SB 210 by **Gibson**; (Similar to CS/H 0119) Licensing of Facilities that Offer Health and Human Services

554682	D	S	CF, Sobel	Delete everything after	03/03 04:05 PM

SB 250 by **Smith (CO-INTRODUCERS) Margolis, Hays, Stargel, Simpson**; (Similar to H 0011) Child Care Facilities

643606	D	S	CF, Altman	Delete everything after	02/18 10:31 AM

SB 514 by **Abruzzo (CO-INTRODUCERS) Clemens**; (Similar to H 0505) Baker Act

SB 552 by **Hays**; (Identical to H 0535) Public Records/Homelessness Surveys and Databases

SB 682 by **Grimsley**; (Similar to CS/H 0111) Transitional Living Facilities

SB 760 by **Bradley**; (Compare to H 1055) Child Protection Teams

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Sobel, Chair
Senator Altman, Vice Chair

MEETING DATE: Thursday, March 5, 2015
TIME: 9:00 —11:00 a.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Sobel, Chair; Senator Altman, Vice Chair; Senators Dean, Detert, Garcia, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 210** Gibson (Similar CS/H 119)	Licensing of Facilities that Offer Health and Human Services; Redefining the term “child care” to include a person or facility that does not receive compensation; redefining the term “child care facility” to include a child care center or child care arrangement that does not receive compensation and provides child care for more than four, rather than five, children unrelated to the operator, etc. CF 03/05/2015 AHS AP	
2	**SB 250** Smith (Similar H 11)	Child Care Facilities; Requiring that certain membership organizations conduct level 2 background screening for child care personnel; requiring such organizations to demonstrate compliance upon request; excluding certain membership organizations from the definition of the term “child care facility”, etc. CF 02/19/2015 CF 03/05/2015 CA AHS AP	
3	**SB 514** Abruzzo (Similar H 505)	Baker Act; Requiring the Department of Children and Families to create a workgroup to provide recommendations relating to revision of the Baker Act; requiring the workgroup to make recommendations on specified topics; requiring a review of draft recommendations by a specified date; requiring the workgroup to submit a report to specified entities and the Legislature by a specified date, etc. CF 03/05/2015 AHS FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 552** Hays (Identical H 535)	Public Records/Homelessness Surveys and Databases; Creating a public records exemption for individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System; providing for future review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CF 03/05/2015 GO RC	
5	**SB 682** Grimsley (Similar CS/H 111)	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 taking other retaliatory action under certain circumstances; providing a penalty for certain misuse of a client's personal funds, property, or personal needs allowance; 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 03/05/2015 AHS AP	
6	**SB 760** Bradley (Compare H 1055)	Child Protection Teams; Requiring the Statewide Medical Director for Child Protection and the district medical directors to hold certain qualifications, etc. CF 03/05/2015 HP FP	
	Other Related Meeting Documents		

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 Children, Families, and Elder Affairs

BILL:	SB 210
INTRODUCER:	Senator Gibson
SUBJECT:	Licensing of Facilities that Offer Health and Human Services
DATE:	February 24, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 210 redefines the term "child care" to include a person or facility that cares for children but does not receive compensation. It redefines the term "child care facility" to include a child care center or child care arrangement that does not receive compensation for more than four, rather than five, children, unrelated to the operator. It requires a family day care home to conspicuously display its license or registration in the common area of the home. A large family child care home is required to permanently post its license in a conspicuous location visible to parents, guardians and the Department of Children and Families (department). Family day care homes not subject to licensing must register with the department and provide the identity of the competent adult who has met the screening and training requirements of the department to serve as a designated substitute for the operator in an emergency. Additionally family day care homes not subject to licensing must provide proof of screening and background checks for the operator, household members and the designated substitute. The bill repeals the maximum licensing fee of $100 per facility. Finally, the bill prohibits the advertising of a child care facility, family day care home or large family day care home unless it is licensed or registered. Violation of the advertising prohibition is a first degree misdemeanor.

The bill is effective July 1, 2015. The fiscal impact is unknown, but the bill provides for the department to charge a fee for licensing.

II. Present Situation:

There are many different settings that are designed to provide child care for payment. Additionally, there are settings that provide child care services for non-payment, such as public and nonpublic schools, summer camps with children as full-time residence, summer day camps, Bible schools and care offered at transient establishments solely for guests of the establishment or resort.

According to the U.S. Department of Health and Human Services in 2011, licenses were issued to approximately 6,750 child care facilities, 3,327 family child care homes and 412 group child care homes in Florida.[1] The definition of "child care" provides for a payment, fee or grant for the supervision of a child for less than 24 hours a day on a regular basis.[2] "Child care facility" is defined as a child care center or child care arrangement providing child care for more than five children unrelated to the operator, wherever operated and whether or not operated for profit which receives a payment, fee or grant.[3]

A family day care home must be licensed if it is presently being licensed under an existing county licensing ordinance or if the board of county commissioners passes a resolution that family day care homes be licensed.[4] Five counties, Broward, Hillsborough, Palm Beach, Pinellas and Sarasota, have elected to regulate licensing of child care facilities pursuant to s. 402.306, F.S.[5] If a family day care home is not subject to a license it must register annually with the department and provide certain information, including proof of screening and background checks.[6] However, the statute does not identify the persons subject to the screenings or background checks.

A large family child care home means an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation.[7] A large family child care home must be licensed.[8] The child care personnel subject to the applicable screening provisions of ss. 402.305(2) and 402.3055, F.S., includes any member of a large family child care home operator's family 12 years of age or older, or any person 12 years of age or older residing with the operator in the large family care home. Members of the operator's family, or persons residing with the operator, who are between the ages of 12 years and 18 years, inclusive, shall not be required to be fingerprinted, but shall be screened for delinquency records.[9]

The department collects a fee for any license it issues for a child care facility, family daycare home, or large family child care home.[10] The fee for a child care facility licensed under s. 402.305, F.S., is $1 per child based on the licensed capacity of the facility with a minimum fee of $25 per facility and a maximum fee of $100 per facility.[11] The fee is $25 for a family day care home registered pursuant to s. 402.313, F.S.[12] The fee is $50 for a family day care home licensed

[1] U.S. Department of Health and Human Services, *Administration for Children, available at* https://childcareta.acf.hhs.gov/resource/number-licensed-child-care-facilities-2011(follow attachment Number of Child Care Facilities in 2011) (last visited Feb. 24, 2015).
[2] Section 402.302(1), F.S.
[3] Section 402.302(2), F.S.
[4] Section 402.313(1), F.S.
[5] Florida Department of Children and Families, *Licensing Information* http://www.myflfamilies.com/service-programs/child-care/licensing-information (last visited Feb. 25, 2015).
[6] Section 402.313(1)(a), F.S.
[7] Section 402.302(11), F.S.
[8] Section 402.3131(1), F.S.
[9] Section 402.3131(2), F.S.
[10] Section 402.315(3), F.S.
[11] Section 402.315(3)(a), F.S.
[12] Section 402.315(3)(b), F.S.

pursuant to s. 402.313, F.S.[13] The fee is $60 for a large family child care home licensed pursuant to s. 402.3131, F.S.[14]

Advertisement of a child care facility, a family day care home or a large family child care home without including the state or local agency license number or registration number of the facility is prohibited. A violation is a misdemeanor of the first degree.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 402.302(1) and (2), F.S., to remove the requirement that there is a payment, fee or grant for the care from the definition of "child care" and from the definition of "child care facility." By removing the compensation requirement, a facility providing care for more than four (instead of five) children unrelated to the operator will be required to be registered or licensed. While this change may increase the number of facilities to be registered or licensed, it will require them to meet licensing standards designed to address the health, safety and adequate physical surroundings for all children in child care. Additionally, this section requires all child care personnel of a transient establishment or resort to be screened according to the level 2 screening requirements of ch. 435, F.S.

Section 2 amends s. 402.313(1), F.S., to require a family day care home to be licensed and that each licensed or registered family day care home must conspicuously display its license or registration in the common area of the home. Section 402.313(1)(a), F.S., requires a family day care home that is not subject to licensure to register annually with the department. In addition to the currently required information, the family day care center must provide proof of a written plan that identifies a competent adult who has met the screening and training requirements of the department to serve as a designated substitute for the operator in an emergency. Proof of screening and background checks for the operator, each household member and the designated substitute will now be required to be provided.

Section 3 amends s. 402.3131, F.S., to require large family child care homes to permanently post its license in a conspicuous location that is visible by all parents and guardians and the department.

Section 4 amends s. 402.315(3)(a), F.S., to allow the department to collect a fee for a license issued for a child care facility at $1 per child, based on the licensed capacity of the facility. If a facility has a licensed capacity of 25 children or fewer there is a minimum fee of $25. The maximum fee of $100 is removed.

Section 5 amends s. 402.318, F.S., which prohibits the advertising of a child care facility, family day care home or large family day care home unless it is licensed or registered without including certain license or registration information. This section defines the term "advertisement" to include, but not be limited to, the marketing of child care services to the public on vehicles; print materials, electronic media, including Internet sites; and radio and television announcements. A person violating this section commits a misdemeanor of the first degree.

[13] Section 402.315(3)(c), F.S.
[14] Section 402.315(3)(d), F.S.
[15] Section 402.318, F.S.

Section 6 of the bill provides an effective date of July 1, 2015.

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:

A family day care home not subject to licensure must register annually with the department and will incur costs of screening and background checks for the operator, each household member and the designated substitute.

The elimination of the maximum license fee of $100 paid by child care facilities to the department would impact the facilities with a licensed capacity of more than 100 children (the current fee is $1 per child based on the licensed capacity of the facility with a maximum of $100); however, the total impact is unknown.

C. Government Sector Impact:

State Government

According to s. 402.315(5), F.S., additional fees collected due to the elimination of the maximum license fee of $100 will be deposited by the department in a trust fund and used to fund child care licensing activities, including the Gold Seal Quality Care program.

The addition of child care facilities providing care for no compensation will increase the number of homes either registered or licensed by the department. The number of additional child care facilities required to be licensed by the department is unknown. The extent to which the license fees cover the department's costs, the new fees would fund the increased activity. Registration information is currently provided to the department so the impact should not be significant.

Local Government

Counties that license child care facilities instead of the department would see an increase in the number of facilities licensed. The impact is unknown but counties are authorized to collect a fee.

VI. Technical Deficiencies:

The proposed legislation requires proof of screening and background checks for the operator, each household member and the designated substitute for family day care homes that are required to register with DCF annually. The proposed language does not include a definition of household members. Section 402.313(3), F.S., provides a definition of the household members required to be screened for large family day care homes. Including the same definition for household members for registered family day care homes may reduce confusion about who is subject to the screenings.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.302, 402.313, 402.3131, 402.315, 402.318

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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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (1) through (7) and (9) through (18) of section 402.302, Florida Statutes, are redesignated as subsections (2) through (8) and (10) through (19), respectively, present subsection (8) is amended, and a new subsection (1) is added to that section, to read:

402.302 Definitions.—As used in this chapter, the term:

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(1) "Advertise" means to market child care services through any means, including, but not limited to, online message boards, motor vehicle signs, newspaper advertisements, roadside signs, flyers and posters, and radio and television announcements.

(9) ~~(8)~~ "Family day care home" means an occupied residence in which care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, ~~child care~~ is regularly provided for children from at least two unrelated families and which either receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, or advertises the availability of its services, whether or not it receives a payment, fee, or grant for any of the children receiving care, and whether or not operated for profit. Household children under 13 years of age, when on the premises of the family day care home or on a field trip with children enrolled in child care, shall be included in the overall capacity of the licensed home. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include household children under 13 years of age:

(a) A maximum of four children from birth to 12 months of age.

