

Florida Assisted Living Workgroup, Phase II  
Recommendations

November 26, 2012

## Final Report of the Assisted Living Workgroup

On January 31, 2012 Governor Rick Scott directed the Agency to go forward with Phase II of the Assisted Living Workgroup (AL Workgroup) to continue the examination of issues related to assisted living facilities (ALF). Phase I of the AL Workgroup made recommendations to the Governor and Legislature to improve the monitoring of safety in ALFs. Phase I took place between August 8, 2011 and November 8, 2011, and a report of initial (Phase I) recommendations was issued in November 2011.

In the 2011 report, the AL Workgroup recommended that a Phase II workgroup be appointed to continue to address assisted living policy and regulation in a comprehensive manner. Phase II Assisted Living Workgroup meetings were held on June 25<sup>th</sup> in Jacksonville, July 27<sup>th</sup> in Fort Lauderdale, September 10<sup>th</sup> in Orlando and October 3<sup>rd</sup> through the 5<sup>th</sup> in Tallahassee as well as two conference calls that took place on August 31<sup>st</sup> and September 21<sup>st</sup>. The AL Workgroup heard testimony and presentations from a wide spectrum of the stakeholders, including: assisted living resident advocates, operators, owners, administrators, state agency staff, managed care organizations, and community mental health centers.

The workgroup included the State Long-Term Care Ombudsman, assisted living facility representative, advocates, health care association representatives, policy experts as well as Senator Rene Garcia and Representative Matt Hudson. Dr. Larry Polivka, Director and Scholar in Residence at the Claude Pepper Foundation, served as Chairman of the workgroup and Agency Secretary Elizabeth Dudek and representatives from the Governor's Office participated in each meeting. State agency leadership participation included representatives from each Agency involved in assisted living facility oversight.

Phase II of the AL Workgroup was designed to utilize the information and recommendations gathered during Phase I and develop recommendations for Legislative proposals for the 2013 Legislative session.

Dr. Larry Polivka, Chair, identified three major priorities of the Phase II Workgroup:

- Identification and discussion of mental health related assisted living issues.
- Evaluation and discussion of issues raised during Phase I relating to organizational infrastructure for regulation.
- Evaluation and discussion of issues related to administrative qualifications, licensure, resident admission/discharge, staffing, resident rights and safety issues.

Throughout Phase II, twenty-one public comments were heard and eleven state agency presentations were made. Additionally, due to the amount of public testimony and potential mental health recommendations, the AL workgroup dedicated two full days to mental health issues, October 4-5, 2012. Prior to that meeting, an Assisted Living Facility/Limited Mental Health and Community Mental Health Center Summit conference call was held September 21, 2012 and a follow-up Summit was held in Tallahassee October 3, 2012. Workgroup member Bob Sharpe, President and CEO, Florida Council for

Community Mental Health, chaired the Summit and presented specific recommendations from the Summit to the AL Workgroup for consideration at the October 4-5, 2012 meeting.

All of the written resources used by the workgroup along with the minutes for the meetings and the Phase I Final Report & Recommendations are available to view at <http://ahca.myflorida.com/SCHS/CommiteesCouncils/ALWG/index.shtml>.

## **WORKGROUP MEMBERSHIP AND PARTICIPATION**

Public officials, policymakers, advocates and members of the provider community participated on the workgroup as follows:

Larry Polivka, PhD., Chair, The Pepper Center Florida State University  
Senator Rene Garcia, The Florida Senate  
Representative Matt Hudson, The Florida House of Representatives  
Larry Sherberg, Florida Assisted Living Association  
Steven P. Schrunk, Florida Health Care Association  
Charles Paulk, Florida Life Care Residents Association (FLiCRA)  
Jack McRay, AARP-Florida  
Jim Crochet, Long Term Care Ombudsman  
Bob Sharpe, Florida Council for Community Mental Health  
Scott Selis, Esq., The Florida Bar, Elder Law Section  
Brian Robare, The Villa at Carpenters  
Roxana Solano, Villa Serena I-V  
Michael Bay, Eastside Care, Inc.  
Martha Lenderman, Lenderman and Associates  
Luis E. Collazo, MSW, Palm Breeze ALF  
Darlene Arbeit, LeadingAge Florida

The Office of the Governor was represented by Danielle Scoggins and Michael Joos.

