

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: December 2, 1997 Revised: \_\_\_\_\_

Subject: Transitional Living Facilities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmeling</u>	<u>Austin</u>	<u>CM</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides for the revision of the state licensure program for Transitional Living Facilities (TLFs) for brain and spinal cord injured patients, by establishing a new part IX of ch. 400, F.S., and repeals the current law in part VIII of the same chapter. The duties of the Advisory Council on Brain and Spinal Cord Injuries are expanded to include the annual appointment of a five-person committee composed of consumers and professionals to conduct on-site visits to TLFs.

Regulatory authority for the protection of residents is strengthened to include right of entry by the Agency for Health Care Administration (AHCA) staff, definition of appropriate resident and treatment programs to be included in this licensure category, resident rights, administrative remedies, receivership proceedings, and contract agreements with residents. The bill provides for the deposit of all fees and fines in the Health Care Trust Fund administered by AHCA and earmarked for enforcing the program.

In addition, this bill extends per diem and reimbursement for travel expenses to all activities required of members of councils established under part II, ch. 413, F.S., relating to general vocational rehabilitation programs, provides that expenses for accommodations necessitated by members' disabilities are to be reimbursed or such accommodations are to be provided by the Division of Vocational Rehabilitation, of the Department of Labor and Employment Security. Reimbursement of certain child care expenses and reasonable compensation under certain conditions for members of the Florida Independent Living Council is specifically provided. Furthermore, this bill authorizes the Florida Independent Living Council to incorporate as a not-for-profit corporation.

This bill creates sections 400.905, 400.906, 400.907, 400.908, 400.909, 400.910, 400.911, 400.912, 400.913, 400.914, 400.915, 400.916, 400.917, 400.918, 400.919, 400.920, 400.921,

400.922, 400.923, 400.924, 400.925, 400.926, 400.927, 400.928, and 400.929, amends sections 413.273, 413.395, 413.405, and 413.605, and repeals section 400.805, Florida Statutes.

## II. Present Situation:

The Agency for Health Care Administration (AHCA) includes the Division of Health Quality Assurance which has responsibility for licensure and Medicare/Medicaid certification of 33 different types of health care facilities and health care service providers, including nearly 18,000 individual facilities and providers. Generally, the statutes clearly provide AHCA with rulemaking authority and regulatory and enforcement authority. In some cases, the statutes establish a joint responsibility between AHCA and another executive agency for the regulation of certain programs. For instance, the Department of Elder Affairs has rulemaking authority for several assisted living programs, while AHCA is responsible for issuance of licenses, inspections and enforcement. Similarly, the Department of Children and Families has rulemaking authority for several mental health programs, while AHCA, again, is responsible for issuance of licenses, inspections and enforcement.

Transitional Living Facilities (TLFs) are intended to serve persons who have had traumatic injury to the brain or spinal cord. These facilities are currently licensed pursuant to ch. 400, part VIII (400.805), F.S., by AHCA in collaboration with the Division of Vocational Rehabilitation (DVR) of the Department of Labor and Employment Security. Section 400.805, F.S., authorizes AHCA to issue licenses to TLFs upon notification by DVR that a facility meets the service requirements. Section 413.49, F.S., authorizes DVR to develop standards governing the delivery of services to residents in licensed TLFs. This treatment is defined as time-limited and directed toward preparing the individual for living as independently as possible in the community. Services provided include physical therapy, occupational therapy, speech therapy, skills of daily living training, and vocational orientation. Persons in TLFs should not require around the clock medical care. Section 413.605, F.S., provides for the creation of the Advisory Council on Brain and Spinal Cord Injuries. The council is to provide advice and expertise to DVR in the preparation, implementation, and periodic review of the program.