(b) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.

(c) A maximum of six preschool children if all are older than 12 months of age.

(d) A maximum of 10 children if no more than 5 are

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preschool age and, of those 5, no more than 2 are under 12 months of age.

Section 2. Subsection (1) of section 402.313, Florida Statutes, is amended to read:

402.313 Family day care homes.—

(1) A family day care home must ~~homes shall~~ be licensed under this section ~~act~~ if it is ~~they are~~ presently being licensed under an existing county licensing ordinance or if the board of county commissioners passes a resolution that family day care homes be licensed. Each licensed or registered family day care home must conspicuously display its license or registration in the common area of the home.

(a) If not subject to license, a family day care home must ~~homes shall~~ register annually with the department and provide~~,~~ ~~providing~~ the following information:

1. The name and address of the home.

2. The name of the operator.

3. The number of children served.

4. Proof of a written plan to identify a ~~provide at least one other~~ competent adult who has met the screening and training requirements of the department to serve as a designated substitute ~~to be available to substitute~~ for the operator in an emergency. This plan must ~~shall~~ include the name, address, and telephone number of the designated substitute.

5. Proof of screening and background checks for the operator, each household member, and the designated substitute.

6. Proof of successful completion of the 30-hour training course, as evidenced by passage of a competency examination, which must ~~shall~~ include:

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a. State and local rules and regulations that govern child care.

b. Health, safety, and nutrition.

c. Identifying and reporting child abuse and neglect.

d. Child development, including typical and atypical language development; and cognitive, motor, social, and self-help skills development.

e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine a child's developmental level.

f. Specialized areas, including early literacy and language development of children from birth to 5 years of age, as determined by the department, for owner-operators of family day care homes.

7. Proof that immunization records are kept current.

8. Proof of completion of the required continuing education units or clock hours.

(b) A family day care home may volunteer to be licensed ~~under this act~~.

(c) The department may provide technical assistance to counties and family day care home providers to enable counties and family day care providers to achieve compliance with family day care homes standards.

Section 3. Subsection (1) of section 402.3131, Florida Statutes, is amended to read:

402.3131 Large family child care homes.—

(1) A large family child care home must ~~homes shall~~ be licensed under this section and permanently post its license in a conspicuous location that is visible by all parents and

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guardians and the department.

(a) A licensed family day care home must first have operated for a minimum of 2 consecutive years, with an operator who has had a child development associate credential or its equivalent for 1 year, before seeking licensure as a large family child care home.

(b) The department may provide technical assistance to counties and family day care home providers to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.

Section 4. Section 402.318, Florida Statutes, is amended to read:

402.318 Advertisement.—A person, as defined in s. 1.01 ~~s. 1.01(3)~~, may not advertise a child care facility as defined in s. 402.302, a child care facility that is exempt from licensing requirements pursuant to s. 402.316, a family day care home as defined in s. 402.302, or a large family child care home as defined in s. 402.302 without including within such advertisement the state or local agency license number, exemption number, or registration number of the ~~such~~ facility or home. A person who violates ~~Violation of~~ this section commits ~~is~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Section 402.317, Florida Statutes, is amended to read:

402.317 Prolonged child care.—Notwithstanding the time restriction specified in s. 402.302(2) ~~402.302(1)~~, child care may be provided for 24 hours or longer for a child whose parent or legal guardian works a shift of 24 hours or more. The

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requirement that a parent or legal guardian work a shift of 24 hours or more must be certified in writing by the employer, and the written certification shall be maintained in the facility by the child care provider and made available to the licensing agency. The time that a child remains in child care, however, may not exceed 72 consecutive hours in any 7-day period. During a declared state of emergency, the child care licensing agency may temporarily waive the time limitations provided in this section.

Section 6. Paragraph (d) of subsection (1) of section 1002.88, Florida Statutes, is amended to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(d) Provide an appropriate staff-to-children ratio, pursuant to s. 402.305(4) or s. 402.302(9) ~~s. 402.302(8)~~ or s. 402.302(12) ~~(11)~~, as applicable, and as verified pursuant to s. 402.311.

Section 7. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the licensing of facilities that offer health and human services; amending s. 402.302, F.S.; defining the term “advertise”; redefining the

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term "family day care home" to include homes that advertise the availability of services whether or not they receive a payment, fee, or grant for any of the children receiving care and whether or not they are operated for profit; amending s. 402.313, F.S.; requiring a family day care home to conspicuously display its license or registration in the common area of the home, to provide proof of a written plan that identifies a designated substitute for the operator, and to provide proof of screening and background checks for certain individuals; amending s. 402.3131, F.S.; requiring a large family child care home to permanently post its license in a conspicuous location that is visible by all parents and guardians and the Department of Children and Families; amending s. 402.318, F.S.; prohibiting certain persons from advertising a child care facility, a family day care home, or a large family child care home without including the facility's or home's license number, registration number, or exemption number in such advertisement; providing penalties; amending ss. 402.317 and 1002.88, F.S.; conforming cross-references; providing an effective date.

By Senator Gibson

9-00136A-15 2015210__

A bill to be entitled

An act relating to the licensing of facilities that offer health and human services; amending s. 402.302, F.S.; redefining the term "child care" to include a person or facility that does not receive compensation; redefining the term "child care facility" to include a child care center or child care arrangement that does not receive compensation and provides child care for more than four, rather than five, children unrelated to the operator; amending s. 402.313, F.S.; requiring a family day care home to conspicuously display its license or registration in the common area of the home, to provide proof of a written plan that identifies a designated substitute for the operator, and to provide proof of screening and background checks for certain individuals; amending s. 402.3131, F.S.; requiring a large family child care home to permanently post its license in a conspicuous location that is visible by all parents and guardians and the Department of Children and Families; amending s. 402.315, F.S.; revising the licensing fee for a child care facility that has a certain licensed capacity; amending s. 402.318, F.S.; prohibiting advertisement of a child care facility, family day care home, or large family child care home unless it is licensed or registered or provides proof of exemption; defining the term "advertisement"; providing penalties; providing an effective date.

9-00136A-15 2015210__

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

Section 1. Subsections (1) and (2) of section 402.302, Florida Statutes, are amended to read:

402.302 Definitions.—As used in this chapter, the term:

(1) "Child care" means the care, protection, and supervision of a child, for ~~a period of~~ less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs~~, and for which a payment, fee, or grant is made for care~~.

(2) "Child care facility" means a ~~includes any~~ child care center or child care arrangement that ~~which~~ provides child care for more than four ~~five~~ children unrelated to the operator ~~and which receives a payment, fee, or grant for any of the children receiving care~~, wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025;

(b) Summer camps having children in full-time residence;

(c) Summer day camps;

(d) Bible schools normally conducted during vacation periods; and

(e) Operators of transient establishments~~,~~ as defined in chapter 509~~,~~ which provide child care services solely for the guests of their establishment or resort, if ~~provided that~~ all child care personnel of the establishment or resort are screened according to the level 2 screening requirements of chapter 435.

Section 2. Subsection (1) of section 402.313, Florida

Statutes, is amended to read:

402.313 Family day care homes.—

(1) A family day care home must ~~homes shall~~ be licensed under this section ~~act~~ if it is ~~they are~~ presently being licensed under an existing county licensing ordinance or if the board of county commissioners passes a resolution that family day care homes be licensed. Each licensed or registered family day care home must conspicuously display its license or registration in the common area of the home.

(a) If not subject to license, a family day care home must ~~homes shall~~ register annually with the department and provide~~,~~ ~~providing~~ the following information:

1. The name and address of the home.

2. The name of the operator.

3. The number of children served.

4. Proof of a written plan to identify a ~~provide at least one other~~ competent adult who has met the screening and training requirements of the department to serve as a designated substitute ~~to be available to substitute~~ for the operator in an emergency. This plan must ~~shall~~ include the name, address, and telephone number of the designated substitute.

5. Proof of screening and background checks for the operator, each household member, and the designated substitute.

6. Proof of successful completion of the 30-hour training course, as evidenced by passage of a competency examination, which must ~~shall~~ include:

a. State and local rules and regulations that govern child care.

b. Health, safety, and nutrition.

c. Identifying and reporting child abuse and neglect.

d. Child development, including typical and atypical language development; and cognitive, motor, social, and self-help skills development.

e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine a child's developmental level.

f. Specialized areas, including early literacy and language development of children from birth to 5 years of age, as determined by the department, for owner-operators of family day care homes.

7. Proof that immunization records are kept current.

8. Proof of completion of the required continuing education units or clock hours.

(b) A family day care home may volunteer to be licensed ~~under this act~~.

(c) The department may provide technical assistance to counties and family day care home providers to enable counties and family day care providers to achieve compliance with family day care homes standards.

Section 3. Subsection (1) of section 402.3131, Florida Statutes, is amended to read:

402.3131 Large family child care homes.—

(1) A large family child care home must ~~homes shall~~ be licensed under this section and permanently post its license in a conspicuous location that is visible by all parents and guardians and the department.

(a) A licensed family day care home must first have operated for a minimum of 2 consecutive years, with an operator

who has had a child development associate credential or its equivalent for 1 year, before seeking licensure as a large family child care home.

(b) The department may provide technical assistance to counties and family day care home providers to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.

Section 4. Subsection (3) of section 402.315, Florida Statutes, is amended to read:

402.315 Funding; license fees.—

(3) The department shall collect a fee for a ~~any~~ license it issues for a child care facility, family day care home, or large family child care home under ~~pursuant to~~ ss. 402.305, 402.313, and 402.3131.

(a) For a child care facility licensed under ~~pursuant to~~ s. 402.305, the ~~such~~ fee is ~~shall be~~ $1 per child, based on the licensed capacity of the facility. However, if a facility has a licensed capacity of 25 children or fewer, ~~except that~~ the ~~minimum~~ fee is ~~shall be~~ $25 per facility ~~and the maximum fee shall be $100 per facility~~.

(b) For a family day care home registered under ~~pursuant to~~ s. 402.313, the ~~such~~ fee is ~~shall be~~ $25.

(c) For a family day care home licensed under ~~pursuant to~~ s. 402.313, the ~~such~~ fee is ~~shall be~~ $50.

(d) For a large family child care home licensed under ~~pursuant to~~ s. 402.3131, the ~~such~~ fee is ~~shall be~~ $60.

Section 5. Section 402.318, Florida Statutes, is amended to read:

402.318 Advertisement.—A person, as defined in s. 1.01 ~~s. 1.01(3)~~, may not advertise a child care facility as defined in s. 402.302, a child care facility that is exempt from licensing requirements pursuant to s. 402.316, a family day care home as defined in s. 402.302, or a large family child care home as defined in s. 402.302 without including within such advertisement the state or local agency license number, exemption number, or registration number of the ~~such~~ facility or home. As used in this section, the term "advertisement" includes, but is not limited to, the marketing of child care services to the public on vehicles; print materials; electronic media, including Internet websites; and radio and television announcements. A person who violates ~~Violation of~~ this section commits ~~is~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. This act shall take effect July 1, 2015.

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 Children, Families, and Elder Affairs

BILL:	SB 250
INTRODUCER:	Senator Smith
SUBJECT:	Child Care Facilities
DATE:	February 4, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Pre-meeting**
2.			CA	
3.			AHS	
4.			AP	

I. Summary:

SB 250 amends the law related to child care facilities. It revises legislative intent related to child care facilities to clarify that membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302, F.S., are not considered to be child care facilities and therefore are not subject to licensing requirements or minimum standards for child care facilities. The bill requires the child care personnel of these organizations to undergo a level two background screening and demonstrate compliance upon request from an authorized state agency.

