
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: January 7, 1998 Revised: _____

Subject: Regulation of 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>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 188 amends current law providing for the regulation of transitional living facilities (TLFs), s. 400.805, F.S. The bill expressly authorizes the Agency for Health Care Administration (agency or AHCA), the state fire marshal, or a local fire marshal to enter the premises of a licensed TLF to determine compliance with TLF licensure rules and standards. The agency may pursue a temporary or permanent injunction against a licensee or an operator of an unlicensed facility to enforce licensure requirements, to terminate the operation of a facility found in violation of such requirements, or to protect facility residents from immediately life-threatening situations. Upon determination that conditions in a facility threaten the health, safety, or welfare of residents, AHCA is authorized to impose a moratorium on admissions to the offending TLF. The law relating to vocational rehabilitation is amended to provide guidelines that: 1) require certain services be provided to residents of TLFs, 2) provide requirements relating to treatment plans and discharge plans for TLF residents, and 3) provide for appointment of a committee by the Advisory Council on Brain and Spinal Cord Injuries, located administratively under DVR, that is to conduct on-site investigations as follow-up to AHCA findings of possible violations relating to the quality of the care a TLF is giving its residents.

This bill amends s. 400.805, 413.49, and 413.605, F.S.

II. Present Situation:

There are presently six licensed TLFs operating in the state. These are small facilities ranging in capacity from six to sixteen beds with one exception, an eighty-one-bed facility. Transitional living 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 DVR as a program to assist brain-injured and spinal-cord-injured persons, DVR's clients, with rehabilitation for

successful re-entry to community living and gainful employment. Transitional living facilities primarily serve DVR clients. However, referrals of persons with brain-injuries or spinal-cord injuries from workers' compensation insurers, private insurers, and the Veterans' Administration, and the referral of persons who pay out-of-pocket are increasing.

Section 413.49, F.S., authorizes DVR to develop standards governing the delivery of services to residents in licensed TLFs. This treatment is characterized as *time-limited* and is directed toward preparing the TLF resident for living as independently as he or she is capable of doing in the community. Services such as: physical therapy, occupational therapy, speech therapy, skills of daily living training, and vocational orientation are provided to TLF residents. Persons residing in TLFs should not require around-the-clock medical care; such a level of care is more appropriately offered by nursing homes.

The Division of Vocational Rehabilitation funds the care and services of clients through contracts with TLFs, using funds in the Florida Brain and Spinal Cord Injury Trust Fund. Revenues for the Florida Brain and Spinal Cord Injury Trust Fund are derived from deposits of: certain civil penalties received by county courts; fines for some traffic violations, including driving under the influence of alcohol or drugs; and a surcharge on temporary car tags. Trust Fund expenditures for Fiscal Year 1996-1997 on behalf of approximately 122 DVR clients are estimated at \$2,000,000.

Generally, the costs of services provided for brain injuries are significantly higher than for spinal-cord injuries, because rehabilitation, typically, is more complex and of longer duration. Contracted daily rates range from \$260 to \$415, depending on the nature of the client's injuries and the services provided. Transitional living facilities may also admit and serve individuals whose care and services are funded through private insurance or out-of-pocket. Payments from private sources usually are substantially greater than the DVR contracted rates, with a \$385 per day to \$648 per day range reported for one facility.

Section 413.605, F.S., establishes the Advisory Council on Brain and Spinal Cord Injuries administratively located within DVR. The council is to provide advice and expertise to DVR in the preparation, implementation, and periodic review of the TLF service-delivery program. In addition to brain and spinal-cord injuries, chapter 413, F.S., contains provisions relating to several vocational rehabilitation programs. Part I of chapter 413, F.S., relates to the Blind Services Program. Part II of the chapter relates to general vocational rehabilitation programs.

In 1993, the Legislature conducted a Sunset review of chapter 400, F.S., that resulted, among other revisions, in the creation of part VIII of chapter 400, F.S., and, more specifically, s. 400.805, F.S., providing for the regulation of TLFs. This reorganization of law involved moving provisions relating to the regulation of TLFs and intermediate care facilities and homes for special services from the nursing home licensure part of chapter 400, F.S. 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. These facilities are currently

licensed by AHCA in collaboration with DVR. The agency is authorized to issue a license to a TLF upon receipt of notification from DVR that a facility meets resident service requirements.

