

CHAPTER 98-12

Committee Substitute for Senate Bill No. 188

An act relating to transitional living facilities for brain-injured and spinal-cord-injured persons; amending s. 400.805, F.S.; providing for the regulation of transitional living facilities; providing for right of entry and inspection; providing for injunctive proceedings; providing for a moratorium on admissions; amending s. 413.49, F.S.; providing duties of transitional living facilities to provide certain therapies and plans; amending s. 413.605, F.S.; providing additional duties of the advisory council on brain and spinal cord injuries; providing an effective date.

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

Section 1. Present subsection (7) of section 400.805, Florida Statutes, is redesignated as subsection (10) and new subsections (7), (8), and (9) are added to that section to read:

400.805 Transitional living facilities.—

(7) Any designated officer or employee of the agency, of the state or of the local fire marshal, may enter unannounced upon and into the premises of any facility licensed under this section in order to determine the state of compliance with this section and the rules or standards in force under this section. The right of entry and inspection also extends to any premises that the agency has reason to believe are being operated or maintained as a facility without a license; but such an entry or inspection may not be made without the permission of the owner or person in charge of the facility unless a warrant that authorizes the entry is first obtained from the circuit court. The warrant requirement extends only to a facility that the agency has reason to believe is being operated or maintained as a facility without a license. An application for a license or renewal thereof which is made under this section constitutes permission for, and acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. A current valid license constitutes unconditional permission for, and acquiescence in, any entry or inspection of the premises by authorized personnel. The agency retains the right of entry and inspection of facilities that have had a license revoked or suspended within the previous 24 months, to ensure that the facility is not operating unlawfully. However, before the facility is entered, a statement of probable cause must be filed with the director of the agency, who must approve or disapprove the action within 48 hours. Probable cause includes, but is not limited to, evidence that the facility holds itself out to the public as a provider of personal assistance services, or the receipt by the advisory council on brain and spinal cord injuries of a complaint about the facility.

(8) The agency may institute injunctive proceedings in a court of competent jurisdiction for temporary or permanent relief to:

(a) Enforce this section or any minimum standard, rule, or order issued pursuant thereto if the agency's effort to correct a violation through administrative fines has failed or when the violation materially affects the health, safety, or welfare of residents; or

(b) Terminate the operation of a facility if a violation of this section or of any standard or rule adopted pursuant thereto exists which materially affects the health, safety, or welfare of residents.

The Legislature recognizes that, in some instances, action is necessary to protect residents of facilities from immediately life-threatening situations. If it appears by competent evidence or a sworn, substantiated affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, shall enjoin operation of the facility.

(9) The agency may impose an immediate moratorium on admissions to a facility when the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility. If a facility's license is denied, revoked, or suspended, the facility may be subject to the immediate imposition of a moratorium on admissions to run concurrently with licensure denial, revocation, or suspension.

Section 2. Section 413.49, Florida Statutes, is amended to read:

413.49 Duties and responsibilities of the division, of transitional living facilities, and of residents.—Consistent with the mandate of s. 413.46, the division shall develop and administer a multilevel treatment program for persons who have 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 a person who has a brain or spinal cord injury, the division 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 division shall refer persons who have brain or spinal cord injuries to other state agencies to assure that rehabilitative services, if desired, are obtained by that person.

(3) The division, in consultation with emergency medical service, shall develop standards for an emergency medical evacuation system that will ensure that all persons who sustain traumatic brain or spinal cord injuries are transported to a division-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 division shall develop standards for designation of rehabilitation centers to provide rehabilitation services for persons who have brain or spinal cord injuries.

(5) The division 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 division shall develop standards for designation of transitional living facilities to provide individuals 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 division, shall develop rules for the licensure of transitional living facilities for persons who have brain or spinal cord injuries.

(b) The goal of a transitional living program for persons who have brain or spinal cord injuries is to assist each person 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 a person who has a brain or spinal cord injury shall provide to such person, in a residential setting, a ~~time-limited~~, goal-oriented treatment program designed to improve the person'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 persons, 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 3. Subsection (4) of section 413.605, Florida Statutes, is amended to read:

413.605 Advisory council on brain and spinal cord injuries.—

(4) The council shall:

(a) Provide advice and expertise to the division in the preparation, implementation, and periodic review of the brain and spinal cord injury program as referenced in s. 413.49.

(b) Annually appoint a five-member committee composed of one person who has a brain injury or has a family member with a brain injury, one person 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 persons 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(7) 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. 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 4. This act shall take effect October 1, 1998.

Became a law without the Governor's approval April 21, 1998.

Filed in Office Secretary of State April 20, 1998.