The bill also adds these membership organizations to the list of entities not included in the definition of "child care facilities."

The bill is not expected to have a significant fiscal impact on state government.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Legislative Intent Related to Child Care and Child Care Facilities

Florida law provides that for parents who choose child care, it is the intent of the legislature to protect the health and welfare of children in care. To accomplish this, the law provides a regulatory framework that promotes the growth and stability of the child care industry and facilitates the safe physical, intellectual, motor, and social development of the child.[1]

[1] Section 402.26, F.S.

Florida law also provides that it is the intent of the Legislature to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care.[2] To further that intent, laws were enacted to:

- Establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to provide for enforcement to regulate conditions in such facilities through a program of licensing; and [3]
- Require that all owners, operators, and child care personnel shall be of good moral character.[4]

Child Care

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.[5]

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.[6] The definition of child care does not specify a maximum or minimum age.

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- The term indoor recreational facility means an indoor commercial facility which is established for the primary purpose of entertaining children in a planned fitness environment through equipment, games, and activities in conjunction with food service and which provides **child care** for a particular child no more than 4 hours on any one day. An indoor recreational facility must be licensed as a child care facility.[7]
- A school-age child care program is defined as any licensed child care facility serving school-aged children[8] or any before and after school programs that are licensed as a child care facility and serve only school-aged children.[9]
- Any of the after school programs accepting children under the age of the school-age child must be licensed.[10]
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.[11]

[2] Section 402.301, F.S.
[3] Sections 402.301 - 402.319, F.S.
[4] Good moral character is based upon screening that shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. *See* s. 402.305, F.S.
[5] Section 402.302, F.S.
[6] *Id*.
[7] *Id*.
[8] Chapter 65C-22.008, F.A.C. "School-age child" means a child who is at least 5 years of age by September 1, of the beginning of the school year and who attends kindergarten through grade five.
[9] *Id*.
[10] *Id*.
[11] *Id*.

Child Care Facilities

The term "child care facility" is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.[12] The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025. F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509,[13] which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435.[14]

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies[15] approved by the department are the entities responsible for the licensure of such child care facilities.[16]

Additional Exemptions

In 1974 and in 1987, the Legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards.

The exemption created for child care facilities that are an integral part of church or parochial schools that meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.[17]

The exemption for membership organizations[18] was broader and allowed personnel to have contact with children without being background screened.[19]

[12] Section 402.302, F.S.
[13] "Transient public lodging establishing" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
[14] Section 402.302, F.S.
[15] Currently, there are five counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota. Department of Children and Families, *House Bill 11 Analysis* (Dec. 8, 2014).
[16] Section 402.308, F.S.
[17] Section 402.316, F.S.
[18] Membership organizations would include such groups as Big Brothers Big Sisters, Boys and Girls Clubs, YMCA's, and Boy Scouts or Girl Scouts.
[19] Chapters 74-113 and 87-238, Laws of Florida.

Background Screening

Currently, Florida has one of the largest vulnerable populations in the country with 21 percent of residents under the age of 17 and 18 percent of the state residents over the age of 65, as well as children and older adults with disabilities.[20] These vulnerable populations require special care as they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

In September 2009, the Fort Lauderdale Sun Sentinel published a series of articles detailing their 6 month investigation into Florida's background screening system for caregivers of children, the elderly and disabled.[21] To address these issues, the Legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of persons and businesses that deal primarily with vulnerable populations.[22]

Major changes to the state's background screening laws included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all level 1 screening which is name-based state criminal history search, to level 2 screening which is a fingerprint based national criminal history search;[23]
- Requiring all fingerprint submissions to be done electronically no later than August 1, 2012, or earlier. However, for those applying under the Agency for Health Care Administration (AHCA), electronic prints were required as of August 1, 2010;
- Requiring certain personnel who dealt substantially with vulnerable persons and who were not presently being screened, including persons who volunteered for more than 10 hours a month, to begin level 2 screening;
- Adding additional serious crimes to the list of disqualifying offenses for level 1 and level 2 screening;
- Authorizing agencies to request the retention of fingerprints by FDLE;
- Providing that an exemption for a disqualifying felony may not be granted until after at least 3 years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and

[20] University of Florida. Bureau of Economic and Business Research, College of Liberal Arts and Sciences. *Florida Estimates of Population 2014* (April 1, 2014), *available at* http://edr.state.fl.us/Content/population-demographics/data/PopulationEstimates2014.pdf. (last visited Feb. 15, 2015).
[21] Sun Sentinel. *Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes*.
[22] Chapter 2010-114, Laws of Florida.
[23] Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. Anyone undergoing a level 1 screening must not have been found guilty of any of the specified offenses. Section 435.03, F.S. A level 2 screening consists of a fingerprint-based search of FDLE and the FBI databases for state and national criminal arrest records. Any person undergoing a level 2 screening must not have been found guilty of any of the offenses for level 1 or additional specified offenses. Section 435.04, F.S.

- Rewriting all screening provisions for clarity and consistency.[24]

Care Provider Background Screening Clearinghouse

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities, including paid employees and volunteers are subject to background screening requirements.[25] However, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting. This is time consuming to those involved and increases the cost to the employer or employee.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given "program." Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate "program" areas and sharing of results has not been allowed. In addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

As a result, the legislature created the Care Provider Background Screening Clearinghouse (clearinghouse) in 2012.[26]The purpose of the clearinghouse is to create a single "program" to screen individuals who have direct contact with vulnerable persons. The clearinghouse is created within the Agency for Health Care Administration (AHCA) and is to be implemented in consultation with the Florida Department of Law Enforcement (FDLE). The Clearinghouse is a secure internet web-based system and was implemented by September 30, 2013, and allows for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.[27]

Fingerprints of individuals having contact with vulnerable persons providers are retained by FDLE, meaning the electronically scanned image of the print will be stored digitally. The FDLE searches the retained prints against incoming Florida arrests and is required to report the results to AHCA for inclusion in the clearinghouse, thus avoiding the need for future screens and related fees.[28]

A digital photograph of the person screened will be taken at the time the fingerprints are taken and retained by FDLE in electronic format, as well. This enables accurate identification of the person when they change jobs or are otherwise presented with a situation requiring screening and enables the new employer to access the clearinghouse to verify that the person has been screened, is in the clearinghouse, and is who they say they are. Once a person's fingerprints are

[24] *Id*.
[25] One exception to those screening requirements are the membership organizations addressed in SB 250 (2015).
[26] Section 435.12, F.S.
[27] "Specified agency" means the Department of Health, the Department of Children and Families, the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities, when these agencies are conducting state and national criminal history background screening on persons who work with children, elderly or disabled persons.
[28] Section 435.12, F.S.

in the clearinghouse, they will not have to be reprinted in order to send their fingerprints to the FBI which will save on further fees.[29]

Attorney General Advisory Legal Opinion

In 2000, the Florida Office of the Attorney General issued an opinion relating to the issue of child care, child care facilities and licensure. At issue was whether or not the child care programs operated by the YMCA or other membership organizations were exempt from licensure by the department as child care facilities. The opinion issued stated that programs operated by YMCAs and other membership organizations that fall within the definition of a "child care program", are not exempt from licensure by the Department of Children and Families.[30]

III. Effect of Proposed Changes:

Section 1 amends s. 402.301, F.S., related to legislative intent and policy to clarify the provision that membership organizations meeting certain criteria are not subject to licensing requirements and minimum standards for child care facilities. It also adds a requirement that membership organizations background screen "child care personnel" at level 2 standards and demonstrate compliance upon the request of an authorized state agency.

The provision that grants certain membership organizations an exemption from being considered child care facilities is found in a legislative intent section of the law. The effect of that placement is that the Legislature "intended" for certain membership organizations to be exempt from licensure requirements, but there is no provision in the substantive law actually granting them the exemption. Substantive provisions should not in included in an intent section.[31]

Section 2 amends s. 402.302, F.S., related to child care facilities, to add membership organizations that meet specified criteria to the list of entities that are not to be considered child care facilities.

Lines 31-33 and lines 66-67 refer to membership organizations that are "certified by their national associations or organizations as being in compliance with their minimum standards and procedures." However, it is unclear what the minimum standards and procedures are and how compliance is enforced.

For example, the Boys and Girls Club of America (BCGA) reports that ensuring the safety of children is fundamental to their mission. Through their Child & Club Safety Department, they have implemented a six-step plan that follows the best practices available today:[32]

[29] *Id*.
[30] Op. Att'y Gen. Fla. 2000-67 (2000).
[31] Office of Bill Drafting Services, The Florida Senate, *Manual for Drafting Legislation-Sixth Edition* (2009).
[32] Boy and Girls Clubs of America, Child Safety, *available at* http://www.bgca.org/whywecare/ChildAndClubSafety/Pages/ChildSafety.aspx. (last visited Feb. 16, 2015).

- Criminal background checks are required for every staff member and volunteer who has direct contact with children. BGCA partners with LexisNexis, the world's largest data company, to provide the most comprehensive screenings available today.[33]
- Through their partnership with Praesidium, BGCA provides a 24-hour toll-free Child Safety Hotline to allow Club managers, staff members, volunteers and Club members to confidentially report suspicions or concerns.
- Safety policies and procedures must adhere to the highest standards. Clubs are required to report any suspected child abuse to local authorities. No adult should ever be alone with a child – all activities inside and outside the Club must have appropriate ratios of staff and members.
- All facilities and vehicles are required to comply with federal, state and local safety laws. BGCA works with leading experts in the area of security technology to develop state-of-the art solutions for our 4,000 sites.[34]

The DCF reports that exemptions from licensing standards provided by the bill are inconsistent with the legislative intent to protect the well-being of the children of Florida by establishing minimum licensing standards to ensure health and safety in child care facilities. The proposed bill states that, 'organizations must be certified by their national organization's minimum standards and procedures' and as such, 'are not subject to the licensing requirements or the minimum standards for child care facilities.' However, the bill alludes to the fact that these national membership organizations meet minimum health and safety standards through a "certification process" yet, there is no specification of the "certification process," nor is there any description of a monitoring process by the organization.[35]

Section 3 provides for an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[33] In 1986, the Boys and Girls Clubs of America recommended the use of background checks. The following year, the clubs in Florida sought and received an exemption from screening from the Florida Legislature. *See* The Los Angeles Times, Boy *Scouts' opposition to background checks let pedophiles in*, December 2, 2012 and Florida Office of the Attorney General. Advisory Legal Opinion, Number AGO 2000-67, November 17, 2000.
[34] *Id*.
[35] Department of Children and Families, Senate *Bill 250 Analysis HB 11*, December 8, 2014.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of SB 250 is unknown; however, membership organizations or their employees will have to bear the cost of screening. The FDLE reports that the cost for a state and national criminal history record check is $38.75. $24 goes into the FDLE Operating Trust Fund and $14.75 from each request is forwarded to the Federal Bureau of Investigation. There is also a $13 lifetime federal fingerprint retention fee and a $6 annual fee for state retention, with the first year included with record check.[36]

One of those membership organizations, the Boys and Girls Clubs, is currently exempt from background screening requirements in Florida.[37]The Florida Alliance of Boys and Girls Clubs reports that in 2009 there were 2,900 adult staff and 7,300 program volunteers in Florida.[38]

C. Government Sector Impact:

The bill does not necessitate additional FTEs or other resources. The number of additional background screenings is needed to determine the impact on the agency's technology systems. [39]

VI. Technical Deficiencies:

The description of membership organizations on lines 22-33 does not match the description of the same membership organizations on lines 61-68.