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. Statutory authority for AHCA staff to enter and inspect facilities, and for adoption of rules other than rules relating to physical plant and fiscal management was not transferred to, or included in, the newly created part VIII. Furthermore, because of the special care needs of TLF residents it is now recognized that persons having experience with service delivery to brain-injured and spinal-cord-injured persons could provide an added source of effective regulatory oversight to ensure that TLF residents are receiving appropriate and high quality care. Such expertise is available from the Advisory Council on Brain and Spinal Cord Injuries.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.805, F.S., relating to TLF regulation, by adding three subsections. A new subsection (7) is added to the TLF regulatory law that grants any designated officer or employee of AHCA or the state or a local fire marshal the right to make unannounced entry on and inspection of TLF premises for purposes of regulatory oversight. This right extends to any premises suspected of unlicensed operation, subject to first obtaining permission from the owner or person in charge, unless a warrant issued by a circuit court authorizing entry has been obtained. A statement of probable cause must be filed with the AHCA director who must approve or disapprove the action within 48 hours prior to an AHCA representative entering such a facility. A facility that has had its license suspended or revoked remains subject to AHCA inspection for 24 months, to ensure that the facility is not operating unlawfully.

Subsection (8) is added to authorize AHCA to obtain a temporary or permanent injunction against a licensed TLF when efforts to correct regulatory violations through imposition of an administrative fine have been unsuccessful and the violation materially affects the health, safety or welfare of the TLF's residents or in order to terminate the operation of a TLF because of regulatory violations that materially affect the health, safety, or welfare of the TLF's residents. Legislative recognition is expressed for the need of immediate protection of TLF residents from life-threatening situations. Under such circumstances, AHCA may petition the appropriate court and the court may temporarily enjoin a facility's operation without requiring a bond or proper proof, if *competent evidence* is presented or a sworn, substantiated affidavit reasonably justifies such an action pending final determination.

Subsection (9) is added to allow AHCA to impose a moratorium on admissions to a TLF that it determines presents conditions that threaten the health, safety, or welfare of the TLF's residents. Licensure denial, revocation, or suspension may subject a facility to immediate imposition of a moratorium on admissions. The moratorium on admissions is to run concurrently with such an action.

Section 2. Amends s. 413.49, F.S., providing duties and responsibilities of the Division of Vocational Rehabilitation, TLFs, and TLF residents, to require TLFs to offer the following therapies, at a minimum: physical; occupational; speech; neuropsychology; independent living skills training; behavior analysis, for programs serving brain-injured persons; health education; and recreation. Additionally, TLFs are required to develop an initial treatment plan within three days after a person is admitted for residence, and within the first 30 days of residence, develop a comprehensive treatment plan and a discharge plan which are to be reviewed and updated no less frequently than quarterly. Clarifying language provides guidelines for the circumstances under which a TLF resident may be discharged. Residents are to be discharged to locations presenting the least restrictive environment while maintaining the individual's health, well-being, and safety.

Section 3. Amends s. 413.605, F.S., relating to the Advisory Council on Brain and Spinal Cord Injuries, to require the council to annually appoint a five-member committee and providing for the composition of the committee. The committee's primary function is to perform onsite investigations of TLFs identified by AHCA as being in possible violation of regulatory requirements. Committee members are granted the same rights of entry and inspection granted to AHCA. Committee members are required to recuse themselves from participating in any investigation that would create a conflict of interest under state law and the council must temporarily or permanently replace the member. The agency is required to adopt the committee's factual findings that result from such onsite investigations when it develops its administrative response regarding regulatory enforcement. The cost of the committee's onsite investigations is to be funded out of the Health Care Trust Fund. However, travel expenses for committee members must be reimbursed on a *per diem* basis in accordance with the requirements of s. 112.061, F.S., providing for *per diem* and travel expenses of public officers, employees, and authorized persons.

Section 4. Provides an October 1, 1998, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Section 24(a) of Article I of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some additional costs may be anticipated relative to compliance with the therapy services required under section 2 of the bill. However, such costs should result in negligible additional costs for TLFs since most facilities already offer several of these services.

C. Government Sector Impact:

The Agency for Health Care Administration projects an annual cost of \$15,000 for travel expenses associated with the investigative visits of the five-member committee appointed by the Advisory Council on Brain and Spinal Cord Injuries.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.