

ALF WORKGROUP OCTOBER 2012

Assisted Living Facility Work Group

REMAINING RECOMMENDATIONS

RESIDENT SAFETY & RIGHTS	STATUS
<p>1. Increase amount and quality of activities made available to ALF residents. Require ALFs to seek out individualized activities and services independent of the facility that are chosen by each resident and expedite participation in these activities and services. Activities must be meaningful activities and allow residents the opportunity for productive learning, life skills, and job experience. This may include meaningful part-time work or volunteer activities, depending on the preferences of the resident. Some structured and meaningful activities can be provided in the ALF, but those integrated in the community with non-disabled persons should be encouraged.</p> <p><i>Originally Recommendation 1 under "Resident Safety and Rights" for Phase II</i></p>	<p>Tabled Item</p> <p>Phase I Recommendation: Assist people who need to know what choices are available and what supports are available to make the choice successful. Each person should have access to the most integrated setting that allows interaction with non-disabled persons to the fullest extent possible so they can live, work and receive services in the greater community. Opportunities must be available to receive services at times, frequencies, and with persons of an individual's choosing.</p>
<p>2. Prohibit ALF related staff from serving as Representative Payees.</p> <p><i>Originally Recommendation 3 under "Resident Safety and Rights" for Phase II</i></p>	<p>Unaddressed Item</p> <p>Current Law: 429.27(2) Any facility whose owner, administrator, or staff, or representative thereof, serves as representative payee for any resident of the facility shall file a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to residents, or expendable for their account, which are received by a facility. Any facility whose owner, administrator, or staff, or a representative thereof, is granted power of attorney for any resident of the facility shall file a surety bond with the agency for each resident for whom such power of attorney is granted. The surety bond shall be in an</p>

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	amount equal to twice the average monthly income of the resident, plus the value of any resident's property under the control of the attorney in fact.
<p>3. Prohibit any binding arbitration agreement language in resident contracts.</p> <p><i>Originally Recommendation 4 under "Resident Safety and Rights" for Phase II</i></p>	<p>Unaddressed Item</p> <p><u>AHCA</u> There are no provisions in ALF statutes that directly prohibit arbitration agreements.</p>
<p>4. Enact legislation that encourages residents and families to establish independent groups within each ALF focused on improving conditions and care for residents without interference from staff.</p> <p><i>Originally Recommendation 5 under "Resident Safety and Rights" for Phase II</i></p>	<p>Unaddressed Item</p> <p>Phase I Recommendation: Create an independent statewide ALF Council made up of residents, ombudsmen, and families (at least 2/3 of the membership), in addition to one member from each respective trade association, to meet periodically.</p>
<p>5. Clarify in statute that the ALF administrator is responsible for ensuring that the resident receives adequate care and services.</p> <p><i>Originally Recommendation 7 under "Resident Safety and Rights" for Phase II</i></p>	<p>Tabled Item</p> <p>Current Law: 429.26 (1), F.S.—The owner or administrator of a facility is responsible for determining the appropriateness of admission of an individual to the facility and for determining the continued appropriateness of residence of an individual in the facility.</p> <p>429.02(2), F.S. "Administrator"— means an individual at least 21 years of age who is responsible for the operation and maintenance of an assisted living facility.</p> <p>58A-5.019 Staffing Standards. (1) ADMINISTRATORS. Every facility shall be under the supervision of an administrator who is responsible for the operation and maintenance of the facility including the management of all staff and the provision of adequate care to all residents as required by Part I of Chapter 429, F.S., and this rule chapter.</p>