Lines 39-40 reference "authorized state agency." There is not a definition of the term in the Florida Statutes, so it is unclear what state agency the term is referring to.

VII. Related Issues:

Lines 33-36 of the bill clarify that membership organizations are not to be considered child care facilities and are therefore not subject to licensure requirements or minimum standards. However, since this exception is granted only in legislative intent and not in substantive law, these organizations may not have an exemption.

Lines 37-38 require membership organizations to conduct background screening of child care personnel. Since the definition of the term "child care personnel" means all owners, operators,

[36] Florida Department of Law Enforcement, *Senate Bill 250 Analysis* (Feb. 13, 2015).
[37] Section 402.301, F.S.
[38] The Florida Alliance of Boys and Girls Clubs, *2009 Florida Fact Book*, available at http://www.floridaalliance.org/index.html. (last visited Feb. 14, 2015).
[39] *Id*.

employees, and volunteers working in a child care facility, it would appear that these membership organizations may be child care facilities and subject to licensure by the department.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.301 and 402.302.

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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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 402.301, Florida Statutes, is amended to read:

402.301 Child care facilities; legislative intent and declaration of purpose and policy.— It is the legislative intent to protect the health, safety, and well-being of the children of

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the state and to promote their emotional and intellectual development and care. Toward that end:

(6) It is further the intent and policy of the Legislature that membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302;~~,~~ whose primary purpose is the provision of after school programs, delinquency prevention programs, and ~~providing~~ activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; ~~or good sportsmanship or to the education or cultural development of minors in this state,~~ which charge only a nominal annual membership fee or no fee;~~,~~ which are not for profit;~~,~~ and which are certified by their national associations as being in compliance with the association's minimum standards and procedures are ~~shall~~ not ~~be~~ considered child care facilities and therefore are not subject to the licensing requirements or minimum standards for child care facilities~~, their personnel shall not be required to be screened.~~ However, such membership organizations shall meet the background screening requirements pursuant to ss. 402.305(2)(a) and 402.3055.

Section 2. Paragraph (f) is added to subsection (2) of section 402.302, Florida Statutes, to read:

(2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s.402.3035.~~;~~

(b) Summer camps having children in full-time residence.~~;~~

(c) Summer day camps.~~;~~

(d) Bible schools normally conducted during vacation periods.~~;~~ ~~and~~

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

(f) Membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302, whose primary purpose is the provision of after school programs, delinquency prevention programs, and activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; which charge only a nominal annual membership fee or no fee; which are not for profit; and which are certified by their national associations as being in compliance with the association's minimum standards. However, such organizations shall meet the background screening requirements pursuant to ss. 402.305(2)(a) and 402.3055.

Section 3. Section 402.316, Florida Statutes, is amended to read:

402.316 Exemptions.—

(1) The provisions of ss. 402.301-402.319, except for the requirements regarding screening of child care personnel, shall not apply to a child care facility which is an integral part of

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church or parochial schools conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization which publishes and requires compliance with its standards for health, safety, and sanitation. However, such facilities shall meet minimum requirements of the applicable local governing body as to health, sanitation, and safety and shall meet the screening requirements pursuant to ss. 402.305 and 402.3055. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.

(2) The provisions of ss. 402.301-402.319, except for the requirements regarding screening of personnel, shall not apply to membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302, whose primary purpose is the provision of after school programs, delinquency prevention programs, and activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; which charge only a nominal annual membership fee or no fee; which are not for profit; and which are certified by their national associations as being in compliance with the association's minimum standards. However, such organizations shall meet the background screening requirements pursuant to ss. 402.305(2)(a) and 402.3055.

(3) ~~(2)~~ Any county or city with state or local child care licensing programs in existence on July 1, 1974, will continue to license the child care facilities as covered by such programs, notwithstanding the provisions of subsection (1), until and unless the licensing agency makes a determination to

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exempt them.

(4) ~~(3)~~ Any child care facility covered by the exemption provisions of subsection (1), but desiring to be included in this act, is authorized to do so by submitting notification to the department. Once licensed, such facility cannot withdraw from the act and continue to operate.

Section. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to child care facilities; amending s. 402.301, F.S.; revising legislative intent and policy; clarifying that membership organizations are not subject to licensing requirements or minimum standards for child care facilities; requiring membership organizations to meet certain background screening requirements; amending s. 402.302, F.S.; adding certain membership organizations to entities that are not considered to be child care facilities; amending s. 402.316, F.S.; providing an exemption to membership organizations from licensure requirements; requiring membership organizations to comply with the requirements relating to screening of child care personnel under ss. 402.305 and 402.3055 , F.S.;; providing an effective date.

By Senator Smith

31-00086A-15 2015250__

A bill to be entitled

An act relating to child care facilities; amending s. 402.301, F.S.; revising legislative intent and policy; requiring that certain membership organizations conduct level 2 background screening for child care personnel; requiring such organizations to demonstrate compliance upon request; amending s. 402.302, F.S.; excluding certain membership organizations from the definition of the term "child care facility"; providing an effective date.

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

Section 1. Subsection (6) of section 402.301, Florida Statutes, is amended to read:

402.301 Child care facilities; legislative intent and declaration of purpose and policy.—It is the legislative intent to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care. Toward that end:

(6) It is further the intent and policy of the Legislature that membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302;~~,~~ whose primary purpose is the provision of after school programs, delinquency prevention programs, and ~~providing~~ activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; ~~or good sportsmanship or to the education or cultural development of minors in this state,~~ which charge

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only a nominal annual membership fee or no fee;~~,~~ which are not for profit;~~,~~ and which are certified by their national associations as being in compliance with the association's minimum standards and procedures are ~~shall~~ not ~~be~~ considered child care facilities and therefore are not subject to the licensing requirements or minimum standards for child care facilities~~, their personnel shall not be required to be screened~~. However, such membership organizations shall conduct background screening of child care personnel in compliance with ss. 435.04 and 435.12 and, upon request of an authorized state agency, shall demonstrate compliance with this subsection.

Section 2. Paragraph (f) is added to subsection (2) of section 402.302, Florida Statutes, to read:

402.302 Definitions.—As used in this chapter, the term:

(2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025.~~,~~

(b) Summer camps having children in full-time residence.~~,~~

(c) Summer day camps.~~,~~

(d) Bible schools normally conducted during vacation periods.~~; and~~

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child

care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

(f) Membership organizations whose primary purpose is the provision of activities that contribute to the development of good character; after school programs; and delinquency prevention programs, if those activities and programs are operated at least 5 days a week, are facility or school based, are not for profit, and are certified by their national organizations as being in compliance with their minimum standards and procedures.

Section 3. This act shall take effect July 1, 2015.

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 Children, Families, and Elder Affairs

BILL:	SB 514
INTRODUCER:	Senators Abruzzo and Clemens
SUBJECT:	Baker Act
DATE:	February 24, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Pre-meeting**
2.			AHS	
3.			FP	

I. Summary:

SB 514 directs the Department of Children and Families (DCF) to create a work group to evaluate methods to improve the operational effectiveness of the Florida Mental Health Act (The Baker Act). The bill identifies the members of the workgroup and provides that a report be provided to the Secretary of DCF, the Secretary of the Agency for Health Care Administration, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2014.

The bill shall take effect upon becoming law and could have an insignificant fiscal impact.

II. Present Situation:

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.[1] Part I of ch. 394, F.S., provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment. The Department of Children and Families (DCF) administers this law through receiving facilities which provide an examination of persons with evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities providing examination and short-term treatment of persons who meet the criteria under The Baker Act.[2] Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[3]

[1] Chapter 71-131, s. 1, Laws of Florida
[2] Section 394.455(26), F.S.
[3] Section 394.455(32), F.S.

Section 394.463(1), F.S., provides that a person may be taken to a receiving facility for involuntary examination if the person is believed to be mentally ill and because of that mental illness: the person has refused voluntary examination or cannot determine for himself or herself whether examination is necessary; and, without care or treatment, the person is either likely to suffer from self-neglect, cause substantial harm to himself or herself, or be a danger to himself or herself or others.[4]

An involuntary examination may be initiated by a circuit court or a law enforcement officer.[5] A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer, as defined in s. 943.10, F.S., may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.

In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for involuntary examination:[6]

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the U.S. Department of Veterans Affairs which qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the U.S. Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under Part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.[7]
- A clinical social worker licensed under ch. 491, F.S.[8]

In 2011, there were 150,466 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary exams (49.2 percent) followed by mental health professionals and physicians (48.7 percent) and then *ex parte* orders by judges (2 percent).[9]

[4] Section 394.463(1), F.S.
[5] Section 394.463(2)(a), F.S.
[6] *Id.*
[7] Section 491.003(8) Marriage and Family Therapists use practice methods of a psychological nature to evaluate, assess, diagnose, treat and prevent emotional and mental disorders or dysfunctions.
[8] Section 491.003(3), F.S. Clinical Social Workers are required by law to have experience in providing psychotherapy and counseling.
[9] Department of Children and Families, *Florida's Baker Act 2013 Fact Sheet* http://myflfamilies.com/service-programs/mental-health/baker-act-manual (last visited Feb. 24, 2015).

III. Effect of Proposed Changes:

Section 1 directs DCF to convene a workgroup to evaluate methods to improve the operational effectiveness of Part I of ch. 394, F.S., the Florida Mental Health Act and recommend changes to existing laws, rules, and agency policies needed to implement the workgroup recommendations.

This section also provides that the workgroup consists of 20 members from various stakeholder groups. Members of the workgroup shall be appointed by June 1, 2014, and the first meeting of the workgroup shall take place before July 1, 2014. The draft of its recommendations shall be reviewed by the group by September 1, 2014. A final report shall be provided to the Secretary of the Department of Children and Families, the Secretary of the Agency for Health Care Administration, the President of the Senate and the Speaker of the House of Representatives by November 1, 2014. The report must include the workgroup's findings and recommended statutory and administrative rule changes.

Section 2 provides that the bill shall take effect upon becoming 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:

Many of the 20 members of the workgroup are from the private sector. The bill does not address reimbursement of travel costs for the members of the workgroup so there may be a fiscal impact on these members.

C. Government Sector Impact:

SB 514 requires DCF to create the workgroup and the meetings of the workgroup to take place in Tallahassee; however, the bill does not address the issue of reimbursement of

costs for members to travel in Tallahassee. If DCF is responsible for the reimbursements there will be an insignificant fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated 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 Abruzzo

25-00320-15 2015514__

A bill to be entitled

An act relating to the Baker Act; requiring the Department of Children and Families to create a workgroup to provide recommendations relating to revision of the Baker Act; requiring the workgroup to make recommendations on specified topics; providing for membership of the workgroup; providing for meetings; requiring the workgroup to meet by a specified date; requiring a review of draft recommendations by a specified date; requiring the workgroup to submit a report to specified entities and the Legislature by a specified date; providing an effective date.

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

Section 1. Workgroup to improve operational effectiveness of the Baker Act.—The Department of Children and Families shall create a workgroup to evaluate methods to improve the operational effectiveness of the Baker Act and recommend changes to existing laws, rules, and agency policies needed to implement the workgroup's recommendations.

(1) At a minimum, the workgroup shall evaluate and make recommendations on the following:

(a) The timeframe for initial assessment, including whether the timeframe should be lengthened.

