

Part 1: Explanation of ALF regulatory changes as an outcome of the Florida ALF workgroup - HB 1001 Bill

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An earlier version of the paper “The Ideal Assisted Living: What It Should Be and Why?” discussed the quality-of-life-oriented values that have guided the development of assisted living over the last 20 years. The main focus was to identify and describe the core values of assisted living, which include resident autonomy and choice, social engagement, privacy and dignity, and aging in place in the most homelike and least restrictive environment. The paper also incorporated many of the recommendations from the 2003 National Assisted Living Workgroup and the 2011 Assisted Living Workgroup in Florida (Phase I & II). Both reports were used to illustrate numerous ideas about what can be done to help ensure the well-being of the residents without imposing excessively burdensome or expensive new regulation on ALFs. This paper provides a brief summary of the Florida ALF workgroup recommendations mentioned in the previous paper and a discussion of the revised ALF bill HB 1001 that was recently passed by the Legislature in Florida.

The Ideal Assisted Living Model

As discussed in the previous paper, the notion of the “ideal” assisted living model is based on a continuing commitment to autonomy, privacy, and the capacity of assisted living to allow residents to age in place in an affordable setting. Nine guidelines were suggested that should be embedded in the regulatory framework: disclosure; admission and retention criteria and staffing levels; negotiated risk; dementia care; physical plant/environmental design; training and staff development; quality of life criteria; nurse delegation and medication management; and regulating small facilities.

## **Disclosure**

*Every potential resident and the family should be fully informed about the services the facility offers, how much they cost, and how costs are adjusted in response to changes in resident needs, aging-in-place policies, and physical environments.*

Based on the Florida AL Workgroup deliberations, there are three types of recommendations that relate to the disclosure guideline: consumer information, resident discharge, and home and community based care. In terms of consumer information, an electronic guide should be available including important information such as size of facility, inspection results, rates charged, and whether the facility accepts Medicaid waivers. Residents should have discharge protection that mandates reasons for relocation, and should be given thirty days notice with an administrative appeal hearing process, if requested. Each individual should know what choices are available in order to make the best decision for home and community based care.

## **Admission/Retention Criteria and Staffing Levels**

*In order to maximize consumer choice and the preference of many residents to “age in place” as long as possible, admission and retention criteria should be inclusive and flexible. Restrictive criteria would keep many frail individuals out of assisted living, which increases their chances of being forced into nursing homes. Staffing levels should be based on assessed resident needs and regulated accordingly.*

As recommended by the Florida AL Workgroup, the hospitals should be held accountable for discharge planning that matches the individual needs and desires to an appropriate setting that best integrates them into the community. In addition, if a person is being referred to an ALF, social workers and discharge planners should provide the

ALF with a completed AHCA 1823 form to ensure the appropriateness of the resident's admission. All ALF staffing levels should be examined to ensure that residents receive adequate care and services.

### **Negotiated Risk**

*Negotiated risk contracts, if clear, non-coercive conditions are met, should be permitted on an expansive basis in assisted living. The use of risk contracts may become an increasingly important vehicle for consumer choice and direction and aging in place. Special provisions will need to be made for those who are cognitively impaired.*

The Florida AL Workgroup suggests that there should be an increase in funding for the Centers for Independent Living. They can provide information and referrals, peer monitoring, independent living skills training, advocacy, and other services that are ideal for ALF residents and those who wish to live more independently. In terms of resident safety and rights, there should be legislation that encourages residents and families to establish independent groups that focus on improving conditions and care for residents without interference from staff.

### **Dementia Care**

*The industry should develop a set of model guidelines for dementia care, which could be used by states to develop regulatory standards designed to ensure an acceptable level of care for residents with dementia.*

The Florida AL Workgroup recommends legislative changes to s. 429, F.S. that are resident-care focused (Alzheimer's secured units, safekeeping of resident funds) and ensure that regulations are consistently enforced.

### **Physical Plant/Environmental Design**

*Physical plant and environmental design regulations should be designed to create as homelike a living environment as possible, provide privacy, and enhance autonomy.*

The Florida AL Workgroup promotes the development of and expands the use of alternative housing options for older adults who need housing supports/assisted care. Incentives should be created for placement of disabled residents in Adult Family Homes, which have the ability to provide individualized attention to resident needs in a home-like setting.