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<p>6. Establish a 60 days probation period beginning the first day of admission whereby the resident be immediately relocated if it is determined by either party that alternate placement may be more appropriate.</p>	<p>Member Recommendation (R. Solano)</p>
<p>7. Enact public record exemption for AHCA complaints. Complaints filed with AHCA are not protected from disclosure. Consider adding confidentiality to AHCA complaints equivalent to that of the Ombudsman.</p> <p><i>Originally Recommendation 8 under "Resident Safety and Rights" for Phase II</i></p>	<p>Unaddressed Item</p>
<p>INFORMATION & REPORTING</p>	<p>STATUS</p>
<p>8. If ALFs are required to report to the Agency occupancy rates and resident acuity, they need to have an online reporting system that requires no more than 30 minutes per quarter for data entry. ALFs will also need to be able to pull up congregate occupancy rates and resident acuity compilation data for their area in order to compare their facility demographics to the average.</p> <p><i>Originally Recommendation 1 under "ALF Information and Reporting" for Phase II</i></p>	<p>Tabled Item</p> <p>Phase I Recommendations: Require minimal online data submission to the Agency on a quarterly basis. ALFs currently submit data to the agency in a variety of online applications including adverse incident reporting, monthly liability claim reporting and participation in the Emergency Status System (over 85% of ALF have online accounts).</p> <p>ALF data submission to the Agency should include: Number of residents (census) Number of residents requiring specialty license services: Limited Nursing Services (LNS), Limited Mental Health (LMH), Extended Congregate Care (ECC) Number of residents on Optional State Supplementation (OSS) Number of Medicaid recipients whose care is funded through Medicaid by type of waiver</p> <p>Phase I Recommendations: 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.</p>

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<p>9. Require AHCA to investigate the types of technology currently available for cost effective methods of collecting, reporting, and analyzing client information and allow facilities to select the type of technology most appropriate to each individual facility. Easy to use swipe / scan handheld devices may be available. The fiscal impact of equipment, software, training, and staff time must be considered.</p> <p><i>Originally Recommendation 2 under "ALF Information and Reporting" for Phase II</i></p>	<p>Tabled Item</p> <p>Phase I Recommendations: Require minimal online data submission to the Agency on a quarterly basis. ALFs currently submit data to the agency in a variety of online applications including adverse incident reporting, monthly liability claim reporting and participation in the Emergency Status System (over 85% of ALF have online accounts).</p> <p>ALF data submission to the Agency should include: Number of residents (census) Number of residents requiring specialty license services: Limited Nursing Services (LNS), Limited Mental Health (LMH), Extended Congregate Care (ECC) Number of residents on Optional State Supplementation (OSS) Number of Medicaid recipients whose care is funded through Medicaid by type of waiver</p> <p>Phase I Recommendations: 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.</p>
<p>10. Require all ALF staff to collect and identify client information that would indicate a change of condition and notify the resident's case manager to enable early intervention and prevent escalation of symptoms that might result in a transfer, discharge, Baker Act, police involvement, injury to staff or resident, or other adverse event. Electronic collection and sharing of this information will improve timely response.</p> <p><i>Originally Recommendation 3 under "ALF Information and Reporting" for Phase II</i></p>	<p>Tabled Item</p> <p>Phase I Recommendations: Require minimal online data submission to the Agency on a quarterly basis. ALFs currently submit data to the agency in a variety of online applications including adverse incident reporting, monthly liability claim reporting and participation in the Emergency Status System (over 85% of ALF have online accounts).</p> <p>ALF data submission to the Agency should include: Number of residents (census) Number of residents requiring specialty license services: Limited Nursing Services (LNS), Limited Mental Health (LMH), Extended Congregate Care (ECC) Number of residents on Optional State Supplementation (OSS) Number of Medicaid recipients whose care is funded through Medicaid by type of waiver</p> <p>Phase I Recommendations: 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.</p>