There are presently six licensed TLFs. These are relatively small facilities ranging in capacity from six to sixteen beds with the one exception being an eighty-one-bed facility. Facilities are located in Orlando, Wauchula, Tampa, Lutz, Miami, and Clearwater. The combined bed total of the six facilities is 141 beds. The concept of a TLF originated with the DVR as a program to assist clients in successful reentry to community living and gainful employment. TLFs primarily service DVR clients, however, the number of referrals from Workers' Compensation, private insurers, Veterans Administration and private pay are increasing.

The DVR funds the care and services of clients through contracts with the TLFs, funded through the Florida Brain and Spinal Cord Injury Trust Fund. Revenues for the Florida Brain and Spinal Cord Injury Program are derived from civil penalties received by county courts from traffic violations, including driving under the influence, and a surcharge on temporary tags. Expenditures for FY 1996-1997 for TLF services were approximately \$2,000,000 for

approximately 122 clients (this does not include clients referred from and services paid by other sources).

Contracted daily rates vary from \$260.00 to \$415.00, depending upon the nature of the clients' injuries and services provided. TLFs may also admit and serve other individuals funded by private payment or third-party payment, which is typically substantially greater than the DVR contracted rates, with a \$385.00 to \$648.00 per day range reported for one facility. Generally, the costs of services for brain-injured individuals are significantly higher than for spinal-cord injured individuals, because rehabilitation is more complex and of longer duration.

A legislative "sunset review" of ch. 400, F.S., was conducted in 1993. The revisions made at that time included the removal of Transitional Living Facility licensure from the nursing home section of the statute to a separate part (ch. 400, part VIII) which specifically addressed Intermediate, Special Services, and Transitional Living Facilities. One of the intentions in segregating statutory requirements for TLFs from nursing homes was to eliminate requirements for medical staff and treatment that were not applicable to TLF programs, which are more focused on rehabilitation and adjustment to community living.

Although the separation of TLF requirements from nursing home requirements accomplished the objective of eliminating inappropriate program requirements, according to AHCA staff, the establishment of a separate part for TLFs inadvertently resulted in the loss of other important regulatory authority. Prior statutory authorization for entry and inspection of facilities by agency staff, and for development of rules other than that relating to physical plant and fiscal management was not transferred to the newly created part VIII.

Currently, there is no requirement that the staff of TLFs undergo a background screening for criminal history or history of abuse. AHCA has proposed legislation that would require the owners and operators of all health care and residential facilities be screened under Level 2 standards as described in ch. 435, F.S. These standards require screening through the Florida Department of Law Enforcement, the Department of Children and Family Services, and the Federal Bureau of Investigation.

Concern has arisen that there may be instances of this licensure category being misinterpreted or misused by provider organizations to deliver services that are not consistent with the time limitation or with the intended client populations. Although there have been no instances of refusal by a TLF to allow AHCA inspection staff to conduct complaint investigations, the lack of clear statutory authority for routine inspections and complaint investigations could pose problems in enforcement of adequate standards of care and services.

Section 400.805, F.S., does not specify the trust fund for deposit of licensure fees and administrative fines. Trust fund authorization was not transferred to s. 400.805, F.S., in the 1993 sunset statutory revision. However, revenue continues to be deposited in AHCA's Health Care Trust Fund, which is a general trust fund that handles licensure fees and administrative fines for all of AHCA's licensure programs, with few exceptions.

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Section 400.805(7), F.S., currently provides for a civil or administrative fine not to exceed \$5,000 for a violation of any provision of s. 400.805, F.S., or rules adopted by AHCA or DVR. A

TLF is a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S. Each day of a continuing violation is a separate offense.

vocational rehabilitation programs. Part I of ch. 413, F.S., relates to the Blind Services Program. Part II of the chapter relates to general vocational rehabilitation programs.

Department of Labor and Employment Security to adopt such methods of administration not in conflict with the laws of this state as are found by the Federal Government to be necessary for the comply with such conditions as may be necessary to secure the full benefits of federal statutes pertaining to vocational rehabilitation.