### **Training and Staff Development**

*The industry tendency to have employees play multiple roles is generally positive in that it can help dilute the stifling effects of hierarchy and helps maintain staff morale, creativity, and commitment. It also creates a greater need for cross training, both pre- and in-services training, especially for workers in facilities serving more physically and cognitively impaired residents. The training should be designed to focus on the values of assisted living in all phases of caregiving and interaction with residents.*

The Florida AL Workgroup has recommendations for ALF administrator qualifications, staff training, and continuing education. The standards for ALF administrators should be raised regarding level of education, experience through mentorship, and ability to be licensed. For staff, the number of CORE training curriculum hours should be expanded from 26 to 40 and should include minimum training hours in each area. In addition, the passing score for the CORE exam should be raised from 70 percent to 80 percent. There should also be additional orientation and in-service training for administrators and direct care staff based upon the types of residents served. The continuing education hours should be increased from 12 to 18 in a two-year period. The

staff should receive training for elopement and backer acts. Finally, there should be an increase in the mental health training for staff including an emphasis on aggression management and de-escalation techniques.

### **Quality of Life Criteria**

*Greater priority should be placed in the development and use of resident-oriented quality-of-life outcomes measures based on the fundamental values of assisted living—autonomy, privacy, dignity and the experience of a fuller life, however impaired one may be.*

The Florida AL Workgroup recommends the creation of rigorous initial ALF license requirements to prevent persons who are unprepared or uncommitted to providing quality care from becoming licensed. The focus should not be limited to physical health and safety, it must extend to other quality of life factors, including staff who are kind and focused on the individual needs of each resident. There should be an increase in the amount and quality of activities available to ALF residents. The activities should be meaningful and allow the residents the opportunity for productive learning, life skills, and job experience. Finally, there should be more case management service and advocacy for residents that could contribute more to the resident's quality of care and life.

### **Nursing Delegation and Medication Management**

*Properly supervised by nurses, non-nursing staff should be allowed to assist in administering medications.*

The Florida AL Workgroup recommends that an ALF prohibits any binding arbitration agreement language in resident contracts. These contract clauses limit a resident's right to access due process whenever care disputes arise.

## **Regulating Small Facilities**

*Policies, financing, and regulatory strategies should reflect our awareness of and support for the different forms of assisted living and the need to provide the consumers with as many options as possible to choose from, as long as they are consistent with the values of the assisted living philosophy and basic safety requirements. This means that small residences should not be held to precisely the same standards, which they are not as likely to meet as the larger, purpose-built, new paradigm properties.*

The Florida AL Workgroup suggests that ALFs are provided with more financial support for care and services including increased per diem rates and more funded slots/beds. They should evaluate the actual cost of ALF care and apply for access to federal funds through Medicaid. Utilize the pay for performance methodology. Finally, make ALF funding readily available similar to how institutional care is funded through the long-term care system (Medicaid reimbursement for nursing homes).

In sum, the Florida ALF Workgroup made recommendations designed to improve administrative capacities, expand the quality of staff training, increase the frequency and rigor of surveys and inspections, better develop the coordination and information sharing among all ALF agencies, and strengthen the voices of residents. Shortly after the final report was submitted in 2012, the DOEA, along with AHCA, DCF, and DOH collaborated to draft and amend mutually acceptable rules addressing the safety and quality of care provided to ALF residents. The following section describes the recent changes in Florida regarding the ALF regulations and compares it to the advice given by the Florida ALF workgroup in 2011.

## Assisted Living Bill HB 1001

The ALF Bill HB 1001 is the first bill in four years to be passed by the Legislature (Senate 38-0 and House 114-0). The purpose of the bill is to improve the quality of ALFs by adding regulatory provisions. In general, the bill focuses on providing new tools for monitoring and disciplining homes that do not measure up. On June 10, 2015 Gov. Rick Scott signed the ALF reform legislation into law. It became effective on July 1, 2015.

### **HB 1001 Changes**

The purpose of the amendments is to implement segments of the recommendations from the Governor's Assisted Living Facility Workgroup.