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<p>11. Consider a document vault to allow off-site compliance review and share information between regulatory agencies.</p> <p><i>Originally Recommendation 10 under "Multiple Regulators" for Phase II</i></p>	<p>Tabled Item</p> <p>Phase I Recommendation: Consolidate and expand existing consumer resources. Currently Florida ALF information is available through the AHCA FloridaHealthFinder.gov website as well as the DOEA Affordable Assisted Living website (http://elderaffairs.state.fl.us/faal/consumer/facilityselect.html). Both sites contain information regarding how to evaluate an ALF, questions to ask and a resource to search for facilities (DOEA links to http://www.floridahousingsearch.org/). Each facility search contains unique information: AHCA www.FloridaHealthFinder.gov 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.</p> <p>Phase I Recommendation: Improve ability to share information and data efficiently between the Long Term Care Ombudsman Program, DCF Adult Protective Services and AHCA by enabling integration between Agency for Health Care Administration's licensure data and the provider data which is used as an identifier in abuse reports and the Ombudsman Program. This integration would allow for more immediate identification of unlicensed facilities and would improve accuracy of reports particular to individual facilities.</p> <p>Proposed in 2012 Legislation</p>
<p>12. Require AHCA to examine the "Dashboard" technology used by DCF in measuring the outcomes of Community Based Care agencies serving dependent children. Some aspects of this oversight should be applicable to long-term care settings.</p> <p><i>Originally Recommendation 4 under "ALF Information and Reporting" for Phase II</i></p>	<p>Tabled Item</p> <p>DCF The Department currently has an external dashboard that is available to the public.</p>

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MULTIPLE REGULATORS, LICENSURE, & ENFORCEMENT	STATUS
<p>13. Authorize use of DCF Adult Protective Services finding and investigations in employment matters. s. 415.107(8), F.S., states that "...information in the Central Abuse Hotline may not be used for employment screening." The current statutory construct allows for the verified perpetrators of abuse, neglect, or financial exploitation to continue working with vulnerable populations as long as none of those cases subsequently result in prosecution and conviction (under a disqualifying criminal offense). Allowing ALFs (and other providers) to use the information from the abuse registry to screen out such employees during the hiring process would necessitate a change in this law. Such a legislative change would require that DCF offer due process hearings for perpetrators prior to the closure of all abuse investigations with verified indicators.</p> <p><i>Originally Recommendation 7 under "Multiple Regulators" for Phase II</i></p>	<p>Tabled Item</p> <p><u>DCF</u> Comments on attached document.</p>
<p>14. Modification of existing administrative rules should also be considered so that any licensee, direct service provider, volunteer, or any other person working in a residential facility who is an alleged named perpetrator in an active protective investigation of abuse, neglect, or exploitation of a vulnerable adult under Chapter 415, F.S., or abuse, abandonment, or neglect of a child under part II of Chapter 39, F.S., are prohibited from</p>	<p>Tabled Item</p> <p><u>DCF</u> Comments on attached document.</p>

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<p>working directly with residents or being alone with residents until the investigation is closed. The only exception to this prohibition would be if the alleged perpetrator is under the constant visual supervision of other persons working in the facility who are not also alleged named perpetrators in the same investigation. This provision would only be applicable in situations where the licensee has been made aware of the investigation.</p> <p><i>Originally Recommendation 8 under "Multiple Regulators" for Phase II</i></p>	
<p>15. As an integral component of an "early warning" system to identify an ALF that presents a risk of harm, abuse or neglect to an ALF resident, AHCA shall conduct an on-site inspection and, if warranted, an investigation of the specified ALF without delay when an ombudsman reports that such harm, abuse or neglect may be imminent. AHCA shall use all authority to address or redress the reported situation or to prevent any harm, abuse or neglect to an ALF resident or to prevent harm to the ALF facility. AHCA shall work with DOEA to address reports initiated by ombudsman which are subsequently determined to be unsubstantiated.</p>	<p>Member Recommendation (J. McRay)</p>
<p>16. Revocation or denial of renewal license should be mandatory for certain violations including resident death at a facility because of intentional or negligent conduct on the part of the facility. Consider the degree of culpability.</p>	<p>Tabled Item</p> <p>Phase I Recommendation: 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.</p>

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*Originally Recommendation 6 under
"Enforcement" for Phase II*

Black's Law Dictionary

The workgroup expressed concerns about the various degrees of proof based on negligence and the threshold needed in to warrant the Agency action. Below are several alternatives to the use a negligent standard.