### **FLORIDA INDEPENDENT LIVING COUNCIL**

The provisions of s. 705(a) of Title VII of the Rehabilitation Act of 1973 (the act), as amended in receive federal financial assistance under the chapter. A state is prohibited from establishing a the Florida Independent Living Council (FILC) to assist the Division of Vocational Rehabilitation as other entities, in the expansion and development of statewide independent living policies, ensure consistency with provisions of the act, as amended, Florida law requires that the FILC Rehabilitation for administrative purposes only.

necessary expenses of attending SILC meetings and performing SILC duties (including child care to a member, if such member is not employed or must forfeit wages from other employment, for per diem and travel expenses for required attendance at meetings of councils established under reasonable expenses for personal care attendants and interpreters needed by members during compensating a member for performance of his or her duties as a council member except as Independent Living Council, but provides no specific language relating to expense reimbursement.

## FLORIDA REHABILITATION ADVISORY COUNCIL

The provisions of s. 105(a)(1) of Title I of the Rehabilitation Act of 1973 (the act) as amended in 1992, require a state to establish a State Rehabilitation Advisory Council (SRAC) in order to be eligible to receive financial assistance under the title. Section 413.405, F.S., provides for the creation of the Rehabilitation Advisory Council (RAC) to assist the Division of Vocational Rehabilitation in the planning and development of statewide rehabilitation programs and services, to recommend improvements to such programs and services, and to perform a number of services outlined in the section.

The provisions of s. 105(g) of Title I of the act permit a SRAC to use funds appropriated under the title to reimburse members of a SRAC for reasonable and necessary expense of attending SRAC meetings and performing SRAC duties. This includes expenses for child care and personal assistance services. A SRAC is also permitted to pay compensation to a member of the SRAC, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing the duties of the SRAC.

Subsection 413.405(11), F.S., requires the RAC to reimburse its members for reasonable and necessary expenses of attending RAC meetings and performing RAC duties, including child care and personal assistance services in accordance with the provisions of s. 112.061, F.S. The RAC is permitted to pay reasonable compensation to a member of RAC if the member is not employed or must forfeit wages from other employment for each day the member is engaged in performing the duties of the RAC.

### III. Effect of Proposed Changes:

Section 1 creates part IX of ch. 400, F.S., entitled “Transitional Living Facilities.”

Section 2 creates s. 400.905, F.S., including the provisions of s. 400.805, F.S., which currently provides authority for the regulation of TLFs including a requirement for licensure, with no exemptions. This section further adds license exemptions for federal facilities, mental health, and developmental services facilities, requires DVR rules to specify investigative and enforcement responsibilities and authority of AHCA and DVR, and clarifies the prohibition against advertising without a license.

Section 3 creates s. 400.906, F.S., providing for definitions of “agency” and “division” which are currently found in s. 400.805, F.S. The definition of “transitional living facility” is modified to cross-reference provisions in ch. 413, F.S., governing the DVR Brain and Spinal Cord Injury Program. Additional definitions are established, providing specific information on the point at which a person is identified as ready to move into the community, and defining the requirement for TLFs to provide a written plan for services that includes a description of services, who will provide the services, when services will be rendered and the purposes and benefits of the services. This section further clarifies that TLFs are time-limited programs providing services to victims of

traumatic injuries that insure progress toward reintegration of individuals into independent community living.

Section 4 creates s. 400.907, F.S., providing that an unlicensed facility may avoid penalties by applying for a license within 10 days of notification by AHCA; establish that unlicensed operation that poses a threat to the health, safety, or welfare of a resident of the facility is considered neglect as defined in the adult abuse and neglect section of statute, s. 415.102, F.S., and in addition to penalties established under ch. 415, F.S., the facility is subject to administrative penalties by AHCA; require separate licenses for separate premises; specify the information to be stated upon a license; increases the annual license fee to \$3,000 plus \$50 per resident; require posting of a license; clarifies that a license may not be sold or transferred, and is not valid for any premises other than that for which the license was issued; and clarify that operation of a facility in excess of the licensed capacity is considered unlicensed activity.