State Agency Representatives serving as resources to the AL Workgroup consisted of:

Elizabeth Dudek, Secretary, Agency for Health Care Administration  
Molly McKinstry, Deputy Secretary for Health Quality Assurance, Agency for Health Care Administration  
Polly Weaver, Bureau Chief, Field Operations, Agency for Health Care Administration  
Anne Avery, Operations and Management Consultant, Bureau of Field Operations, Agency for Health Care Administration  
Darcy Abbott, Bureau of Medicaid Services, Agency for Health Care Administration  
Carol Barr Platt, AHCA Administrator, Managed Behavioral Health, Legislative Analysis & Special Projects Unit, Bureau of Managed Health Care, Agency for Health Care Administration  
David Oropallo, Bureau Chief, Health Facility Regulation, Agency for Health Care Administration  
Shaddrick Haston, Esq., Assisted Living Unit Manager, Agency for Health Care Administration  
Susan Kaempfer, Operations and Management Consultant Manager, Assisted Living Unit, Agency for Health Care Administration  
Marisol Novak, Government Operations Specialist, Bureau of Health Facility Regulation, Agency for Health Care Administration

Charles Corley, Secretary, Department of Elder Affairs  
Susan Rice, Assistant General Counsel, Department of Elder Affairs  
Jackie Beck, Bureau Chief, Mental Health Services, Department of Children and Families  
Robert Anderson, Director Adult Protective Services, Department of Children and Families  
Cynthia Holland, Bureau Chief, Substance Abuse and Mental Health Services, Department of Children and Families  
Mary Beth Vickers, Division Director, Children Medical Services, Department of Health  
Robin Eychaner, Environmental Supervisor II, Bureau of Environmental Health, Department of Health  
James Varnado, Director, Medicaid Fraud Control Unit, Attorney General's Office  
David Bundy, Chief Assistant Attorney General, Medicaid Fraud Control Unit, Office of the Attorney General  
Captain Chuck Jordan, Medicaid Fraud Control Unit—Central Florida Region, Office of the Attorney General  
Captain William Avery, Medicaid Fraud Control Unit, Office of the Attorney General  
Captain David Brockmeier, Medicaid Fraud Control Unit, Office of the Attorney General  
George Cooper, State Fire Marshall, Department of Financial Services  
Fred Chaplin, Regional Supervisor, Bureau of Fire Prevention, Department of Financial Services  
Tom Rice, Operations Review Specialist, Agency for Persons with Disabilities  
Gerry Driscoll, South East Region Manager, Agency for Persons with Disabilities

## **EXECUTIVE SUMMARY**

The assisted living community in Florida has witnessed exponential growth over the past eight years, increasing by 30 percent. As a largely consumer choice driven industry, assisted living continues to be a home-like, residential model that thrives in the Sunshine State. Pursuant to section 429, F.S., ALFs should be operated and regulated as residences with supportive services and not as medical or nursing facilities. Furthermore, regulations governing ALFs must be flexible enough to allow the facilities to adopt policies enabling residents to age in place while accommodating their needs and preferences—creating more complex care. The challenge is balancing the provision of appropriate care without compromising the concept of a social or residential model.

The changing landscape of long-term care with the expected implementation of Medicaid managed care statewide will further strengthen and evolve the role of ALFs. In addition, Phase II of the AL Workgroup delved into the expanding role of ALFs providing residential services to the limited mental health population. The need for clear roles and responsibilities for provision of services to all categories of residents within ALFs is evident, and will help to provide more efficient and effective care to these residents

This report and the recommendations contained herein, if passed into law, would increase some regulations and continue Florida's tradition of providing the home-like characteristics that have allowed for such growth. These recommendations will also address the growing limited mental health community residing in ALFs with resident's safety and security ensured. Going forward, the Agency for Health Care Administration must continue diligent cooperation with other agencies, provider representatives, advocates, families and individuals to reduce regulation in areas that are overly burdensome while implementing further safeguards and regulations that will protect the residents of ALFs in the ever-evolving health care landscape.

## **ASSISTED LIVING WORKGROUP RECOMMENDATIONS**

The Assisted Living Workgroup, Phase II, compiled a series of recommendations based on public meetings and member input. Although not all issues had the full support of each member, Phase II recommendations did receive approval by a majority of members.