(b) The use of advanced registered nurse practitioners to rescind Baker Act commitments.

(c) The use of telemedicine for patient evaluation, case

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management, and ongoing care and the recommendation by the courts on the use of telemedicine to improve management of patient care and to reduce costs of transportation and public safety.

(d) The 7-day requirement for followup care and its applicability to outpatient providers.

(e) Other areas deemed by the workgroup to improve the operational effectiveness of the Baker Act.

(2) The workgroup shall consist of the following stakeholders:

(a) A representative of the Department of Children and Families, who shall serve as chair, appointed by the Secretary of Children and Families.

(b) Two representatives of public receiving facilities and two representatives of specialty hospitals, appointed by the Florida Hospital Association.

(c) Two representatives of crisis stabilization units, appointed by the Department of Children and Families.

(d) A representative of law enforcement agencies, appointed by the Florida Sheriffs Association.

(e) A member of the judiciary who regularly evaluates Baker Act cases, appointed by the Chief Justice of the Supreme Court.

(f) A public defender, appointed by the Florida Public Defender Association.

(g) A state attorney, appointed by the Florida Prosecuting Attorneys Association.

(h) A physician who provides care within a Baker Act receiving facility, appointed by the Florida Medical Association.

(i) A physician who regularly screens patients who meet Baker Act criteria, appointed by the Florida College of Emergency Physicians.

(j) A representative from a managing entity, appointed by the Secretary of Children and Families.

(k) A representative of the Agency for Health Care Administration, appointed by the Secretary of Health Care Administration.

(l) Two representatives of the Florida Council for Community Mental Health, appointed by the council.

(m) An advanced registered nurse practitioner who works in a Baker Act receiving facility and who treats patients who meet Baker Act criteria, appointed by the Florida Nurses Association.

(n) Two advanced registered nurse practitioners who are nationally certified in mental health, one appointed by the Florida Association of Nurse Practitioners, and one appointed by the Florida Nurse Practitioner Network.

(o) A psychologist licensed under chapter 490, Florida Statutes, appointed by the Florida Psychological Association.

(p) A psychiatrist with experience in the Baker Act, appointed by the Florida Psychiatric Society.

(3) The workgroup shall meet in Tallahassee and shall determine the frequency of its meetings. Individual workgroup members are responsible for their travel expenses.

(4) Members of the workgroup shall be appointed by June 1, 2015, and the first meeting of the workgroup must take place before July 1, 2015. The workgroup shall review a draft of its recommendations before September 1, 2015. By November 1, 2015, the workgroup shall provide a final report to the Secretary of

Children and Families, the Secretary of Health Care Administration, the President of the Senate, and the Speaker of the House of Representatives. The report must include the workgroup's findings and recommended statutory and administrative rule changes.

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

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 Children, Families, and Elder Affairs

BILL:	SB 552
INTRODUCER:	Senator Hays
SUBJECT:	Public Records/Homelessness Surveys and Databases
DATE:	February 19, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 552 creates s. 420.6231, F.S., to provide that individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill defines the term "individual identifying information" and applies the exemption to such information held retroactively.

The bill does not prevent the release of aggregate information from a Point-In-Time Count and Survey or data in a Homeless Management Information System that does not disclose individual identifying information of a person. The bill provides for an Open Government Sunset review and contains a statement of public necessity as required by the State Constitution.

The bill is anticipated to have no fiscal impact on state government.

The bill has an effective date of upon becoming law.

II. Present Situation:

Point-In-Time Count and Survey

A point-in-time count is an unduplicated count on a single night of the people in a community who are experiencing homelessness that includes both sheltered and unsheltered populations. Counts are provided by household type (individuals, families, and child-only households), and are further broken down by subpopulation categories, such as homeless veterans and people who are chronically homeless.[1]

[1] National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts. (last visited February 23, 2015).

The Department of Housing and Urban Development (HUD) requires that state homeless continuums of care[2] conduct an annual count of persons who are homeless and who are sheltered in emergency shelters, transitional housing and safe havens on a single night during the last ten days of January. Further, HUD requires that the continuums of care also must conduct a count of the unsheltered homeless population every other year, required on odd numbered years. The goal is to produce an unduplicated count, or statistically reliable estimate of the homeless in the community.[3]

Point-in-time counts are important because they establish the severity of the problem of homelessness and help policymakers and program administrators track progress toward the goal of ending homelessness. Collecting data on homelessness and tracking progress can inform public opinion, increase public awareness, and attract resources that will lead to a reduction or the eradication of the problem.[4] On the local level, point-in-time counts help communities plan services and programs to appropriately address local needs, measure progress in decreasing homelessness, and identify strengths and gaps in a community's current homelessness assistance system.[5]

For 2014, Florida's homeless continuums of care carried out both the sheltered and unsheltered counts as required. The 2014 Point-In-Time Survey reports from the local continuums of care indicate that 41,335 persons met the HUD definition of homeless in Florida on a given day in January 2014. The Florida Department of Education reports that 70,215 public school students were homeless in Florida in the 2012-2013 school year. Sixteen rural county areas did not have the point in time count conducted in 2014 due to lack of resources.[6]

The intent is to identify those men, women and children who meet HUD's definition of a homeless person. This is limited to:

- Those living in a publicly or privately operated shelter providing temporary living arrangements;
- Those persons whose primary nighttime residence is a public or private place not intended to be used as an accommodation for human beings, such as: a car, park, abandoned building or campground;
- A person who is exiting from an institution, where he or she lived for 90 days or less, and who was otherwise homeless immediately prior to entering that institution;
- A person who is fleeing from a domestic violence situation;

[2] The federal Department of Housing and Urban Development (HUD) designed the Homeless Continuums of Care to promote communitywide commitment and planning toward the goal of ending homelessness. In Florida there are 28 Continuum of Care lead agencies serving 64 of 67 counties.
[3] National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts. (last visited February 23, 2015).
[4] *Id*.
[5] *Id*.
[6] Florida Department of Children and Families. Council on Homelessness, 2014 Annual Report. June 2014, available at: www.myflfamilies.com/service-programs/homelessness. (last visited February 23, 2015).

- A person who will lose their primary nighttime residence within 14 days, where no subsequent dwelling has been found and the individual lacks the resources to obtain permanent housing.[7]

Public Records Requirements

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[8] The records of the legislative, executive, and judicial branches are specifically included.[9]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119. F.S., guarantees every person's right to inspect and copy any state or local government public record[10] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[11]

Only the Legislature may create an exemption to public records requirements.[12] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[13] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[14] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[15]

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[7] *Id*.
[8] FLA. CONST. art. I, s. 24(a).
[9] *Id*.
[10] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Chapter 119, F.S., does not apply to legislative or judicial records. See Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992).
[11] Section 119.07(1)(a), F.S.
[12] FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see WFTV, Inc. v. The School Board of Seminole, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So. 2d 1135 (Fla. 4th DCA 2004); and Williams v. City of Minneola, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).
[13] FLA. CONST. art. I, s. 24(c).
[14] The bill, however, may contain multiple exemptions that relate to one subject.
[15] FLA. CONST. art. I, s. 24(c).

III. Effect of Proposed Changes:

Section 1 creates s. 420.6231, F.S., to provide that identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations, is confidential and exempt from s.119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption is applied to information being held retroactively.

The section also provides a definition of the term "individual identifying information", provides that such information may be released in the aggregate, and provides for an Open Government Sunset Review in 2020.

Section 2 provides a statement of public necessity as required by the Florida Constitution. The bill states that it is a public necessity to keep confidential and exempt from public disclosure identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations.

The public release of such sensitive information could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members. The public release of such information may put affected individuals at greater risk of injury as a significant proportion of such individuals are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public access to such information may put affected individuals at a heightened risk for fraud and identity theft.

Section 3 provides an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill provides a public record exemption related to individual identifying information obtained during annual counts of persons who are homeless and therefore it **requires a two-thirds vote for final passage**.

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill provides a public record exemption related to individual identifying information obtained during annual counts of persons who are homeless and is therefore required to include a public necessity statement.

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated

purpose of the law. The exemption provided for in the bill does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 420.6231.

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 Hays

11-00581-15 2015552__

A bill to be entitled

An act relating to public records; creating s. 420.6231, F.S.; creating a public records exemption for individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System; defining the term "individual identifying information"; providing for retroactive application of the exemption; specifying that the exemption does not preclude the release of aggregate information; providing for future review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 420.6231, Florida Statutes, is created to read:

420.6231 Individual identifying information in specified homelessness surveys and databases; public records exemption.—

(1) As used in this section, the term "individual identifying information" means information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person.

(2) Individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations

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provided in 24 C.F.R. part 91, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held before, on, or after the effective date of this section.

(3) This section does not preclude the release, in the aggregate, of information from a Point-In-Time Count and Survey or data in a Homeless Management Information System which does not disclose individual identifying information of a person.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations provided in 24 C.F.R. part 91, be made exempt from public records requirements. Pursuant to 42 U.S.C. s. 11363, the Secretary of Housing and Urban Development is required to instruct service providers not to disclose individual identifying information about any client for purposes of the Homeless Management Information System, which includes Point-In-Time Count and Survey information. The public release of such sensitive information could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members. The public release of such information may put affected individuals at greater risk of injury as a significant proportion of such

individuals are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public access to such information may put affected individuals at a heightened risk for fraud and identity theft. The harm from disclosing such information outweighs any public benefit that can be derived from widespread and unfettered access to such information. This exemption is narrowly drawn so that aggregate information may be disclosed, but does not disclose the individual identifying information of a person from the Point-In-Time Count and Survey and data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations provided in 24 C.F.R. part 91.

Section 3. This act shall take effect upon becoming a law.

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 Children, Families, and Elder Affairs

BILL:	SB 682
INTRODUCER:	Senator Grimsley
SUBJECT:	Transitional Living Facilities
DATE:	February 19, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 682 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 is not expected to have a fiscal impact on the Agency for Health Care Administration (AHCA) as regulation of TLFs is funded through existing fees and fines. The bill is effective July 1, 2015.

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]

[1]Florida Spinal Cord Injury Resource Center, *Family and Survivor's Guide*, http://fscirc.com/what-is-a-sci (last visited Feb. 23, 2015).

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 14 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 AHCA is the licensing authority and one of the regulatory authorities which 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]

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[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 Feb. 23, 2015).
[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 Feb. 23, 2015).
[5] The AHCA, *Senate Bill 682 Analysis* (Dec. 12, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 current and former clients and their family members, criminal charging documents, civil complaints, and advocates for the disabled.[10] The employees were terminated from employment with the facility and face criminal charges for abusing clients. AHCA most recently inspected the facility April 9, 2014 and found no deficiencies.[11]

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

Under the newly created 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

[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.
[11] The AHCA, *Florida Health Finder* http://www.floridahealthfinder.gov/index.html (last visited Feb. 23, 2015).

- "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 the newly created 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 a 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 the newly created 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.

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 4 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

[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 the bill uses these amounts.

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 the newly created 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 examinations 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 the newly created 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 the newly created 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 the newly created s. 400.9977, F.S., unlicensed direct care services staff may assist residents with repackaged medications that are prescribed, prepackaged, and premeasured. The bill requires that the facility 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 the newly created 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 the newly created 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:

- 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 ch. 39, F.S. and ch. 415, F.S., to the appropriate licensing authorities.

Under the newly created 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 certifications 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 the newly created 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 from 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, 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 the newly created 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.[13] 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

[13] *See* s. 408.813(2), F.S.

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.[14]

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 the newly created 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 the newly created 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.