Purposeful Intent

A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.

Knowing Intent

A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

Reckless Intent

A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist.

Gross Negligence

A person act with gross negligence by acting, or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences so far as other persons may be affected.

Negligent

A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that such circumstances may exist.

Proposed in 2012 Legislation

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<p>17. Retain multiple visitors in non-compliant facilities.</p> <p><i>Originally Recommendation 11 under "Multiple Regulators" for Phase II</i></p>	<p>AHCA Continuing to retain multiple regulators in ALFs with non-compliant history may be obtained by combining this recommendation with other recommendations, which require State Agencies and Departments to collaborate and coordinate.</p>
<p>18. Revise regulations to be appropriate for specific persons served in an ALF including persons with serious mental illness and those serving geriatric or medical needs.</p> <p><i>Originally Recommendation 2 under "Licensure" for Phase II</i></p>	<p>Tabled Item</p> <p>AHCA Some states regulate mental health facilities under separate licensure types.</p>
<p>19. Removal of all references to Limited Mental Health; Mental Health Care Provider; Mental Health Care Manager; etc., from 58A-5 and Chapter 429. Limited Mental Health providers would be moved to chapter 394.</p> <p>Reclassification of Limited Mental Health (LMH) to something other than assisted living facilities. Possible options are Limited Mental Health Facilities or Limited Mental Health Centers.</p>	<p>Member Recommendation (S. Schrunk)</p>
<p>20. Seek legislative changes to s. 429, F.S. that are resident-care focused and examine ALF staffing ratios. Ensure that regulations are appropriately and consistently enforced.</p> <p><i>Originally Recommendation 7 under "Licensure" for Phase II</i></p>	<p>Tabled Item</p> <p>AHCA Staffing is currently set based on the number of residents. Rule 58A-5.019</p>

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21. Allow assisted living facilities to use bulk over the counter medications.	Member Recommendation (L. Sherberg)
22. Require assisted living administrators to hold a certification by a nonprofit third party credentialing organization.	Member Recommendation (L. Sherberg) Documentation concerning the proposal is attached.
23. Eliminate limited mental health licensure.	Member Recommendation (L. Sherberg)
24. Place all mental health regulation in Chapter 394, F.S.	Member Recommendation (L. Sherberg)
25. Increase state funding to limited mental health facilities prior to imposing fee increases by state and local agencies.	Member Recommendation (L. Sherberg)
26. An AHCA survey team for an ALF may include a volunteer representative from another licensed ALF provided that the ALF being surveyed agrees to the presence of the volunteer representative. A volunteer representative must comply with confidentiality statutes or regulations applicable to the survey team.	Member Recommendation (J. McRay)
27. Create a 5 member council/board of providers to act as hearing officers. Their purpose would be to hear appeals on survey inspections. This Board would meet on a regular basis validate surveyor the authority to overturn citations. The council/board will be funded by fines collected by the Agency.	Member Recommendation (L. Sherberg)

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<p>28. Establish a discharge protocol that should include, at a minimum, a completed 1823, insurance information, prescriptions, diagnosis, prognosis, discharge orders and 3 days of medication if the resident is being discharged during a non-business day.</p>	<p>Member Recommendation (R. Solano)</p>
<p>28. Develop an independent Medicaid consumer choice counseling hotline which patients, their families, or medical professionals can call to get information to help them make informed decisions about proper ALF placement. This single point of contact could provide of the options depending on the manage care institution that the person belong to. A third party will eliminate the possibility of referrals to a facility motivated for other reasons that do not include the resident needs.</p>	<p>Member Recommendation (R. Solano)</p>
<p>29. Develop and adopt an ALF pre-admission screening process implemented by an independent body. This “single point of contact” would permit choice counseling and referral to the most appropriate ALF choices which align with the individual resident needs. Require hospitals to document consideration of an individual’s choices in discharge placements through the use of a guidance system.</p>	<p>Member Recommendation (R. Solano)</p>
<p>30. AHCA shall research and make recommendations on ways to use licensed ALFs and personnel within those ALFs for continuing education of other ALFs’ personnel. The emphasis of the recommendations shall be to use excellent</p>	<p>Member Recommendation (J. McRay)</p>

