup> Most of the facilities are small and have between 5 and 10 beds. One facility however is licensed for 116 beds (Florida Institute for Neurologic Rehabilitation in

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<sup>2</sup> Florida Department of Health website, available at <http://www.doh.state.fl.us/> (last visited March 13, 2014).

<sup>3</sup> Agency for Health Care Administration, Health Finder Website <http://www.floridahealthfinder.gov/index.html> (last visited March 13, 2014).

Wauchula). The facilities are located primarily in central Florida. The Agency for Health Care Administration (AHCA) is the licensing authority and one of the regulatory authorities which oversee transitional living facilities pursuant to Part II of ch. 408, and Part V of ch. 400, F. S., and ch. 59A-17 of the Florida Administrative Code. The current licensure fee is \$4,588, and \$90 per bed fee per biennium.

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

Section 400.805, F.S., 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 submit to a level 2 background screening. Section 400.805(3)(a), F.S., requires AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of transitional living facilities.

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

According to a news report from Bloomberg, dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida were abused, neglected and confined. The news report was based on information from 20 current and former clients and their family members, criminal charging documents, civil complaints and advocates for the disabled.<sup>4</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>5</sup> As of March 13, 2014, the facility remains licensed.

### III. Effect of Proposed Changes:

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

The bill creates s. 400.9971, F.S., to define terms. The bill defines a chemical restraint which is used for the client protection or safety and is not required for the treatment of medical conditions or symptoms. The definition of physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual’s body so the

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

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

client cannot easily remove the restraint and restricts freedom of movement or normal access to one's body. The definition of a transitional living facility is moved from s. 381.475, F.S.

The bill creates s. 400.9972, F.S., to provide the licensure requirements and application fee for transitional living facilities. The bill codifies the current license fee of \$4,588 and the per bed fee of \$90.<sup>6</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, documentation 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. Such accreditation does not supplant the requirement for AHCA inspections.

### **Admission Criteria**

The bill creates s. 400.9973, F.S., to set standards transitional living facilities must meet for client admission, transfer, and discharge from the facility. The facility is required to have admission, transfer, and discharge policies and procedures in writing.

Clients can only be admitted to the facility through a prescription by a licensed physician and must remain under the care of the physician for the duration of the client's stay in the facility. Clients admitted to the facility must have a brain and spinal cord injury, as defined in s. 381.745(2), F.S. Clients 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 or mental health practitioner. The facility may not admit clients requiring mental health treatment or nursing supervision on a 24-hour basis or who are bedridden.

### **Client Plans and Evaluation**

The bill creates s. 400.9974, F.S., to require that the facility develop a comprehensive treatment plan for each client within 30 days of admission. An interdisciplinary team, including the client, as appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

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

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<sup>6</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., 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.

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

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

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors;
- Participates in community services and activities;
- Manages his or her own financial affairs, unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
- Has reasonable opportunity for regular exercise and to be outdoors several times a week;
- May exercise civil and religious liberties;
- Has adequate access to appropriate health care services; and
- Has the ability 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 AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call AHCA, the central abuse hotline 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.

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

The bill creates s. 400.9977, F.S., to provide that unlicensed care staff may assist residents with repackaged medications. The bill requires that the facility must provide training, develop procedures, and maintain records in regards to assistance with medication by unlicensed staff.

The bill creates s. 400.9978, F.S., to state that the facility is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. This includes the facility identifying clients whose history renders the client a risk for abusing other clients. The facility must implement procedures to:

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;
- Train employees through orientation and on-going sessions on abuse prohibition practices;
- 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 reporting, and reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under chs. 39 and 415, F.S., to the appropriate licensing authorities.

The bill creates s. 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 and provided with the consent of the client or client's representative. Chemical restraint is limited to the dosage of medications prescribed by the client's physician. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

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

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

The bill creates s. 400.998, F.S., to require all facility personnel to complete a level 2 background screening as required in s 408.809(1)(e), F.S., pursuant to ch. 435, F.S. The facility must maintain personnel records which contain the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certification held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires the facility to:

- Implement infection control policies and procedures.
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times.
- Designate one person as administrator who is responsible for the overall management of the facility.
- Designate in writing a person responsible for the facility when the administrator is absent for 24 hours.
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency.

- Maintain written records in a form and system in accordance with standard medical and business practices and be available for submission to AHCA upon request. The records must include:
  - A daily census record;
  - A report of all accident or unusual incidents involving clients or a staff member that caused or had the potential to cause injury or harm to any person or property within the facility;
  - Agreements with third party providers;
  - Agreements with consultants employed by the facility; and
  - Documentation of each consultant's visits and required written, dated reports.

The bill creates s. 400.9981, F.S., to allow clients the option of using their own personal belongings, and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein shall not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian, trustee, or payee for social security or other benefits. The licensee, administrator, employee, or representative may be granted power of attorney for a client if the licensee has filed a surety bond with AHCA in an amount equal to twice the average monthly income of the client. When the power of attorney is granted to the licensee, administrator, staff, or representative, he or she must notify the client on a monthly basis of any transactions made on their behalf and a copy of such statement given to the client and retained in the client's file and available for inspection by AHCA.

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

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

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

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

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

The bill creates s. 400.9982, F.S., to authorize AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. AHCA, in consultation with the DOH, may adopt and enforce rules.

The bill creates s. 400.9983, F.S., to revise penalties for violations. Current law requires AHCA to determine if violations in health care related facilities are isolated, patterned or widespread by AHCA.<sup>7</sup> The penalties in the bill take into account the frequency of the problems within the facility. Violations are also separated into classes 1 through 4 based on severity in s. 408.813, F.S. Class 1 violations being the most serious and class 4 being the least serious. Class 1 violations put clients in imminent danger. Class 2 violations directly threaten the safety of clients. Class 3 violations indirectly threaten the safety of clients. Class 4 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.

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

The bill creates s. 400.9984, F.S., to establish the right for AHCA to petition a court for the appointment of a receiver using the provisions of s. 429.22, F.S., when the following conditions exist:

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

The bill creates s. 400.9985, F.S., to require AHCA, the DOH, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure relevant data pertaining to the regulation of transitional living facilities and clients is communicated timely among all agencies for the protection of clients. This system must include the Brain and Spinal Cord Registry and the abuse registries. A database containing information on facilities will assist the various state agencies that are involved in regulating the facilities and the treatment of their clients.

**Section 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.

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<sup>7</sup> s. 408.813(2), F.S.



**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 AHCA 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 AHCA under the bill and, as a result, are removed.

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

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

**Section 9** amends s. 408.820, F.S., to correct 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 must be meet 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 increased costs based on the increased requirements under the bill. The amount is indeterminate.

**C. Government Sector Impact:**

AHCA currently regulates the 13 transitional living facilities in the state and is not expected to incur increased costs of regulation. AHCA will see increased costs however to develop a database to hold information on facilities that would be shared with other state agencies as required under the bill. The costs are estimated below.

<b>Fiscal Impact</b>	<b>Fiscal Year 2014-15</b>
<b>AHCA</b>	
Develop database	\$164,060
<b>Total</b>	\$164,060

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.

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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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