#### *Limited Mental Health License*

The first amendment (s. 394.4574, F.S.) clarifies who is responsible for assuring that mental health residents in an ALF receive necessary services. Specifically, Medicaid managed care plans are responsible for enrolled state-supported mental health residents, and managing entities under contract with the DCF are responsible for residents who are not enrolled with a Medicaid health plan. A mental health community living support plan must be submitted within 30 days of admission and updated if there is a significant change in the residents' behavioral health status. The case manager is responsible for keeping record of all in-person communication with the resident for 2 years, monitoring the living support plan, and reporting any signs of neglect or potential harm to the resident.

The second amendment (s. 429.075, F.S.) requires facilities with at least one state-supported mental health residents to obtain a LMH license. Further, it allows the

LMH facility up to 72 hours from a resident's admission to receive a copy of the community living support plan as long as it provides evidence of a written request for the care plan.

#### *Long-Term Care Ombudsman Program*

The amendment for Administrative Assessment (s. 400.0074, F.S.) requires a comprehensive assessment from the Ombudsman and an exit consultation with the administrator regarding concerns and recommendations for improvement.

The Resident Grievance amendment (s. 400.0078, F.S.) requires ALFs to advise the resident, or representative, upon admission that exercising residents' rights or submitting a grievance against the ALF cannot lead to retaliatory action against them.

#### *Extended Congregate Care & Limited Nursing Service License*

The amendment for ECC and LNS (s. 429.07, F.S.) adds provisions to improve regulation of these licensed facilities. Specifically, it allows a temporary ECC license for ALFs that have been licensed less than 2 years, and specifies when AHCA may deny or revoke a facility's license. The temporary license is valid for 6 months and, following that time, if the ALF demonstrates compliance with the requirements, AHCA must grant the facility an ECC license. Monitoring visits may be reduced for facilities with ECC licenses from quarterly to twice a year, and for facilities with LNS licenses from twice a year to once a year.

#### *Violations and Penalties*

There is an amendment for additional criteria under which AHCA must deny or revoke a facility's license (s. 429.14, F.S.) including 2 or more class I violations within two years, or if the facility is cited for 2 or more class I violations arising from unrelated

circumstances during the same survey or investigation. In addition, AHCA must impose an immediate suspension on a facility that does not allow AHCA enter to the facility, refuses a regulatory inspection/interviews, or restricts access to residents' records. Lastly, a facility is exempt from the 45-day notice requirement if AHCA requires relocation of the facilities residents.

An amendment to s. 429.19, F.S. requires a facility to pay a \$500 fine to AHCA if it does not comply with the background screening requirements of s. 408.809, F.S.

#### *Assistance with Self-Administration of Medication*

The amendment for s. 429.256, F.S. authorizes ALF staff who received the required 4-6 hours of training to perform specific additional services to assist with self-administration of medication. The services include bringing a prefilled insulin syringe to the resident, and using a nebulizer and glucometer. The staff can also assist with anti-embolism stockings, oxygen cannula, a continuous positive airway pressure device, colostomy bags, and measuring vital signs.

#### *Personal Property of Residents*

The bill amends s. 429.27(3), F.S., to increase the amount of cash that a facility may provide a resident from \$200 to \$500.

#### *Resident Bill of Rights*

The amendment for residents bill of rights (s. 429.28, F.S.) requires that the facility ensure each resident have access to a telephone and provides the telephone number for Disability Rights Florida. Also, a fine of \$2,500 will be imposed if a facility does not show good cause for terminating the residency of an individual.

#### *Right of Entry and Inspection*

The bill amends s. 429.34, F.S., to add Medicaid Fraud investigators and state or local fire marshals to the list of people who must report abuse or neglect to the Department of Children and Families' central abuse hotline. In addition, AHCA is required to conduct an additional inspection within 6 months of a facility cited for certain serious violations (one or more class I violations, three or more class II violations arising from separate surveys within a 60-day period, or three or more unrelated class II violations cited during one survey).

#### *Staff and Training Requirements*

The first amendment (s. 429.41, F.S.) clarifies that ALF staffing requirements apply only to residents who receive personal LNS or ECC services in a continuing care facility or retirement community. A list of the residents' names and units must be available for surveyors upon request.

