

**SUMMARY OF AARP'S REMARKS
DELIVERED 8/8/11 to the
ASSISTED LIVING WORKGROUP**

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●Initial review of statutory authorities indicates many of the provisions re: regulation of ALFs should be sufficient. For example, see the intent statement in s. 429.01, F. S. That provides a good statement of what the ALF industry and services should be about. However, some of the egregious matters recently chronicled in the press raise the question of whether there is the WILL in Florida to forcefully use the authorities for consumer protection. By analogy, it is as much or more the delivery instead of the package that is faulty. Florida should strengthen education, training and credentials for ALF owners, managers and controlling interests. Consumers must have good and transparent information from which they can make sound decisions re: long-term care. Florida consumers also need more ALF ombudmen and training for those volunteers.

●Some disturbing trends are evident:

-The Legislature recently has focused on extension of sovereign immunity to long-term care industries and on tort reform favorable to those industries. This legislative focus has threatened consumer protections and remedies. In light of the exposes in the ALF industry, in light of the state's need to communicate a positive image as a place where seniors can get needed long-term care services, and in order to prevent injuries and other harms to consumers, the Legislature should turn its attention to enhancement of consumer protections in ALFs.

-The ALF industry should be riding a wave of increasing demand due to the aging of "baby boomers." However, with that increasing demand and with escalating costs for nursing home care, there is concern that ALFs are and will house residents for whom their services are inappropriate. Inappropriate assessments are ticking time-bombs for ALF resident welfare. The recent Medicaid reform espouses greater use of home-and-community-based services, and the state's move to capitation will give managed care organizations a built-in incentive to use non-NH settings. AARP supports greater use of HCBS, but only if consumers are getting the care they need in those facilities. ALFs should reject resident applicants (private pay or Medicaid recipients) who are not appropriate for the care ALFs offer and they should take action to place residents in other settings as soon as alternative need becomes apparent. The assessments are done by the ALFs. Perhaps assessments should be done or reviewed by persons independent of the admitting facilities, and assessments should be updated regularly and in response to changes in residents' mental/physical conditions and other circumstances.

●Some suggestions for the Workgroup to consider:

-Ombudsmen are not, and should not be, regulators. Their independence is critical to success of the program. They are invaluable eyes and ears for consumers of ALF services. Their role should not be diminished in any way. However, ombudsmen could benefit from additional and recurring training. AARP suggests, too, that the process set forth in s. 400.0075 (complaint notification and resolution procedures) could

be speedier, perhaps by eliminating some of the steps. The ombudsmen should be used to identify and expedite resolution of grievances, and they should be a part of an early-warning system that “prevents” grievous harm to consumers.

-There should be a new focus on “early intervention” for problem ALFs. “Process” and “benign oversight” as excuses for inaction too often only amount to complicity in the ALFs’ problems. Early attention to ALF problems doesn’t have to be intrusive and/or punitive in nature. It could be focused on improving ALF performance.

-The regulatory agencies have ample authority under Ch. 120 to take action (including emergency suspensions of and restrictions on licensees) in response to complaints. However, the disciplinary process most often is based on actions/incidents that have occurred. The Legislature should consider how it can give adequate authority and tools to early interventionists. For example, if an ombudsman’s observations lead to heightened concern over cleanliness, unpalatable food, professionalism of staff, or adequacy of staffing levels, those observations need to be communicated immediately and there should be rapid-response on-site inspections or evaluations of the ALF.

-The Legislature should consider establishing locally/regionally based rapid-response teams (something akin to the basis for SWAT teams when there is risk of serious and imminent harm to persons). Those teams could include regulators, local legal counsel (hired or volunteer), peer ALFs [those not in competition with an ALF being provided assistance], representatives of FALA and other persons or organizations who can offer ALFs expertise and assistance directed to correcting or reducing the particular threats of harm or injury to residents. Perhaps the Aging Resource Centers (ARC) could play a role in coordinating/recruiting/training participants for these teams. The ARCs should be the best source about all alternatives available for long-term care. The ARCs could be especially valuable when there is a need to quickly identify alternatives when an ALF resident is at risk (by actions of others or by their own actions). An ounce of prevention is worth a pound of cure. The industry would benefit from assisting wayward ALFs before adverse incidents mar the reputation of the industry.

-Punitive actions for egregious preventable harm to ALF residents should be certain and strong. The Workgroup should review Part II of Ch. 501, Florida’s Deceptive and Unfair Trade Practices statute, to see if any portion of that could be useful (even with amendment) to punish and deter the types of incidents chronicled in the Miami Herald. Section 501.202(2), F. S., establishes that Part II is: “To protect the consuming public and legitimate business enterprises from those who engage in ...unconscionable, deceptive or unfair acts or practices in the conduct of any trade or commerce.” Also, see section 501.203(8), F. S. . Any ALF which holds itself out to the public and which commits such offenses would be deceiving the public, because nothing about those incidents could be described as “assistance” or even “living” for harmed residents. In short, the title of their service would be “misleading.” Section 501.2077, F. S. already relates to violations involving senior citizens or handicapped persons. However, to be remotely applicable to the ALF circumstances at hand, s. 501.212(3), F. S., “Application,” would need to be amended. That subsection provides that Part II does **not** apply to a claim for personal injury or death. The exclusion would need to be eliminated. This would be a potential way to remove bad ALF offenders from the industry—see s. 501.207 (remedies of enforcing authority). That section provides that a remedy (among others) is “to order any defendant to divest herself or himself of any interest in any

enterprise, including real estate.” That might help prevent reappearance of a wayward ALF owner into the industry.

-The Workgroup should look at ways to go after the personal assets of officers and directors of corporations that own or operate ALFs and which engage in egregious/preventable harm to residents. Those types of harms arguably can not be within the protections afforded by the corporate veil.

-The Workgroup should look at ways to educate/encourage prosecuting authorities to seek felony convictions under statutes applicable to abuse of the elderly and disabled or other vulnerable adults (see, e.g., s. 784.08, F. S.).

-The Workgroup should look at increasing the standards/training/education required for owners/operators/controlling interests/staff of ALFs and it should look at increasing the staffing levels in ALFs.

-The Workgroup should prohibit ALFs from using pre-dispute arbitration agreements. In many cases, those contractual agreements are entered into when consumers are at a bargaining disadvantage (e.g., arising upon imminent discharge from a hospital).

-The Workgroup should consider recommending that ss. 429.11(2) and 429.275(3), F. S, be amended to establish a minimum amount of liability insurance to be carried by ALFs/owners upon ALF licensure application and for all periods of operation. The minimum amount should be sufficient to cover egregious harm or injury to residents and to cover attorneys’ fees.