Sections 2 and 3 transfers s. 400.805, F.S., to the newly created s. 400.9986, F.S., and repeals the new section.

Section 4 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 5 amends s. 381.745, F.S., to conform to changes in the definition of a TLF.

Section 6 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.

Section 7 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 8 amends s. 400.93, F.S., to conform a reference to TLFs.

[14] *See* s. 408.813, F.S.

Section 9 amends s. 408.802, F.S., to conform a reference to TLFs.

Section 10 amends s. 408.820, F.S., to conform a reference to TLFs.

Section 11 reenacts s. 381.79, F.S., to incorporate amendments made to s. 381.75, F.S.

Section 12 creates a non-statutory section of Florida law requiring that TLFs 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, 2016.

Section 13 provides for an effective date of July 1, 2015.

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 due to the increased requirements under the bill.

C. Government Sector Impact:

None.[15]

VI. Technical Deficiencies:

None.

[15] The AHCA, *Senate Bill 682 Analysis* (Dec. 12, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 reenacts s. 381.79, F.S.

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.

By Senator Grimsley

21-00365B-15 2015682__

A bill to be entitled

An act relating to transitional living facilities; creating part XI of ch. 400, F.S.; creating s. 400.997, F.S.; providing legislative intent; creating s. 400.9971, F.S.; providing definitions; creating s. 400.9972, F.S.; requiring the licensure of transitional living facilities; providing license fees and application requirements; requiring accreditation of licensed facilities; creating s. 400.9973, F.S.; providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; creating s. 400.9974, F.S.; requiring a comprehensive treatment plan to be developed for each client; providing plan and staffing requirements; requiring certain consent for continued treatment in a transitional living facility; creating s. 400.9975, F.S.; providing licensee responsibilities with respect to each client and specified others and requiring written notice of such responsibilities to be provided; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or taking other retaliatory action under certain circumstances; requiring the client and client's representative to be provided with certain information; requiring the licensee to develop and implement certain policies and procedures governing the release of client information; creating s. 400.9976, F.S.; providing licensee requirements relating to administration of

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medication; requiring maintenance of medication administration records; providing requirements for the self-administration of medication by clients; creating s. 400.9977, F.S.; providing training and supervision requirements for the administration of medications by unlicensed staff; specifying who may conduct the training; requiring licensees to adopt certain policies and procedures and maintain specified records with respect to the administration of medications by unlicensed staff; requiring the Agency for Health Care Administration to adopt rules; creating s. 400.9978, F.S.; providing requirements for the screening of potential employees and training and monitoring of employees for the protection of clients; requiring licensees to implement certain policies and procedures to protect clients; providing conditions for investigating and reporting incidents of abuse, neglect, mistreatment, or exploitation of clients; creating s. 400.9979, F.S.; providing requirements and limitations for the use of physical restraints, seclusion, and chemical restraint medication on clients; providing a limitation on the duration of an emergency treatment order; requiring notification of certain persons when restraint or seclusion is imposed; authorizing the agency to adopt rules; creating s. 400.998, F.S.; providing background screening requirements for licensee personnel; requiring the licensee to maintain certain personnel records; providing administrative responsibilities for

licensees; providing recordkeeping requirements; creating s. 400.9981, F.S.; providing licensee responsibilities with respect to the property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds or other property received by a licensee and credited to the client; providing a penalty for certain misuse of a client's personal funds, property, or personal needs allowance; providing criminal penalties for violations; providing for the disposition of property in the event of the death of a client; authorizing the agency to adopt rules; creating s. 400.9982, F.S.; providing legislative intent; authorizing the agency to adopt and enforce rules establishing specified standards for transitional living facilities and personnel thereof; creating s. 400.9983, F.S.; classifying certain violations and providing penalties therefor; providing administrative fines for specified classes of violations; creating s. 400.9984, F.S.; authorizing the agency to apply certain provisions with regard to receivership proceedings; creating s. 400.9985, F.S.; 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; transferring and renumbering s. 400.805, F.S., as s.

400.9986, F.S.; repealing s. 400.9986, F.S., relating to transitional living facilities, on a specified date; revising the title of part V of ch. 400, F.S.; amending s. 381.745, F.S.; revising the definition of the term "transitional living facility," to conform to changes made by the act; amending s. 381.75, F.S.; revising the duties of the Department of Health and the agency relating to transitional living facilities; amending ss. 381.78, 400.93, 408.802, and 408.820, F.S.; conforming provisions to changes made by the act; reenacting s. 381.79(1), F.S., to incorporate the amendment made by this act to s. 381.75, F.S., in a reference thereto; providing for the act's applicability to licensed transitional living facilities licensed on specified dates; providing effective dates.

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

Section 1. Part XI of chapter 400, Florida Statutes, consisting of sections 400.997 through 400.9986, is created to read:

PART XI

TRANSITIONAL LIVING FACILITIES

400.997 Legislative intent.—It is the intent of the Legislature to provide for the licensure of transitional living facilities and require the development, establishment, and enforcement of basic standards by the Agency for Health Care Administration to ensure quality of care and services to clients

in transitional living facilities. It is the policy of the state that the least restrictive appropriate available treatment be used based on the individual needs and best interest of the client, consistent with optimum improvement of the client's condition. The goal of a transitional living program for persons who have brain or spinal cord injuries is to assist each person who has such an injury to achieve a higher level of independent functioning and to enable the person to reenter the community. It is also the policy of the state that the restraint or seclusion of a client is justified only as an emergency safety measure used in response to danger to the client or others. It is therefore the intent of the Legislature to achieve an ongoing reduction in the use of restraint or seclusion in programs and facilities that serve persons who have brain or spinal cord injuries.

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

(1) "Agency" means the Agency for Health Care Administration.

(2) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives a person of movement or mobility, is used for client protection or safety, and is not required for the treatment of medical conditions or symptoms.

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

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

(5) "Physical restraint" means a manual method to restrict freedom of movement of or normal access to a person's body, or a physical or mechanical device, material, or equipment attached

or adjacent to the person's body that the person cannot easily remove and that restricts freedom of movement of or normal access to the person's body, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, or a Posey restraint. The term includes any device that is not specifically manufactured as a restraint but is altered, arranged, or otherwise used for this purpose. The term does not include bandage material used for the purpose of binding a wound or injury.

(6) "Seclusion" means 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. Such prevention may be accomplished by imposition of a physical barrier or by action of a staff member to prevent the person from leaving the room or area. For purposes of this part, the term does not mean isolation due to a person's medical condition or symptoms.

(7) "Transitional living facility" means a site where specialized health care services are provided to persons who have brain or spinal cord injuries, including, but not limited to, rehabilitative services, behavior modification, community reentry training, aids for independent living, and counseling.

400.9972 License required; fee; application.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for licensure from the agency pursuant to this part. A license issued by the agency is required for the operation of a transitional living facility in this state. However, this part

does not require a provider licensed by the agency to obtain a separate transitional living facility license to serve persons who have brain or spinal cord injuries as long as the services provided are within the scope of the provider's license.

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

(3) An applicant for licensure must provide:

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

(b) Proof of liability insurance as provided in s. 624.605(1)(b).

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

(d) Proof that the facility has received a satisfactory firesafety inspection.

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

(4) The applicant's proposed facility must attain and continuously maintain accreditation by an accrediting organization that specializes in evaluating rehabilitation facilities whose standards incorporate licensure regulations comparable to those required by the state. An applicant for

licensure as a transitional living facility must acquire accreditation within 12 months after issuance of an initial license. The agency shall accept the accreditation survey report of the accrediting organization in lieu of conducting a licensure inspection if the standards included in the survey report are determined by the agency to document that the facility substantially complies with state licensure requirements. Within 10 days after receiving the accreditation survey report, the applicant shall submit to the agency a copy of the report and evidence of the accreditation decision as a result of the report. The agency may conduct an inspection of a transitional living facility to ensure compliance with the licensure requirements of this part, to validate the inspection process of the accrediting organization, to respond to licensure complaints, or to protect the public health and safety.

400.9973 Client admission, transfer, and discharge.—

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

(2) The admission of a client to a transitional living facility must be in accordance with the licensee's policies and procedures.

(3) To be admitted to a transitional living facility, an individual must have an acquired internal or external injury to the skull, the brain, or the brain's covering, caused by a traumatic or nontraumatic event, which produces an altered state of consciousness, or a spinal cord injury, such as a lesion to the spinal cord or cauda equina syndrome, with evidence of significant involvement of at least two of the following

deficits or dysfunctions:

(a) A motor deficit.

(b) A sensory deficit.

(c) A cognitive deficit.

(d) A behavioral deficit.

(e) Bowel and bladder dysfunction.

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

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

(6) A transitional living facility may not admit a person whose primary admitting diagnosis is mental illness or an intellectual or developmental disability.

(7) A person may not be admitted to a transitional living facility if the person:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the person is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to himself or herself or others as determined by a physician, physician assistant, or advanced

registered nurse practitioner or a mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

(8) If the client meets the admission criteria, the medical or nursing director of the facility must complete an initial evaluation of the 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 comprehensive treatment plan that delineates services to be provided and appropriate sources for such services must be implemented within the first 4 days after admission.

(9) A transitional living facility shall develop a discharge plan for each client before or upon admission to the facility. The discharge plan must identify the intended discharge site and possible alternative discharge sites. For each discharge site identified, the discharge plan must identify the skills, behaviors, and other conditions that the client must achieve to be eligible for discharge. A discharge plan must be reviewed and updated as necessary but at least once monthly.

(10) A transitional living facility shall discharge a client as soon as practicable when the client no longer requires the specialized services described in s. 400.9971(7), when the client is not making measurable progress in accordance with the client's comprehensive treatment plan, or when the transitional living facility is no longer the most appropriate and least

restrictive treatment option.

(11) A transitional living facility shall provide at least 30 days' notice to a client of transfer or discharge plans, including the location of an acceptable transfer location if the client is unable to live independently. This subsection does not apply if a client voluntarily terminates residency.

400.9974 Client comprehensive treatment plans; client services.—

(1) A transitional living facility shall develop a comprehensive treatment plan for each client as soon as practicable but no later than 30 days after the initial comprehensive treatment plan is developed. The comprehensive treatment plan must be developed by an interdisciplinary team consisting of the case manager, the program director, the advanced registered nurse practitioner, and appropriate therapists. The client or, if appropriate, the client's representative must be included in developing the comprehensive treatment plan. The comprehensive treatment plan must be reviewed and updated if the client fails to meet projected improvements outlined in the plan or if a significant change in the client's condition occurs. The comprehensive treatment plan must be reviewed and updated at least once monthly.

(2) The comprehensive treatment plan must include:

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

(b) A preliminary nursing evaluation, including orders for immediate care provided by the physician, physician assistant,

or advanced registered nurse practitioner, which shall be completed when the client is admitted.

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

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

(3) The client or, if appropriate, the client's representative must consent to the continued treatment at the transitional living facility. Consent may be for a period of up to 6 months. If such consent is not given, the transitional living facility shall discharge the client as soon as practicable.

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

(5) The licensee must employ qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of the client's comprehensive treatment plan.

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

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

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

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

400.9975 Licensee responsibilities.—

(1) The licensee shall ensure that each client:

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

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

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

(d) Has unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visits with any person of his or her choice. Upon request, the licensee shall modify visiting hours for caregivers and guests. The facility shall restrict communication in accordance with any court order or written instruction of a client's representative. Any restriction on a client's communication for therapeutic reasons shall be documented and reviewed at least weekly and shall be removed as soon as no longer clinically indicated. The basis for the restriction shall be explained to the client and, if applicable, the client's representative. The client shall retain the right to call the

central abuse hotline, the agency, and Disability Rights Florida at any time.

