

M E M O R A N D U M

TO: Task Force on the Availability and Affordability of Long-Term Care

FROM: Larry Sherberg, Member

DATE: November 6, 2000

SUBJECT: Regulatory Recommendations

These regulatory recommendations are being submitted by myself, independent of the Florida Assisted Living Association. These recommendations do not deal with tort reform; rather they are aimed at improving the efficiency and effectiveness of the regulation of ALFs while providing consumer choice.

As a member of the Task Force, I am submitting the following recommendations for your review and consideration. As all reports and testimony to the Task Force have not been received, and not having access to the recommendations submitted by the public, I wish to reserve the right to amend my recommendations in whole or in part, upon review of further testimony and information received by the Task Force.

For the last few months we have listened to testimony, concerns, problems, and at times, troublesome anecdotes that have personally touched us all. I have read every document that has been provided to us by the staff of the Florida Policy Exchange Center on Aging (FPECA). Many of these documents were written by staff and have provided me not only insight but also important data which has been instrumental in developing many of my recommendations.

Throughout the testimony there seems to be some common concerns and/or themes:

There is an inability for Florida citizens to access appropriate long-term care services.
This includes the inability to identify appropriate public long term care programs and

resources as well as the absence of a coordinated entity that can provide information on all long-term care programs and services available.

Choice is an important factor for all Floridians. The ability of the elder and/or impaired/disabled consumer to have a choice about the types of services needed as well as where those services are delivered is an important consideration as we fashion a long-term care delivery system.

Services and care must be affordable. This is a major concern to everyone. For the elder and/or impaired/disabled consumer, for the caregiver, and for the payer source, usually the government.

Quality of care must be maintained. Regardless of the long-term care service delivery system, all care delivered must be of the highest quality possible.

Based on what I've learned as a member of this task force, it appears that Florida's approach to long-term care should be directed toward Community Based Services (CBS) and choices. These programs are generally run by the Department of Elder Affairs (DOEA). **I recommend that we change the Department's name to the Department of Elder Affairs and Long Term Care.** This will give DOEA the designation as the lead agency for long-term care, a designation that does not clearly exist today. This designation would provide consumers and others a clear indication that DOEA is the state agency to approach on matters related to non-institutional long-term care services.

We must change the mindset of long-term care to an outcome driven process versus one that is controlled by regulations and regulators. The regulation model fits people into programs based on their conditions (like pegs into holes). When an individual's condition changes often the arena in which they receive services changes. This results in a focus on the "system" rather than the "choice of the consumer". Too many of our citizens are being forced into the most controlled and restrictive institutional settings (nursing homes) because of our regulatory standards. If the State wants to adequately promote Community Based Services, the concern and consideration needs to be primarily directed toward the consumer, the elder and frail/or disabled, and secondly, the caregiver. The plan needs flexibility, as no two clients are the same. We need to stress individuality along with respect and dignity.

The programs that are presently in Chapter 430, Florida Statutes, represent some of the current Community Based Services programs. Some of these include:

1. Office of Volunteer Community Service

2. Respite for elders
3. Community care for the elderly
4. Community care service system
5. Alzheimer's clinics, day care and respite care programs
6. Home care for the elderly

There are other community-based programs (as opposed to institutional programs), such as Adult Day Care Centers (ss. 400.55-400.564, F.S.), Adult Family-Care Home Act (ss. 400.616-400.629, F.S.), and Assisted Living Facilities (ss. 400.401-400.454, F.S.). These programs should be moved out of chapter 400, F.S., "Nursing Homes" and into chapter 430, F.S., a chapter whose philosophy is more clearly directed toward non-institutional care, consumer choice and consumer outcomes. The Department of Elder Affairs administers the Assisted Living for the Elderly (ALE) Waiver program for residents living in Assisted Living Facilities (ALF). This program acknowledges the need for ALFs as an alternative to Institutional Care Placement (ICP).