Section 5 creates s. 400.908, F.S., expanding current law to require that the TLF notify the residents seven days before a change in ownership or transfer of operation, to operate the facility in compliance with regulations through the transfer date, and to stand liable for penalties and liabilities incurred prior to the transfer.

Section 6 creates s. 400.909, F.S., establishing authority to deny, revoke, or suspend a license or impose an administrative fine as provided for in ch. 120, F.S. Grounds for action are established to include acts affecting the health, safety, or welfare of a resident, applicant or licensee not being of suitable character or competency, misappropriation of property of residents, repeat violations of statutory criteria, confirmed report of abuse, neglect, or exploitation, falsification of application materials, history of Medicaid or Medicare violations. Administrative hearings on reported threats to the health safety of welfare of a resident will be held by Division of Administrative Hearings within 120 days after the request for such hearing is received.

Section 7 creates s. 400.910, F.S., providing that AHCA may impose a moratorium on admissions to a facility when the agency determines that any condition presents a threat to the health, safety, or welfare of the residents of a facility. A moratorium on admissions may also run concurrently pending appeal of a license denial, revocation or suspension.

Section 8 creates s. 400.911, F.S., providing for license applications to be made under oath, and to include name, address, and social security number of applicants, of owners of 5 percent interest in applicant corporation, partnership, or firm. Information is required on the good moral character, financial stability, and competency of applicants. Criminal history and background screening information is required of applicants to permit applying level 2 standards set forth in ch. 435, F.S. A license will not be granted to applicants who fail to meet these level 2 standards. Level 2 background screening includes abuse registry, FDLE and FBI background checks. Other application requirements include proof of compliance with zoning requirements, proof of financial ability to operate, and proof of liability insurance.

Section 9 creates s. 400.912, F.S., clarifying that licenses expire one year from the date of issuance. Late fees for late submission of re-licensure applications will be in an amount equal to 50 percent of the fee in effect on the day prior to the renewal date. Authorization is provided for issuance of a conditional license in the case of a facility which has a pending revocation or suspension at the time of renewal. A six-month conditional license is an option in the event an applicant fails to meet all criteria for licensure. This provision would permit the issuance of a license in the event a facility has not yet met the time requirements for accreditation by the Commission for the Accreditation of Rehabilitation Facilities (CARF). This accreditation has been utilized as the basic criteria for the review of services provided by a TLF program by the Division of Vocational Rehabilitation. Other requirements for renewal applications, similar to requirements for initial application, are specified.

Section 10 creates s. 400.913, F.S., requiring that a confirmed report of adult abuse by an employee, volunteer, administrator, or owner of a facility be reported to AHCA by the protective investigator. Such confirmed abuse or neglect or exploitation may, consequently, be grounds for AHCA to take action against the licensed TLF.

Section 11 creates s. 400.914, F.S., providing for the deposit of all fees and fines collected under this part into the Health Care Trust Fund administered by AHCA. Provisions are made for up to 50 percent of these funds to be used for expenses of receivership actions, and the balance to be used to offset costs of licensure programs administered by both AHCA and the Advisory Council on Brain and Spinal Cord Injuries.

Section 12 creates s. 400.915, F.S., establishing criteria for imposition of fines and the option of requesting a plan of corrective action from the facility. Fines will be set and levied by AHCA and compliance monitored through visits by agency staff. Fine amounts may take into consideration factors including corrective actions taken, previous violations, the financial benefit to the facility of continuing the violation, and the capacity of the facility. Classes of violations based on severity of infraction are established with fine limits applicable to each class: Class I, \$1,000 to \$5,000 per violation; Class II, \$500 to \$1,000 per violation; Class III, \$100 to \$500 per violation; and Class IV, \$50 to \$200 per violation.