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

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

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

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

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

(j) Has the opportunity to present grievances and recommend changes in policies, procedures, and services to the staff of the licensee, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. A licensee shall establish a grievance procedure to facilitate a client's ability to present grievances, including a system for investigating, tracking, managing, and responding to complaints by a client or, if applicable, the client's representative and an appeals process. The appeals process must include access to

Disability Rights Florida and other advocates and the right to be a member of, be active in, and associate with advocacy or special interest groups.

(2) The licensee shall:

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

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

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

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

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

(3) The administrator of a facility shall ensure that a written notice of licensee responsibilities is posted in a prominent place in each building where clients reside and is read or explained to clients who cannot read. This notice shall be provided to clients in a manner that is clearly legible, shall include the statewide toll-free telephone number for reporting complaints to the agency, and shall include the words: "To report a complaint regarding the services you receive,

please call toll-free ...[telephone number]... or Disability Rights Florida ...[telephone number]...." The statewide toll-free telephone number for the central abuse hotline shall be provided to clients in a manner that is clearly legible and shall include the words: "To report abuse, neglect, or exploitation, please call toll-free ...[telephone number]...." The licensee shall ensure a client's access to a telephone where telephone numbers are posted as required by this subsection.

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

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

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

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

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

400.9976 Administration of medication.—

(1) An individual medication administration record must be maintained for each client. A dose of medication, including a self-administered dose, shall be properly recorded in the client's record. A client who self-administers medication shall

be given a pill organizer. Medication must be placed in the pill organizer by a nurse. A nurse shall document the date and time that medication is placed into each client's pill organizer. All medications must be administered in compliance with orders of a physician, physician assistant, or advanced registered nurse practitioner.

(2) If an interdisciplinary team determines that self-administration of medication is an appropriate objective, and if the physician, physician assistant, or advanced registered nurse practitioner does not specify otherwise, the client must be instructed by the physician, physician assistant, or advanced registered nurse practitioner to self-administer his or her medication without the assistance of a staff person. All forms of self-administration of medication, including administration orally, by injection, and by suppository, shall be included in the training. The client's physician, physician assistant, or advanced registered nurse practitioner must be informed of the interdisciplinary team's decision that self-administration of medication is an objective for the client. A client may not self-administer medication until he or she demonstrates the competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact the appropriate person with questions.

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

400.9977 Assistance with medication.—

(1) Notwithstanding any provision of part I of chapter

464, the Nurse Practice Act, unlicensed direct care services staff who provide services to clients in a facility licensed under this part may administer prescribed, prepackaged, and premeasured medications after the completion of training in medication administration and under the general supervision of a registered nurse as provided under this section and applicable rules.

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

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

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

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

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

(d) Maintain documentation of compliance with required training.

(4) The agency shall adopt rules to implement this section.

400.9978 Protection of clients from abuse, neglect, mistreatment, and exploitation.—The licensee shall develop and implement policies and procedures for the screening and training of employees; the protection of clients; and the prevention, identification, investigation, and reporting of abuse, neglect,

mistreatment, and exploitation. The licensee shall identify clients whose personal histories render them at risk for abusing other clients, develop intervention strategies to prevent occurrences of abuse, monitor clients for changes that would trigger abusive behavior, and reassess the interventions on a regular basis. A licensee shall:

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

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

(3) Provide clients, families, and staff with information regarding how and to whom they may report concerns, incidents, and grievances without fear of retribution and provide feedback regarding the concerns that are expressed. A licensee shall identify, correct, and intervene in situations in which abuse, neglect, mistreatment, or exploitation is likely to occur, including:

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

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

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

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

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

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

(6) Protect clients from harm during an investigation.

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

400.9979 Restraint and seclusion; client safety.—

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

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

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

(4) Based on the assessment by a physician, physician assistant, or advanced registered nurse practitioner, if a client exhibits symptoms that present an immediate risk of injury or death to himself or herself or others, a physician, physician assistant, or advanced registered nurse practitioner may issue an emergency treatment order to immediately administer rapid-response psychotropic medications or other chemical restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is not effective for more

than 24 hours.

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

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

(a) The continued need for the medication.

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

(c) The need for adjustments to the prescription.

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

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

(8) Interventions to manage dangerous client behavior shall be employed with sufficient safeguards and supervision to ensure that the safety, welfare, and civil and human rights of a client are adequately protected.

(9) A facility shall notify the parent, guardian, or, if applicable, the client's representative when restraint or seclusion is employed. The facility must provide the notification within 24 hours after the restraint or seclusion is employed. Reasonable efforts must be taken to notify the parent, guardian, or, if applicable, the client's representative by

telephone or e-mail, or both, and these efforts must be documented.

(10) The agency may adopt rules that establish standards and procedures for the use of restraints, restraint positioning, seclusion, and emergency treatment orders for psychotropic medications, restraint, and seclusion. If rules are adopted, the rules must include duration of restraint, staff training, observation of the client during restraint, and documentation and reporting standards.

400.998 Personnel background screening; administration and management procedures.—

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

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

(3) The licensee must:

(a) Develop and implement infection control policies and procedures and include the policies and procedures in the licensee’s policy manual.

(b) Maintain liability insurance as defined in s. 624.605(1)(b).

(c) Designate one person as an administrator to be responsible and accountable for the overall management of the facility.

(d) Designate in writing a person to be responsible for the facility when the administrator is absent from the facility for more than 24 hours.

(e) Designate in writing a program director to be responsible for supervising the therapeutic and behavioral staff, determining the levels of supervision, and determining room placement for each client.

(f) Designate in writing a person to be responsible when the program director is absent from the facility for more than 24 hours.

(g) Obtain approval of the comprehensive emergency management plan, pursuant to s. 400.9982(2)(e), from the local emergency management agency. Pending the approval of the plan, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. Appropriate volunteer organizations shall also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days after receipt of the plan and either approve the plan or advise the licensee of necessary revisions.

(h) Maintain written records in a form and system that comply with medical and business practices and make the records available by the facility for review or submission to the agency upon request. The records shall include:

1. A daily census record that indicates the number of clients currently receiving services in the facility, including information regarding any public funding of such clients.

2. A record of each accident or unusual incident involving a client or staff member that caused, or had the potential to cause, injury or harm to any person or property within the facility. The record shall contain a clear description of each accident or incident; the names of the persons involved; a description of medical or other services provided to these persons, including the provider of the services; and the steps taken to prevent recurrence of such accident or incident.

3. A copy of current agreements with third-party providers.

4. A copy of current agreements with each consultant employed by the licensee and documentation of a consultant's visits and required written and dated reports.

400.9981 Property and personal affairs of clients.—

(1) A client shall be given the option of using his or her own belongings, as space permits; choosing a roommate if practical and not clinically contraindicated; and, whenever possible, unless the client is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(2) The admission of a client to a facility and his or her presence therein does not confer on a licensee or administrator, or an employee or representative thereof, any authority to manage, use, or dispose of the property of the client, and the admission or presence of a client does not confer on such person any authority or responsibility for the personal affairs of the client except that which may be necessary for the safe management of the facility or for the safety of the client.

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

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

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

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

The surety bond required under paragraph (b) or paragraph (c) shall be executed by the licensee as principal and a licensed surety company. The bond shall be conditioned upon the faithful compliance of the licensee with the requirements of licensure and is payable to the agency for the benefit of a client who suffers a financial loss as a result of the misuse or misappropriation of funds held pursuant to this subsection. A surety company that cancels or does not renew the bond of a licensee shall notify the agency in writing at least 30 days before the action, giving the reason for cancellation or nonrenewal. A licensee or administrator, or an employee or representative thereof, who is granted power of attorney for a client of the facility shall, on a monthly basis, notify the

client in writing of any transaction made on behalf of the client pursuant to this subsection, and a copy of the notification given to the client shall be retained in the client's file and available for agency inspection.

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

(5) Funds or other property belonging to or due to a client or expendable for the client's account that are received by a licensee shall be regarded as funds held in trust and shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. The funds held in trust shall be used or otherwise expended only for the account of the client. At least once every month, except pursuant to an order of a court of competent jurisdiction, the licensee shall furnish the client and, if applicable, the client's representative with a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. The licensee shall furnish the statement annually and upon discharge or transfer of a client. A governmental agency or private charitable agency contributing funds or other property to the account of a client is also entitled to receive a statement monthly and upon the discharge

or transfer of the client.

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

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

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

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

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

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

(7) In the event of the death of a client, a licensee shall return all refunds, funds, and property held in trust to the client's personal representative, if one has been appointed at the time the licensee disburses such funds, or, if not, to the client's spouse or adult next of kin named in a beneficiary designation form provided by the licensee to the client. If the client does not have a spouse or adult next of kin or such person cannot be located, funds due to be returned to 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 funds shall be kept separate from the funds and property of the licensee and other clients of the facility. If the funds of the deceased client are not disbursed pursuant to the Florida Probate Code within 2 years after the client's death, the funds shall be deposited in the Health Care Trust Fund administered by the agency.

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

400.9982 Rules establishing standards.—

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

(2) The agency may adopt and enforce rules to implement this part and part II of chapter 408, which may include reasonable and fair criteria with respect to:

(a) The location of transitional living facilities.

(b) The qualifications of personnel, including management, medical, nursing, and other professional personnel and nursing assistants and support staff, who are responsible for client care. The licensee must employ enough qualified professional

staff to carry out and monitor interventions in accordance with the stated goals and objectives of each comprehensive treatment plan.

(c) Requirements for personnel procedures, reporting procedures, and documentation necessary to implement this part.

(d) Services provided to clients of transitional living facilities.

(e) The preparation and annual update of a comprehensive emergency management plan in consultation with the Division of Emergency Management. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; communication with families; and responses to family inquiries.

400.9983 Violations; penalties.—A violation of this part or any rule adopted pursuant thereto shall be classified according to the nature of the violation and the gravity of its probable effect on facility clients. The agency shall indicate the classification on the written notice of the violation as follows:

(1) Class "I" violations are defined in s. 408.813. The agency shall issue a citation regardless of correction and impose an administrative fine of $5,000 for an isolated violation, $7,500 for a patterned violation, or $10,000 for a widespread violation. Violations may be identified, and a fine must be levied, notwithstanding the correction of the deficiency

giving rise to the violation.

(2) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine of $1,000 for an isolated violation, $2,500 for a patterned violation, or $5,000 for a widespread violation. A fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(3) Class "III" violations are defined in s. 408.813. The agency shall impose an administrative fine of $500 for an isolated violation, $750 for a patterned violation, or $1,000 for a widespread violation. If a deficiency giving rise to a class III violation is corrected within the time specified by the agency, the fine may not be imposed.

(4) Class "IV" violations are defined in s. 408.813. The agency shall impose for a cited class IV violation an administrative fine of at least $100 but not exceeding $200 for each violation. If a deficiency giving rise to a class IV violation is corrected within the time specified by the agency, the fine may not be imposed.

400.9984 Receivership proceedings.—The agency may apply s. 429.22 with regard to receivership proceedings for transitional living facilities.

400.9985 Interagency communication.—The agency, the department, the Agency for Persons with Disabilities, and the Department of Children and Families shall develop electronic systems to ensure that relevant information pertaining to the regulation of transitional living facilities and clients is timely and effectively communicated among agencies in order to facilitate the protection of clients. Electronic sharing of

information shall include, at a minimum, a brain and spinal cord injury registry and a client abuse registry.