The second amendment (s. 429.52, F.S.) requires new facility staff that have not previously completed core training to attend a 2-hour pre-service orientation before interacting with residents. The topics covered in the orientation must teach the staff how to provide responsible care and respond to the needs of the residents. The staff member and the ALF administrator must sign a statement of completion of the orientation.

#### *Consumer Information Resources*

The bill created s. 429.55, F.S., which requires AHCA to add certain content to its website by November 1, 2015, to assist consumers in selecting an ALF. The website must include the following information: facility name and address, owner and operators name, number and type of licensed beds, types of licenses and expiration dates, total number of clients that the facility is licensed to serve and the most recent occupancy levels, number

of private and semi-private rooms, bed-hold policy, religious affiliation, languages spoken by staff, availability of nurses, accepted payment methods, identification if facility is operating under bankruptcy protection, all programs available, special care units offered, part of a retirement community that offers other services, links to State LTC Ombudsman Program website and the program's statewide toll-free telephone number, links to the providers websites, all relevant information collected by AHCA, a list of survey and violation information committed in the previous 60 months along with sanctions imposed, and links to inspection reports on file with AHCA.

In sum, the HB 1001 bill requires more employee training and background screening, doubles fines for ALFs with recurring deficiencies, provides detailed regulations for shutting down repeat violators, requires a special license for an ALF that provides mental health services, establishes fines when residents complain about treatment, allows staff to assist with simple medical tasks, and decreases the frequency of inspections when homes demonstrate a good track record. The following section describes the specific recommendations that were taken from the Florida ALF workgroup and applied to the updated bill.

### **Recommendations from the Florida ALF Workgroup used in the HB 1001 Bill**

As discussed in detail in the previous paper, the Assisted Living Workgroup (2011) composed a series of recommendations based on public meetings and member input. The Phase I recommendations included issues that the workgroup felt could be addressed immediately. The workgroup also formulated issues identified separately as Phase II that were intended to allow an additional six to twelve months of evaluation and dialogue prior to being considered as formal recommendations. This section describes the

specific recommendations from the Florida ALF workgroup Phase I and Phase II (including the issues identified prior to the final draft of recommendations) that were taken into consideration in the HB 1001 Bill.

#### *Limited Mental Health License*

Under the Mental Health section in Phase I of the ALF workgroup, the committee only made one recommendation and it was included in the bill amendments. An ALF should be required to have a LMH license if they serve one or more mental health residents. The current definition requires an ALF that serves three or more mentally ill or disabled residents to obtain a LMH license.

In Phase II, multiple recommendations were included in the bill; however, there were many additional suggestions not taken into consideration. The ones that were included are as follows: to increase in the monitoring of case managers, require DCF/Managing Entity to review a sample of the community living support plans to ensure they embody adequate mental health supports as well as activities and services that represent the preferences of the consumers, and require DCF/Managing Entity to confirm that each mental health resident is assigned a case manager and that in-person contact has been documented.

#### *Long-Term Care Ombudsman Program*

Of the 6 recommendations made in Phase I of the LTC Ombudsman program section, only one was included in the bill. The recommendation had multiple parts. Ombudsman oversight should focus on resident advocacy. Communication with each resident should be monitored to elicit information on ways the facility can improve or

excel. Train members on regulatory requirements of ALFs so they can recognize obvious deficiencies and make complaints to regulators.

There was only one recommendation made in Phase II and it was not included in the bill.

#### *Extended Congregate Care & Limited Nursing Service License*

Three recommendations were made for licensure in Phase I and only one was included in the bill. Utilize the temporary license permitted in s. 429, F.S., for initial licensure, and then conduct the more complete survey within a specified time after the facility has opened.

Under the Enforcement section in Phase II there were seven recommendations, and only one was used in the bill. Give AHCA more power if needed to place sanctions, fines, moratoriums, as well as deny, revoke or suspend licenses for poorly performing facilities.

#### *Violations and Penalties*

Of the five recommendations made in the Enforcement section of Phase I, only one was included in the bill. Require a mandatory moratorium for serious violations (Class I or II) when an ALF fails to correct all outstanding deficiencies and reach full compliance at the time of a follow up visit or by the mandatory correction date.