Section 13 creates s. 400.916, F.S., prohibiting the paying of rebates for referring clients to receive services in a licensed facility and authorizing AHCA, in consultation with DVR, to adopt rules which assess administrative penalties for prohibited referral practices.

Section 14 creates s. 400.917, F.S., prohibiting coercive solicitations, misrepresentation of the facility as a charity, or requirement for a contribution from any person as a condition of services paid for by the state.

Section 15 creates s. 400.918, F.S., authorizing AHCA to initiate injunctive proceedings to enforce the provisions of this part when administrative means have proven unsuccessful in effecting compliance and protecting the health and welfare of residents. Such injunctive relief

may be temporary or permanent. The court is authorized to take such injunctive action without bond on proper proof being made in instances of life-threatening situations.

Section 16 creates s. 400.919, F.S., authorizing AHCA to petition a court of competent jurisdiction for the appointment of a receiver in a situation in which the facility is not licensed, the facility is about to close, the health, safety, or welfare of residents is at risk, or the facility cannot provide food, shelter, care or utilities. Criteria and procedures established in this section are patterned after receivership proceedings provided for nursing homes and authorize the receiver to exercise full power and control over the facility to effect a remedy to the financial difficulty recognized by the court.

Section 17 creates s. 400.920, F.S., providing for the requirement for each resident to enter into a contract for care and services at the time of admission to the facility. The contract shall specify rates and charges, spell out rights and obligations of the resident, and the handling of residents' funds.

Section 18 creates s. 400.921, F.S., establishing the requirement that licensed nurses perform medication administration and nursing assessment functions for residents. Emergency situations are provided for by authorizing licensed nurses to provide care in the facility until emergency personnel arrive.

Section 19 creates s. 400.922, F.S., establishing requirements for admission to a TLF facility, requiring the owner/administrator to insure that residents are appropriate for admission, prohibiting physicians or nurse practitioners employed (or contracted with) by a facility to make initial examinations for admission purposes from having a financial interest in such facility, providing for monthly nursing assessments of residents, and prohibiting retaining a resident who requires medical care beyond that which the facility is licensed to provide.

Section 20 creates s. 400.923, F.S., providing for the resident to use his own personal property, and prohibits the facility, an owner, administrator, employee or representative from serving as guardian of a resident or his property. The facility is obligated to insure the safekeeping of resident property and prohibited from the use of resident funds for facility benefit. Funds of deceased residents shall be given to next of kin, or when that is not possible, retained for two years, then deposited to the Health Care Trust Fund. This section also provides for a criminal penalty of a misdemeanor in the first degree for intentionally withholding a resident's personal funds or property, or borrows from or pledges a resident's personal funds without agreement.

Section 21 creates s. 400.924, F.S., establishing a resident bill of rights. The rights set forth here are patterned after the rights established for residents of Assisted Living Facilities, which are regulated under ch. 400, F.S. The section also requires facilities to post written notices of resident rights, and prohibits facilities from hampering or preventing residents from exercising their rights. The section further provides immunity from civil or criminal liability for any person who submits a complaint concerning a suspected violation of resident rights or conditions in a facility.



Section 22 creates s. 400.925, F.S., establishing the right of a resident whose rights, as presented in s. 400.924, F.S., are violated will have a basis for taking legal action against the licensee. This right is patterned after the right established in the Nursing Home licensure statute in s. 400.023, F.S.

Section 23 creates s. 400.926, F.S., reestablishing authority for the staff of AHCA and the state fire marshal to have the right to enter and inspect a facility which has applied for license as a TLF or is licensed as a TLF. Inspections may be conducted on facilities which were formerly licensed as TLF within a 24 month period if there is probable cause to suspect that the facility continues to operate as a provider of TLF services. Such inspections would require approval by the agency director.