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<p>ALF practitioners as teachers for better and best practices in ALF administration and to provide the approved trainers continuing education credit for themselves as consideration for the training.</p>	
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Assisted Living Facility Administrator Certification Proposal

Policy Statement:

- Professional credentialing is recognized as a valid process for ensuring that members of a profession have the competencies necessary to practice safely and protect the health, safety and welfare of consumers. Certification of a profession by a third-party credentialing entity has been validated in Florida Statutes as being equivalent to a state-run licensure program.

Background:

- The Florida Certification Board (FCB) is partnering with the Florida Assisted Living Association (FALA) to develop a professional credentialing system. The system will be designed to ensure ALF administrators have the competencies necessary to respond appropriately to the needs of residents, maintain resident care and facility standards, and to meet facility licensure requirements.
- The Florida Certification Board, incorporated in 1985, is a nationally recognized non-profit professional credentialing organization with over 25 years of experience credentialing professionals in multiple health and human service related fields including substance abuse counselors, prevention specialists, criminal justice professionals, mental health professionals, behavioral health technicians and child welfare professionals in Florida.
- The Florida Certification Board's Mission statement is: Protecting the health, safety and welfare of the citizens of Florida by regulating our certified professionals through education and compliance.
- Certification is a process that requires applicants to demonstrate core competency by meeting education, experience, training, supervision and testing requirements that are directly linked to core competencies.
- Under the ALF Administrator Certification proposal, the Florida Certification Board, or some other qualified third-party credentialing entity, would conduct a role delineation study to ascertain exactly what duties and functions an administrator must be able to complete. The Board would then develop a test to ensure that an administrator possesses the core competencies necessary to carry out those duties and functions.
- The purpose of a certification system for ALF Administrators is to:
 - Assure the public a minimum level of competency for quality services by ALF administrators
 - Give professional recognition to qualified ALF administrators through a process that examines demonstrated work competencies
 - Assure an opportunity for ongoing professional development for ALF administrators
 - Promote professional and ethical practice by enforcing adherence to a Code of Ethics
- In a final report released in December 2011, Governor Scott's Assisted Living Workgroup made several recommendations that the Workgroup believed would strengthen oversight of ALFs and reassure the public that ALFs are safe places for their residents. One recommendation was to increase administrator qualifications.
- The Senate Health Regulation Committee recommended in Interim Report 2012-128, Review Regulatory Oversight of Assisted Living Facilities in Florida, a myriad of options for the Legislature to consider to improve the regulatory oversight of ALFs, including expanding Florida's core training curriculum and requiring additional administrator qualifications.
- FALA supports certification of ALF Administrators by a credible third-party credentialing entity as a fiscally responsible and viable alternative to licensure of ALF Administrators as proposed during the 2012 Legislative Session.
- The legislative proposal will improve the quality of care and services to residents of ALFs and provide for accountability by using established credentialing entities to administer a certification program at no cost to the state.

Assisted Living Facility Administrator Certification Proposal

Key components of the legislative proposal:

- Legislative intent section
- Approval by Department of Elder Affairs (DOEA) of one or more third-party credentialing entities to develop and administer an Assisted Living Facility Administrator professional credentialing program
- DOEA must grant approval to any third-party credentialing entity that documents compliance with specific minimum standards, including establishment of core competencies, certification standards, testing instruments, and recertification standards pursuant to standards set forth by the National Commission for Certifying Agencies
- Third-party credentialing entities must have their ALF Administrator certification program accredited with the National Commission for Certifying Agencies
- Certification program requirements must be established according to National Commission for Certifying Agencies standards
- Third-party credentialing entities must:
 - administer a professional code of ethics and disciplinary process
 - administer and maintain a public-access, Internet-based database of all persons applying for and holding certification
 - approve qualified training entities to provide pre-certification and continuing education programs
- Effective July 1, 2014, an ALF administrator must be certificated by a third-party credentialing entity approved by the Department of Elder Affairs; Nursing Home Administrators are exempt from this requirement
- Grandfather Clause