Since the DOEA is presently involved with resident funding through the ALE waiver program, it is reasonable and more efficient to **transfer the Optional State Supplementation (OSS) Program (s. 409.212, F.S.) out of the Department of Children and Families and into the Department of Elder Affairs.** This would allow the funding mechanism of all public ALF programs to be organized in one Department and insure a higher degree of continuity of care. Once this is accomplished, funding could be based on a tiered payment system determined by the level of care and not by license. The possibility of creating a voucher program, where the elder and/or frail/disabled client receives a voucher enabling choice of programs in which to enroll should also be explored. (Developmental Services operates a program with similarities to this proposal.) This creates a totally market-driven system, which would address the specified needs of the consumers accessing the system.

I recommend the transfer of the Economic-Self Sufficiency Unit of the Department of Children and Families to the Department of Management Services (DMS). DMS is more efficient and has the technical inclination and ability to streamline not only applications for benefits, but to coordinate with other state agencies. DMS's philosophy centers on incorporating proven business principles in its operations to increase responsiveness and accountability. This philosophy is exactly what is needed to make our choice delivery system successful.

To be the national leader in the delivery of long term care services we must change our antiquated philosophies and approaches. We must be innovative and use simplicity as our guide. Generally, common sense works, and most citizens are comfortable with this approach.

Related specifically to Assisted Living Facilities, I recommend that we abolish specialty licenses (that is, limited nursing services, limited mental health, and extended congregate care). We should embrace a basic philosophy and approach that would apply if one were taking care of a family member in the home setting. When the family can no longer provide the proper care, more services must be acquired through alternate resources or an appropriate setting must be found where necessary services can be provided. The same approach can be applied for individuals living in an assisted living facility. The individual should have a choice and the caregiver should have a choice. If both sides agree that the appropriate care can be received and provided, then we should allow for the delivery of care based on these agreed upon tenets. This is called “shared risk” or “negotiated risk”. Shared risk maximizes the choice of services and how those services are delivered. The question we, as Task Force members must ask is, “Whose choice is it, the elder and/or frail/disabled client who requires services, the provider of the service, or the Government (who is paying for the service)?”

The CARES assessment unit could be used to assess the needs of the elder and/or frail and disabled client and ensure that proper funding and care is both available and delivered. This would apply to all individuals who qualify for DOEA community-based programs.

The highest quality of care must be guaranteed in all community-based programs. Presently, ALFs are inspected once every two years by the Agency for Health Care Administration (AHCA). On an annual basis they are inspected by the local fire department consistent with chapter 4A-40, F.A.C. Food service is inspected quarterly consistent with chapter 64E-11, F.A.C. Inspections of the sanitary conditions within the facility and its surroundings occur annually, consistent with chapter 64E-12, F.A.C. The local Ombudsman also inspects each facility annually. **“Quality of Life” is the model to ensure that an individual’s needs are met and rights are upheld.**

Rather than the biannual inspection by AHCA, this model would be comprised of:

- ◆ An annual fire inspection (same);
- ◆ Food and sanitary inspections as they exist today; and
- ◆ An annual “team quality inspection” completed by a member of the Long Term Care Ombudsman Committee and a member of the local district’s CARES Assessment Team.

The intent of the combination of the Ombudsman and CARES team would be for the Ombudsman to ensure the rights of the residents are protected, while the CARES member would ensure the Service Plans are current, being followed properly, and meeting the needs of the individual. This would protect the rights of residents and their choice, and still allow for

objective outcomes. This would become a “Quality of Life” inspection, based on the resident’s choice, need, and fulfillment of these objectives.