Under the licensure section of Phase I, a second recommendation was used in the bill. There were multiple parts to the recommendation. Create thorough preliminary ALF license requirements to prevent persons who are unprepared to providing quality care from becoming licensed. Consider education and training of the administrator,

background checks on the owner and anticipated administrator regarding previous facility ownership and operations, and suitability of the facility.

There were no recommendations used in the bill from Phase II.

#### *Assistance with Self-Administration of Medication*

Under the Staff/Training section in Phase I, there was a subsection called continuing education. A part of one of the eleven recommendations was included in the bill. Create additional orientation and in-service training for administrators and direct care staff based upon the types of residents served.

From the Residents Safety and Rights section of Phase II, one was used for this part of the bill. An ALF should prohibit any binding arbitration agreement language in resident contracts. These contract clauses limit a resident's right to access due process whenever care disputes arise.

#### *Personal Property of Residents*

There were no recommendations used in the bill from Phase I. One of the recommendations used from the Residents Safety and Rights section in Phase II was included in the bill for this issue. Amend Chapter 429, F.S., to include proposed language that will increase the provision an ALF may provide for the safekeeping of a resident's personal property and funds from \$200 to \$500, which is more in line with today's economy.

#### *Resident Bill of Rights*

There were no recommendations used in the bill from Phase I. Another recommendation from the Residents Safety and Rights section of Phase II was included in the bill. Offer ALF residents discharge protection that mandates detailed reasons for

relocation, and provide ample notice to residents along with an administrative appeal hearing process.

### *Right of Entry and Inspection*

Under the Multiple Regulators section of Phase I, one of the recommendations was used to address this issue. AHCA staff and all other agencies in connection with ALF's are required to report knowledge or suspicion of any resident abuse, neglect or exploitation to the central DCF abuse hotline.

Of the nine recommendations made in the Survey and Inspection section of Phase I, only one was included in the bill. Inspect facilities with a problematic regulatory history more frequently than once every two years. Require more frequent and extensive inspections of those facilities that have recurring deficiencies.

### *Staff and Training Requirements*

Under the Staff/Training section in Phase I, there was a subsection called continuing education. Two of the eleven recommendations were included in the bill. There were multiple parts to the first recommendation, however, only a part of it was used. Allow flexible training to meet individual needs of direct care/frontline staff, and consider varying skill levels of staff. The second recommendation requires staff to pass a short exam after initial and in-service training to document receipt and comprehension of the training. From this recommendation, the staff is not required to pass an exam, only signed documentation that the staff did the training.

Of the two recommendations from the ALF information and reporting section of Phase I, one was included in the bill. Require maintenance of a resident roster available upon request including name, Medicaid ID, guardian or representative name and contact

information, source of resident admission and care manager name and contact information.

There were no recommendations used in the bill from Phase II.

### *Consumer Information Resources*

Under the Consumer Information section in Phase I, the committee only made one recommendation and it was included in the bill. Merge and expand existing customer resources. Currently the AHCA and DOEA have websites that contain different information regarding how to evaluate an ALF, questions to ask, and a way to search for facilities. AHCA provides more regulatory information such as inspection reports, sanctions, owner and administrator names; while DOEA allows the ALF to update information about funding sources, available services, and other accommodations.

Both recommendations from Phase II were used in the bill. The first was to develop, in an electronic format, an ALF guide for the consumer, and consider the inclusion of a rating system and watch list. This will assist people by providing important facts such as deficiencies found at inspection, the number of beds, the languages spoken, inspection results, rates charged for a standard set of services and whether the facility accepts Medicaid waivers.

Second, develop an independent Medicaid consumer choice counseling hotline for information on making informed decisions about appropriate ALF placement. It should be a single point of contact and operated by a third party to eliminate the possibility of referrals to facilities motivated for reasons other than resident needs.

Overall, the ALF workgroup made over one hundred recommendations between both phases, and only around a quarter of them were included in the amendments for the

bill. Some of the sections completely left out of the bill include the following: ALF administrator qualifications, core and limited mental health training, home and community based care, and funding. Even though the bill is far from perfect, the changes represent a coming together of legislators in support of increased oversight and protections of resident rights in the state's ALFs as recommended by the workgroup, and will help protect the lives of countless vulnerable citizens. However, the excluded topics should be considered for future amendments.