Department of Children and Families Response

Originally Recommendation 7 under "Multiple Regulators" for Phase II

The Department's Adult Protective Investigations are designed to focus on the victim of alleged abuse, neglect or exploitation. The investigation process assesses the victim's safety, offers services as needed, and refers the alleged perpetrator to law enforcement and other entities, as appropriate, for further criminal investigations. Since the enactment of chapter 2000-349, Laws of Florida, which eliminated the Hotline's function as an "Abuse Registry," used for licensing and employment screening, APS has not functioned in an adjudicatory capacity. Adult protective investigations do not result in a formal determination that an "alleged perpetrator" is, in fact, a perpetrator. Chapter 2000-349, section 36, Laws of Florida, also eliminated the right to an administrative proceeding to challenge the abuse report findings, because the reports themselves no longer adversely affected an individual's substantial interests.

The focus of the protective investigation on the victim and the victim's needs is the result of a conscious and deliberate policy decision by the 2000 Legislature. That is why section 415.102, F.S., no longer includes a definition for "perpetrator" (only "alleged perpetrator") and why the substantive provisions in chapter 415 no longer refer to "perpetrators" other than in section 415.1111, F.S. Section 415.104(7), F.S., for example, simply states that the Department shall, when appropriate, refer reports of abuse, neglect, or exploitation to the state attorney.

The proposed Workgroup recommendations would have the effect of blurring the role of the protective investigation as provided in current law. The recommendations appear to advocate that the Department's protective investigations once again have a regulatory/adjudicatory purpose. This can be confusing for the Department, the public, vulnerable adults and their families and caregivers, and the courts. It could have the effect of requiring the Department to once again identify a person as a perpetrator in a protective investigation and could lead courts to conclude that persons identified as perpetrators, or even alleged perpetrators, in "verified" reports are entitled to an administrative proceeding to challenge the report findings.

Originally Recommendation 8 under "Multiple Regulators" for Phase II

This is and should remain as agency discretion. It should not be a mandated rule. For example, in state mental health hospitals, there are self-reporters that call in hundreds of reports a year, all unfounded. Having this restriction would compromise hospital ability to maintain staff/client ratios for proper care. In small ALF, this can also be a problematic workload issue.

Since the enactment of chapter 200-349, Laws of Florida (chapter 95-228, LOF, is the related legislation on the child abuse side), the Legislature has restored some access to the hotline records so that certain entities can be aware of events that could be of concern, but those entities are not authorized to make decisions based on the mere existence of a verified report. Currently, for example, section 39.202(2)(a) authorizes DCF, APD, and DOH licensing staff to access hotline information for consideration in licensing decisions. See also, §39.201(6), F.S. Section 415.107(3)(a), Florida Statutes, already affords AHCA similar authority to access adult abuse reports for licensing purposes. In effect, the hotline is one source of information, and, if the facts and circumstances underlying a verified report lead an agency to conclude that an individual should not be licensed, then the agency can exercise its judgment to deny or revoke

the license. The individual whose license is denied or revoked can challenge the decision in a chapter 120 proceeding, and the agency must produce competent evidence (license denial) or clear and convincing evidence (license sanction) of the facts and circumstances on which the licensing action is based. This has been the status quo since 2000, and ensures due process in the licensing action.

AHCA is already fully empowered by section 415.107(3)(a), F.S., to access the adult hotline records for licensing purposes. APD is authorized to access child and adult hotline records. If AHCA and APD are having difficulty accessing the records, the Department can work with them to resolve the problems.

The Department would ask that the workgroup does not recommend any legislation that would allow the mere existence of a verified abuse report to provide a basis for denying a license application, sanctioning a licensee, or serving as a disqualifying offense for employment.