Based on Phase II deliberations, the following recommendations were made:

### **Utilize Current Regulations**

1. Utilize existing regulations to evict unethical or incompetent providers from the system. Recognize that most ALF residents are currently being well taken care of under the current regulatory environment. Do not undermine a social model of care that works.
2. Evaluate the ALF enforcement process beyond a punitive approach. Although the punitive approach is necessary for chronically poor performing facilities, it is not the best way to elevate quality across the ALF community. Examine the Wisconsin model for ALF regulation which is similar to the AHCA abbreviated survey with the addition of a consultative/collaborative regulatory model.
3. Maintain current law that fines will only be imposed for low-level citations if uncorrected, to focus penalties on poor performers without adverse impact on competent providers.
4. Work with long-term managed care plans, once selected by AHCA, to promote the number and use of ALF beds through reimbursement and other incentives, so that the plans increasingly serve as appropriate diversions to nursing home care as well as serving those on waiting lists for nursing home care.

### **Licensure Revisions**

5. Enable a public record exemption for AHCA complaints. Complaints filed with AHCA are currently not protected from disclosure. Consider adding confidentiality to AHCA complaints equivalent to that of the Ombudsman.
6. Allow assisted living facilities to use bulk over-the-counter medications.
7. Amend Chapter 429, F.S., to authorize the use of a floating license for facilities that have a standard, LNS or ECC license.
8. Amend Chapter 429, F.S., to allow Assisted Living Facilities to use the acronym ALF on business cards and other forms of advertising rather than having to spell out Assisted Living Facility.
9. Make technical changes to Chapter 429.14 specific to administrative penalties by changing deficiencies to violations.

10. Include a volunteer representative from another licensed ALF in an AHCA ALF survey team, 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.

### **Multiple Regulators**

11. Form a workgroup of all agencies involved in ALF regulation and stakeholder groups to develop a new organizational structure streamlining the regulatory process. Designate AHCA as the lead agency for all regulatory activities in the interim.
12. Improve coordination between the various federal, state and local agencies with any role in long-term care facilities oversight, especially ALFs. This includes AHCA, the Long Term Care Ombudsman Program, local fire authorities, local health departments, DCF, DOEA, local law enforcement and the AG's Office.
13. Clearly define and formalize Agency responsibilities and lines of communication, coordination and cooperation between agencies with oversight/regulatory through inter-agency agreements.
14. Allow AHCA discretion to use DCF Adult Protective Services findings and pursue sanctions for verified abuse and neglect findings in a facility.
15. Evaluate the ability to determine Level of Care at the time a person is initially added to the wait list as well as allow a person who meets nursing home level of care to receive Medicaid at the ICP level while awaiting long-term care services. AHCA should work with DOEA on this evaluation.
16. Develop a strategy with the State Fire Marshal, DOEA and AHCA to deliver a proposal to address life safety plans and fire sprinkler systems for ALFs with communities with municipal water supply access issues.
17. Develop a strategy with the State Fire Marshal, DOEA and AHCA to deliver a proposal addressing locked unit requirement within facilities.
18. Authorize use of DCF Adult Protective Services finding and investigations in employment matters. As it currently stands, 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. 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. This change would require DCF to offer due process hearings for perpetrators prior to the closure of all abuse investigations with verified indicators.
19. Modify existing administrative rules 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., and upon reasonable suspicion by an DCF investigator, are prohibited from 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.

20. Work together within state agencies to minimize audit and documentation regulatory requirements on community mental health agencies and ALFs by at least 30 percent to provide for better patient coordination and outcomes.
21. Improve the accessibility of transportation services for ALF residents by working with the Florida Transportation Commission, DCF and AHCA.

### **Administrator Qualifications**

22. Develop protocols for administrator mentorship programs by the provider community and ALF associations for ALFs with no Class I or II violations in the past two years.
23. Create a professional board with regulatory responsibility for assisted living facility administrators.
24. Require assisted living administrators to hold certification by a non-profit third-party credentialing organization. This certification is to be in lieu of licensing administrators.