Section 24 creates s. 400.927, F.S., requiring that a facility provide 90 days notice prior to closing. Such notice will be provided to AHCA and to residents' next of kin or legal representative. Failure to provide notice at least 30 days prior to closure will constitute the basis for a fine up to \$10,000 by AHCA. This assurance of advance notice is consistent with requirements currently in place in other health care facilities.

Section 25 creates s. 400.928, F.S., expanding rulemaking authority to include fire safety, disaster preparedness, qualification of personnel, and the procedures for review by agency staff and reporting of findings. This provision will permit development of adequate regulatory criteria for regulation of TLFs which are presently issued licenses without on-site reviews of care and treatment conditions at the facilities.

Section 26 creates s. 400.929, F.S., establishing the requirement that facilities maintain and make available, all inspection reports issued by AHCA to the facility for a period of five years. The most recent inspection report must be posted in a prominent place in the facility so as to be accessible to the residents and public.

Section 27 amends s. 413.605, F.S., relating to the Advisory Council on Brain and Spinal Cord Injuries, establishing a DVR five member committee to supplement abbreviated monitoring visits by AHCA. Committee findings must be adopted and enforced by AHCA.

Section 28 amends s. 413.273, F.S., extending per diem and travel expenses to all activities required of members of councils established under part II of ch. 413, F.S., relating to vocational rehabilitation, requiring reimbursement of reasonable expenses for accommodations such as personal care attendants and interpreters needed by members because of their disabilities during all activities required by the councils or requires the DVR to provide the accommodations.

Section 29 amends s. 413.395(1), F.S., permitting the Florida Independent Living Council (FILC) to incorporate as a Florida not-for-profit corporation. If the FILC elects to incorporate, the Division of Vocational Rehabilitation is directed to incorporate the FILC. The FILC's appointed members will constitute the board of directors of the corporation. Creates s. 413.395(13), F.S., authorizing the FILC to pay reasonable compensation to a member of the FILC if such member is

not employed or must forfeit wages from other employment for each day the member is engaged in performing the duties of the FILC. Additionally, this subsection permits the FILC to reimburse members for certain child care expenses and to compensate members under certain conditions.

Section 30 amends s. 413.405(11), F.S., reimbursement provisions relating to the Rehabilitation Advisory Council (RAC), to cross-reference the general provisions in s. 413.273(1), F.S. The RAC is specifically authorized to reimburse members for child care expenses incurred as a result of activities required by the RAC. Language requiring the RAC to reimburse members for reasonable and necessary expenses of attending meetings and performing RAC duties is stricken.

Section 31 repeals s. 400.805, F.S., relating to administration of TLFs.

Section 32 provides an effective date of October 1, 1998.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

There will be a \$7,516 impact in total on the six TLFs located around the state.

##### **C. Government Sector Impact:**

The Agency for Health Care Administration (AHCA) provided the following fiscal information:

Revenues - Total license fee revenue at the current rate is \$17,534. The proposed increase would generate \$7,516, for a total annual fee revenues of \$25,050.

Expenditures - Although last year AHCA indicated this same bill (SB 2330) would not require additional expenditures to implement, this year, AHCA indicates expenditures of \$10,050 for salary and expenses of agency licensure and survey staff would be necessary to implement this bill. The newly created five member committee proposed by the Division of Vocational Rehabilitation will cost approximately \$15,000 per year for travel expenses related to facility monitoring.

The bill calls for placing all license fees and fines collected in the Health Care Trust Fund.

According to the Department of Labor and Employment Security, there is no fiscal impact from the changes made to ss. 413.273, 413.395, and 413.405, F.S.

**VI. Technical Deficiencies:**

Section 1 inadvertently omits the creation of s. 400.910, F.S.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Commerce and Economic Opportunities:

Technical amendment which includes the creation of s. 400.910 in section one of the bill.

#2 by Commerce and Economic Opportunities:

Removes from licensure exemption under part IX of chapter 400 facilities eligible for licensure under chapter 400.