Section 2. Section 400.805, Florida Statutes, is transferred and renumbered as s. 400.9986, Florida Statutes.

Section 3. Effective July 1, 2016, s. 400.9986, Florida Statutes, is repealed.

Section 4. The title of part V of chapter 400, Florida Statutes, consisting of sections 400.701 and 400.801, is redesignated as "INTERMEDIATE CARE FACILITIES."

Section 5. Subsection (9) of section 381.745, Florida Statutes, is amended to read:

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

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

Section 6. Section 381.75, Florida Statutes, is amended to read:

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

(1) Within 15 days after any report of an individual who has sustained a brain or spinal cord injury, the department shall notify the individual or the most immediate available family members of their right to assistance from the state, the

services available, and the eligibility requirements.

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

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

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

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

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

~~(a) The Agency for Health Care Administration, in consultation with the department, shall develop rules for the licensure of transitional living facilities for individuals who~~

~~have brain or spinal cord injuries.~~

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

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

~~(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30 days after the resident's admission. Each comprehensive treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to~~

~~require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.~~

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

Section 7. Subsection (4) of section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.—

(4) The council shall~~:~~

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

~~(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the rehabilitation of individuals who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.~~

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

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

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

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

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

Section 8. Subsection (5) of section 400.93, Florida Statutes, is amended to read:

400.93 Licensure required; exemptions; unlawful acts; penalties.—

(5) The following are exempt from home medical equipment provider licensure, unless they have a separate company,

corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence pursuant to the provisions of this part:

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

(b) Nursing homes licensed under part II.

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

(d) Home health agencies licensed under part III.

(e) Hospices licensed under part IV.

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

(g) Transitional living facilities licensed under part XI.

(h)~~(g)~~ Hospitals and ambulatory surgical centers licensed under chapter 395.

(i)~~(h)~~ Manufacturers and wholesale distributors when not selling directly to consumers.

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

(k)~~(j)~~ Pharmacies licensed under chapter 465.

Section 9. Subsection (21) of section 408.802, Florida Statutes, is amended to read:

408.802 Applicability.—The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390,

394, 395, 400, 429, 440, 483, and 765:

(21) Transitional living facilities, as provided under part XI ~~V~~ of chapter 400.

Section 10. Subsection (20) of section 408.820, Florida Statutes, is amended to read:

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

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

Section 11. Subsection (1) of s. 381.79 is reenacted for the purpose of incorporating the amendment made by this act to s. 381.75, Florida Statutes, in a reference thereto.

Section 12. (1) A transitional living facility that is licensed under s. 400.805, Florida Statutes, on June 30, 2015, must be licensed under and in compliance with s. 400.9986, Florida Statutes, until the licensee becomes licensed under and in compliance with part XI of ch. 400, Florida Statutes, as created by this act. Such licensees must be licensed under and in compliance with part XI of chapter 400, Florida Statutes, as created by this act, on or before July 1, 2016.

(2) A transitional living facility that is licensed on or after July 1, 2015, must be licensed under and in compliance with part XI of ch. 400, Florida Statutes, as created by this act.

Section 13. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2015.

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 Children, Families, and Elder Affairs

BILL:	SB 760
INTRODUCER:	Senator Bradley
SUBJECT:	Child Protection Teams
DATE:	February 19, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Pre-meeting**
2.			HP	
3.			FP	

I. Summary:

SB 760 requires the Department of Health's Statewide Medical Director for Child Protection to be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics with a subspecialty certification in child abuse from the American Board of Pediatrics.

The bill also requires each district medical director to be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics. In addition, within 2 years after the date of employment as district medical director, he or she must obtain a subspecialty certification in child abuse from the American Board of Pediatrics or a certificate issued by the Deputy Secretary for Children's Medical Services in recognition of demonstrated specialized competence in child abuse.

The bill is anticipated to have no fiscal impact on state government.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local Sheriff's offices and the Department of Children and Families (DCF or department) in cases of child abuse and neglect to supplement investigation activities.[1]

[1] Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Feb. 21, 2015).

Child protection teams provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and providing recommendations for interventions to protect children and to enhance a caregiver's capacity to provide a safer environment when possible.[2]

Child abuse, abandonment and neglect reports to the Child Abuse Hotline that must be referred to child protection teams include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.[3]

The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families, have the responsibility for the screening, employment, and any necessary termination of child protection team medical directors, both at the state and district level.[4] There is currently no statutory requirement related to the qualifications of either the Statewide Medical Director for Child Protection or the district team medical directors.

Specialty Certification for Child Abuse Pediatrics

Child abuse pediatricians are responsible for the diagnosis and treatment of children and adolescents who are suspected victims of child maltreatment. This includes physical abuse, sexual abuse, factitious illness (medical child abuse), neglect, and psychological/emotional abuse. These specialty pediatricians participate in multidisciplinary collaborative work within the medical, child welfare, and law enforcement systems. They are also often called to provide expert testimony in court proceedings.[5]

The American Board of Medical Specialties approved the child abuse pediatrics specialty in 2006 and the American Board of Pediatrics issued the first certification exams in late 2009. Dr. Ann S. Botash, MD,[6]stated that "Board certification is really necessary in a field like this… it's helpful in the medical setting when I'm working with other pediatricians who are good

[2] *Id*.
[3] Section 39.303, F.S.
[4] *Id*.
[5] Council of Pediatric Subspecialties. *Pediatric Child Abuse*, available at: http://pedsubs.org/SubDes/ChildAbuse.cfm. (last visited Feb. 21, 2015).
[6] Professor of pediatrics at the State University of New York (SUNY) Upstate Medical University and Director of the University Hospital's Child Abuse Referral and Evaluation (CARE) program in Syracuse, NY.

practitioners, but don't have the same experience in child abuse treatment that I have.[7] The certification may be a deciding factor in a disagreement between two practitioners, one a specialist and the other a generalist, about a diagnosis of child abuse…"[8]

Three-year child abuse fellowships are in various stages of development at academic medical centers as a result of the new specialty designation. Most of them are housed within children's hospitals across the country, and similar to other pediatric specialty fellowships, there will be both clinical and research training and a requirement for a scholarly project, which will help advance the field.[9] In 2012, there were 264 physicians nationwide who are certified in this specialty.[10]

III. Effect of Proposed Changes:

Section 1 amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection to be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics with a subspecialty certification in child abuse from the American Board of Pediatrics.

This will ensure that the Statewide Director who is responsible for supervising other pediatricians on child protection teams will hold the same or similar credentials.

The bill also requires each district medical director to be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics. In addition, within 2 years after the date of employment as district medical director, he or she must obtain a subspecialty certification in child abuse from the American Board of Pediatrics or a certificate issued by the Deputy Secretary for Children's Medical Services in recognition of demonstrated specialized competence in child abuse.

This will ensure that all district medical directors have a recognized degree of competence.

Section 2 reenacts s. 39.3031 and s. 391.026(2), F.S., to incorporate amendments to s. 39.303, F.S.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[7] Emily Berry, *New Specialty Certification for Child Abuse Pediatrics* Nov. 6, 2009. Health Leaders Media, available at: http://www.healthleadersmedia.com/content/PHY-241751/New-Specialty-Certification-for-Child-Abuse-Pediatrics.html. (last visited Feb. 23, 2015).
[8] *Id*.
[9] Giardino, A., Hanson, N., Hill, K.S, and Leventhal, J.M. Child Abuse Pediatrics: New Specialty, Renewed Mission. *Pediatrics* 2011; 128(1):156-159.
[10] University of Louisville Today. *UofL pediatrician joins elite group of board-certified child abuse specialists.* March 20, 2012, available at: https://louisville.edu/uofltoday/facultystaff-news/uofl-pediatrician-joins-elite-group-of-board-certified-child-abuse-specialists. (last visited Feb. 23, 2015).

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:

The cost for pediatricians to obtain the required specialty certifications is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: s. 39.303.
This bill reenacts the following sections of the Florida Statutes: ss. 39.3031 and 391.026.

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 Bradley

7-00912A-15 2015760__

A bill to be entitled

An act relating to child protection teams; amending s. 39.303, F.S.; requiring the Statewide Medical Director for Child Protection and the district medical directors to hold certain qualifications; reenacting ss. 39.3031 and 391.026(2), F.S., to incorporate the amendment made by this act to s. 39.303, F.S., in references thereto; providing an effective date.

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

Section 1. Section 39.303, Florida Statutes, is amended to read:

39.303 Child protection teams; services; eligible cases.—The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Families. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The Department of Health and the Department of Children and Families shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families, shall maintain the responsibility for the screening, employment, and, if necessary,

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the termination of child protection team medical directors, at headquarters and in the 15 districts. The Statewide Medical Director for Child Protection at all times must be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics with a subspecialty certification in child abuse from the American Board of Pediatrics. Each district medical director must be a physician licensed under chapter 458 or chapter 459 who is board certified in pediatrics and, within 2 years after the date of his or her employment as district medical director, must obtain a subspecialty certification in child abuse from the American Board of Pediatrics or a certificate issued by the Deputy Secretary for Children's Medical Services in recognition of demonstrated specialized competence in child abuse. Child protection team medical directors shall be responsible for oversight of the teams in the districts.

(1) The Department of Health shall use and convene the teams to supplement the assessment and protective supervision activities of the family safety and preservation program of the Department of Children and Families. This section does not remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the teams shall be to support activities of the program and to provide services deemed by the teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team shall be capable of

providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of related findings.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children and Families, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(j) Child protection team assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.

All medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum as set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection. A child protection team that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child shall consult with a physician who has experience in treating children with the same condition.

(2) The child abuse, abandonment, and neglect reports that must be referred by the department to child protection teams of

the Department of Health for an assessment and other appropriate available support services as set forth in subsection (1) must include cases involving:

(a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

(b) Bruises anywhere on a child 5 years of age or under.

(c) Any report alleging sexual abuse of a child.

(d) Any sexually transmitted disease in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

(3) All abuse and neglect cases transmitted for investigation to a district by the hotline must be simultaneously transmitted to the Department of Health child protection team for review. For the purpose of determining whether face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (2) must be timely reviewed by:

(a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a

child protection team;

(b) A physician licensed under chapter 458 or chapter 459 who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(c) An advanced registered nurse practitioner licensed under chapter 464 who has a specialty in pediatrics or family medicine and is a member of a child protection team;

(d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team; or

(e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of a physician licensed under chapter 458 or chapter 459 who holds certification in pediatrics and is a member of a child protection team.

(4) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team board-certified pediatrician, advanced registered nurse practitioner, physician assistant working under the supervision of a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection

team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

(b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (2)(a)-(h) as reported; or

(c) The child protection team board-certified pediatrician, as authorized in subsection (3), determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a child protection team pediatrician, as authorized in subsection (3), may determine that a face-to-face medical evaluation is necessary.

(5) In all instances in which a child protection team is providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Families, shall avoid duplicating the provision of those services.

(6) The Department of Health child protection team quality assurance program and the Family Safety Program Office of the Department of Children and Families shall collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate. Each quality assurance program shall include a review of records in which there are no findings of abuse, abandonment, or neglect, and the findings of these reviews shall be included in each department's quality assurance reports.

Section 2. Section 39.3031 and subsection (2) of s.

391.026, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 39.303, Florida Statutes, in references thereto.

Section 3. This act shall take effect July 1, 2015.

As per President Gardiner who announced in the Senate Chamber on March 3, 2015, Senator Gibson is excused from all Senate business for the remainder of the week due to a death in her family.