By moving the Chapter 400 programs mentioned above to DOEA, more sharing of resources could be accomplished and consumers would be offered greater selection in programs. Following are examples of how costs could be offset, thus making more programs available to more consumers in the State of Florida. By working together in the same system, ALFs could provide respite care. An ALF could also decide to offer adult day care services for their residents and members of the public who are still residing independently at home. The establishment of adult day care service programs would also allow a number of caregivers greater opportunities for respite and allow them to devote more time to their employers or perhaps seek employment outside of their roles as caregivers. The DOEA is also responsible for the implementation of the Long-Term Care Community Diversion Pilot Project. All of the previously mentioned programs would benefit by consolidating community-based, non-institutional long term care programs under DOEA. A more defined continuum of long-term care would be accomplished.

I recommend the creation of a task force in the 2001 session of the Legislature to address “The Long Term Care Continuum”. This task force must be adequately funded to enable the participation and support of the Florida Policy Exchange Center On Aging (FPECA). FPECA’s role as staff to the proposed task force would enable them to provide expertise and research to the task force while coming from the unique prospective of having served as staff to the present Task Force on the Affordability and Availability of Long-Term Care. The Lt. Governor would optimally be the best choice to chair this task force as his knowledge and service as Chairman of the current Task Force would bring the credibility, knowledge and leadership most befitting this entity. I would also recommend a smaller task force than the present one.

If the recommendations of transferring parts of Chapter 400 into Chapter 430 are realized, then I would suggest that a change in the composition of the Elderly Affairs Advisory Council would be necessary. **I would suggest that (s. 430.05(3)(a)8, F.S.), be amended to allow the Governor to appoint an additional member to the Department of Elderly Affairs Advisory Council from the Florida Assisted Living Association. This would allow the assisted living industry to represent this continuum within the Department’s structure.**

We as an industry believe in the importance of the Long Term Care Ombudsman. **We also believe that ss. 400.0065(3)(a) &(b), F.S., needs to be amended.** This is the part of Florida Statutes that (a) precludes anyone who is an owner, an investor, or a provider of long term

service or (b) employed by or participates in the management of a long-term facility from serving with or as a Long Term Ombudsman. I can understand the appearance of a conflict of interest. At the same time the knowledge assisted living providers can share with the volunteers that serve as ombudsmen can be very beneficial to them in the course of their duties. Many ombudsmen have very little knowledge of the long-term care continuum and in the case of assisted living providers, the function and role of assisted living facilities. Inclusion and collaboration with the necessary delineations is always more productive than exclusion.

Summary of Recommendations

1. Change DOEA's name to the Department of Elder Affairs and Long Term Care.
2. Transfer Assisted Living Facilities (ss. 400.401-400.454, F.S.) to Chapter 430, F.S.
3. Transfer Adult Day Care Centers (ss. 400.55-400.564, F.S.) to Chapter 430, F.S.
4. Transfer Adult Family-Care Homes (ss. 400-616-400.629, F.S.) to Chapter 430, F.S.
5. Transfer the oversight of the optional state supplementation program from the DCF to DOEA to include funding and payments.
6. Transfer the eligibility underwriting (qualifications) of all Chapter 430, F.S. programs, performed by the Economic Self-Sufficiency Unit of the DCF to the Department of Management Services (DMS).
7. Change ALFs inspection standards to "Quality of Life".
8. Authorize and provide funding for the creation of a task force to review the long term care continuum and plan the long term care system of the future, to be chaired by the Lt. Governor.
9. Add a member from the Florida Assisted Living Association to the Department of Elderly Affairs Advisory Council (ss. 430.05(3)(a)8, F.S.), to be appointed by the Governor.
10. Change ss. 400.0065(3)(a)&(b), F.S. to include individuals who are associated with long term care facilities to participate with the Long Term Care Ombudsman, but exclude them from inspection and investigation functions.
11. Funding: there needs to be proper funding for the program(s) to be a success.

I am aware that there are other recommendations and ideas that will come forth in future meetings. These are some of the ideas and solutions I can recommend to date.

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I would like to take this opportunity to thank my colleagues who have served with me. I have been impressed with the knowledge and contributions you have made to the Task Force and am appreciative of the opportunity to share my ideas and proposals with you.