



DATE: August 9, 2011

RE: Governor's Workgroup Begins Review of Assisted Living Issues

The Agency for Health Care Administration (AHCA) hosted the first of three meetings of Governor Scott's Assisted Living Workgroup on Monday. The workgroup – consisting of 14 appointed members representing the Florida Legislature, industry leaders, assisted living facility (ALF) operators and resident advocates – listened and directed questions to a dozen speakers who voiced their concerns about the current problems facing assisted living facilities and those who reside in them.

Industry representatives, from the Florida Assisted Living Association and Florida Association of Homes and Services for the Aging, voiced the need for more streamlined and better defined regulation so that ALF and nursing facility operators know what is expected of them. Alberta Granger, from FALA, noted that facility surveys “are all over the place.” Problems the ALFs must contend with include various and overlapping statutory provisions which confuse ALF operators and causes problems with compliance, inconsistent facility surveys, and poorly trained surveyors. Adding to this confusion, according to the speakers, is the multitude of agencies involved in oversight. Not only does AHCA regulate ALF facilities and operators, but also the Department of Children and Families, the Department of Health, local health and fire departments, Florida Department of Elder Affairs, and others.

Consumer advocacy representatives from organizations such as the Florida Peer Network and Florida Long Term Care Ombudsman spoke in favor of a stronger “bill of rights” for ALF residents and pushed for more quality of life measures to be mandated in facilities. State Senator Ronda Storms, R-Brandon, echoed these sentiments and questioned whether the four ALF operators on the panel, as well as other industry representatives, supported such measures in the past.

There seemed to be a consensus among all participants that more mental health services need to be delivered to ALF residents and that ALF operators who are proven to be “bad actors” – references to the *Miami Herald*'s six-part series “Neglected to Death” were repeatedly provided as examples – should face more serious consequences. According to those newspaper articles, AHCA did not do enough to punish certain ALFs which were allegedly caught abusing or neglecting its residents.

Governor's Workforce Begins Review of Assisted Living Issues
August 9, 2011

However, one common misconception about ALFs is they are supposed to provide health care beyond basic residential and custodial services. ALFs provide housing and some support services, but do not provide round-the-clock nursing supervision. The state's moratorium on skilled nursing facility construction may be forcing many elderly residents into ALFs when, in actuality, they need a higher level of skilled nursing services. In reality, ALFs provide an important and valuable service to the state's elderly residents and the vast majority of them work to stay in compliance with agency regulations.

Larry Polivka, the panel's chairman, laid out objectives for the workgroup's next two meetings, which includes evaluating the current legislation that regulates ALFs in Florida and make recommendations to the Governor regarding regulation of ALFS, consumer information and choice, and long-term care services and access to adequate care.

As to regulatory issues, the workforce will be considering the following:

1. Enhanced regulatory oversight of "troubled" facilities and a streamlined regulatory process for facilities with a favorable regulatory history;
2. Roles of various oversight and regulatory agencies, collaboration to improve oversight and protections, and use of findings by another regulatory agency in agency actions;
3. Enforcement action, such as mandatory sanctions, revocation or denial, and related due process matters;
4. Licensure structure, including "types" of licensure by size, specialty and residents served;
5. Qualifications and training requirements for assisted living administrators, management, staff and core trainers;
6. Limited mental health services in ALFs, including specialty license qualification, staff preparation, community support, facility size, resident needs and comingling of diverse resident populations;
7. Frequency of inspection and monitoring ALFs and the "resource impact" of such changes;
8. Evaluation of ALF fee structure as it relates to paying the cost of ALF regulation.

The next workgroup meeting will be held on August 23 at the University of South Florida in Tampa, Florida. Attendees are invited to listen, but may not participate in the workgroup

Governor's Workforce Begins Review of Assisted Living Issues
August 9, 2011

discussions. The workgroup will have a final meeting in September before making its recommendations to the Governor's office.

If you have any questions regarding the workgroup or issues relating to ALF operation, regulation or agency action taken against your ALF, one of the attorneys at Smith & Associates will be happy to help you.