### **Information and Reporting**

25. Require AHCA to investigate the types of technology currently available for cost effective methods of collection, reporting and analyzing client information and allow facilities to select the type of technology most appropriate to each individual facility—including the availability of swipe or scan handheld devices. The fiscal impact of the equipment, software and staff time must be considerations.
26. Require AHCA to examine the “Dashboard” technology used by DCF in measuring the outcomes of Community Based Care agencies serving dependent children as some aspects of this oversight may be applicable to long-term care settings.
27. Amend Chapter 429, F.S., to consolidate the adverse incident report from two reports into one final report. This final report will be filed within 15 business days of the occurrence of the adverse incident, except in cases of death or elopement.
28. Establish through pilot projects the development of consultative health quality initiatives in Florida. The pilot projects should include criteria for quality improvement plans and a means of measuring progress towards implementation of quality improvement plans. These pilot projects should include data collection requirements regarding resident satisfaction, quality of care indicators and implementation of best practices into the hands of frontline caregivers.

29. AHCA should conduct a cost of care study that would establish cost of care to meet all the requirements associated with the care of a resident in a licensed LMH ALF, a standard licensed facility, a licensed LNS and ECC facility.

### **Resident Rights and Safety**

30. Hold state and local hospitals accountable for discharge planning that matches individual needs and desires to an appropriate and available setting that best integrates individuals into the community. Modify Chapter 395, F.S., to require hospital document consideration of an individual's choices in discharge placements. Address hospitals that do not consider the individual's preferences and community integration in discharge planning.
31. Establish a hospital discharge protocol to an ALF that should include, at a minimum: 3 days of medication if the resident is being discharged during a non-business day, a completed 1823, insurance information, prescriptions, diagnosis, prognosis and discharge orders.
32. Enact legislation that provides ALF residents a formal appeal process for disputed discharge.
33. Afford ALF residents discharge protection that mandates specific reasons for relocation, provides ample notice to residents and provides residents with an administrative appeal hearing.
34. Increase the amount and quality of activities made available to ALF residents.
35. Evaluate expectations for quality of life and care in an ALF. Focus cannot be limited to physical health and safety—it must extend to other quality of life factors, including staff that are kind and focused of the individual wants/needs of each resident.
36. 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. This is more in line with today's economy.

### **Consumer Information**

37. Develop an independent Medicaid consumer choice counseling hotline for patients, their families or medical professionals to access information on making informed decisions about appropriate ALF placement. This single point of contact could provide options depending on managed care options. This will be operated by a third party to eliminate the possibility of referrals to facilities motivated for reasons other than resident needs.

### **Mental Health**

38. Require the ALF's administrator, or designee, who acts to have a resident involuntary examined pursuant to Chapter 394, F.S., to document in the resident record the steps taken to prevent the

Baker Act within five business days after the initiation of the Baker Act. The presence of the documentation within the timeframe permitted shall be sufficient to satisfy the requirement.

39. Increase state funding to limited mental health facilities prior to imposing fee increases by state and local agencies.
40. Increase funding for personal needs allowance for ALF residents and provide cost of living increases for ALF residents receiving OSS funds.
41. Convene a summit to collaborate on issues to provide better care to residents of ALFs who have a mental illness with ALF operators and Community Mental Health Centers.
42. Allow DCF to provide more intense services for ALF residents with mental illness.
43. Improve case management services and advocacy for residents by offering residents choice of case managers and living arrangements.
44. Prohibit targeted case management from being provided by an assisted living facility.
45. Increase the monitoring of case managers.
46. Conduct a study to explore the methods of enhancing care for persons with severe and persistent mental illness in ALFs.
47. Develop methods for reducing the LMH ALF resident-to-staff case management ratios for community mental health agencies.
48. Work together to develop a crisis avoidance system for ALFs and ALF residents with the ALF providers, community mental health agencies and managed care organizations.
49. Increase the availability, use and responsiveness of emergency interventions, including but not limited to, mobile crisis services.
50. Clarify roles and responsibilities of LMH ALFs and make appropriate changes with AHCA, DOEA, DCF and any other appropriate agencies.

#### **Additional Policy Issues**

51. Support legislation to form an ALF Policy Council to continue to address issues identified by the workgroup. The ALF Policy Council should meet on a permanent, on-going basis.
52. Additional funds should be appropriated by the legislature for assistive care services and other budget categories that support the cost of care for residents of assisted living facilities.
53. Address the issue of tort reform in assisted living facilities through legislation.