

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE**

**FINAL REPORT  
OF THE  
MIAMI-DADE COUNTY GRAND JURY**

**SPRING TERM A.D. 2011**

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# **ALFs: A CALL FOR GREATER INTERAGENCY COMMUNICATION AND A CRY FOR MORE CITIZEN VOLUNTEERS**

## **I. INTRODUCTION**

In recent years there has been an explosion in the number of Assisted Living Facilities (“ALFs”)<sup>1</sup> licensed in Florida. In part, this may be the result of medical breakthroughs and scientific advancements that are allowing people to live longer. However, as individuals age, become frail and start suffering from dementia, Alzheimer’s or other debilitating diseases, they lose the ability to take care of themselves. Eventually, many family members also lose the ability to care for their elderly relatives at home. Placement in an ALF has become a viable option for families faced with this dilemma.

As members of the Baby-Boomer generation age out and enter this final phase of their lives, there will be an increased need for ALFs. In light of that reality, we need to ensure that the oversight, regulation and operation of ALFs in our state are being done in a manner that provides for the delivery of appropriate care of ALF residents.

During our term, the Grand Jury became aware of issues, involving the operation of and the care of residents living in Florida ALFs. We decided to focus on two specific aspects of this issue. First, we sought to get a better understanding of the role the Agency for Health Care Administration (AHCA) plays in the oversight and regulation of ALFs. Second, we wanted to learn about the work performed by volunteers who serve with Florida’s Long Term Care Ombudsman Program. This report will focus on those two areas and make recommendations related thereto.

Finally, in addition to witness testimony and our consideration of various exhibits, we also reviewed The Florida Senate, *Interim Report 2012-128 September 2011, Review Regulatory Oversight of Assisted Living Facilities in Florida*.<sup>2</sup> The Report provides a wealth of background

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<sup>1</sup> Florida Statute 429.02(5) defines “Assisted living facility” as any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

<sup>2</sup> The interim report can be found at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-128hr.pdf>.

information on the present state laws and agency regulatory processes for ALFs.<sup>3</sup> At the conclusion of the Senate Interim Report, Senate professional staff present recommendations to the Florida legislature as a means of developing more comprehensive and multifaceted approaches to resolving regulatory deficiencies in order to better protect vulnerable residents in ALFs.<sup>4</sup> As this Grand Jury also has a desire to protect vulnerable Florida residents in ALFs, at the end of this report we adopt herein, and prioritize several recommendations from the Senate Interim Report which we believe will have the greatest impact on improving conditions at ALFs.

## **II. AGENCY FOR HEALTH CARE ADMINISTRATION-THE REGULATORY AGENCY**

All Assisted Living Facilities (ALFs) in Florida are licensed by the Agency for Health Care Administration (AHCA). Of the approximate 2,960 facilities in the State, more than 900, almost one third, are located in Miami-Dade County. AHCA officials report that since 2006, there has been a twenty five percent (25%) increase in the number of licensed ALFs in Florida.<sup>5</sup> Some facilities may provide care for only seven (7) persons while other facilities may have several hundred residents. Approximately one half of Florida's ALFs (50%) are licensed as facilities that are authorized to care for ten (10) residents or less.

In addition to its licensing function, one of AHCA's primary roles is to ensure that ALFs are operating in accordance with all applicable regulations.<sup>6</sup> To help accomplish this goal, it conducts one survey (investigation) of every ALF every two (2) years.<sup>7</sup> If complaints are received before the scheduled biennial review, AHCA may also respond to an ALF for purposes

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<sup>3</sup> We commend the report to readers who wish to have a broader understanding of this area (i.e., the rules and regulations that cover the different types of ALFs, different licensing requirements, or the different services provided at certain ALFs which are beyond the limited scope of this report).

<sup>4</sup> Florida Senate Interim Report, Regulatory Oversight of ALFs in Florida, p. 1.

<sup>5</sup> Even with this increase, since 2009, an average of 125 ALFs have been failing to renew their licenses each year. <http://ahca.myflorida.com/SCHS/ALWG2011/ALFWG-092311/AssistedLivingWhitepaperIntro-DRAFT091611.pdf>

<sup>6</sup> Although AHCA enforces compliance with the regulations, the rules they enforce are actually promulgated and adopted by the Department of Elder Affairs. The rules dealing with Assisted Living Facilities are found in Florida Administrative Code, Chapter 58A-5.

<sup>7</sup> As of October 4, 2011 there were 2,962 licensed ALFs in Florida. Over the past year AHCA conducted 6,327 visits and cited 12,887 violations at ALFs. Of that number 109, 351, 11,696, and 731 were Category I, II, III and Category IV violations, respectively. See fn.14, p. 5.

of conducting an interim investigation. When conducting its biennial survey, AHCA strives to ensure that it has the most complete picture of how a specific facility has operated since its last survey, investigation or inspection. Prior to going out to the facility to conduct the survey, the surveyor, usually described as a Health Facility Evaluator, must perform a “pre-survey.” The pre-survey involves a review of all available historical information on the facility scheduled for the biennial survey. The pre-survey is done for every ALF regardless of whether there are 10, 50 or 200 residents at the facility. For a Health Facility Evaluator to conduct the most effective pre-survey, AHCA needs information regarding any reports of abuse, neglect, violations of residents’ rights and similar data. All sustained violations are finalized in some type of report. Most of these reports usually stem from someone lodging a complaint.

Complaints regarding problems at ALFs may come from a number of sources, including but not limited to direct reports to Florida Department of Children & Families’ (DCF) Adult Protective Services Program,<sup>8</sup> calls to Florida’s Abuse Hotline,<sup>9</sup> confidential reports to Florida’s Long Term Care Ombudsman Program,<sup>10</sup> a call to Florida’s Department of Elder Affairs’ (DOEA) Elder Hotline<sup>11</sup> or a direct contact with AHCA. As AHCA is the agency that determines whether or not an ALF should be re-licensed, we believe that processes should be in place to ensure that AHCA receives all pertinent information, especially information regarding substantiated complaints. Specifically, there should be greater interagency communication and sharing of information among all the departments and agencies involved in this process. As an

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<sup>8</sup> Florida’s Adult Protective Services Act is set forth at Florida Statute 415. The Adult Protective Services Program is charged with protecting vulnerable adults from being harmed. These adults may experience abuse, neglect, or exploitation by second parties or may fail to take care of themselves adequately. Florida statutes require any person who knows or who has reasonable cause to suspect any abuse of vulnerable adults to report that information to the Florida Abuse Hotline.

<sup>9</sup> The Florida Abuse Hotline screens allegations of child and adult abuse/neglect to determine whether the information meets the criteria of an abuse report. If the criteria are met, a protective investigation is initiated to confirm whether or not there is evidence that abuse, neglect, or exploitation occurred; whether there is an immediate or long-term risk to the victim; and whether the victim needs additional services to safeguard his or her well-being. <http://www.dcf.state.fl.us/programs/aps/index.shtml> . The Florida Abuse Hotline number is 1-800-962-2873.

<sup>10</sup> Information about Florida’s Long term Care Ombudsman Program can be found herein, pp. 11-20.

<sup>11</sup> The Florida Department of Elder Affairs is committed to ensuring the safety and well-being of the elders in Florida. The Department works in conjunction with the Department of Children & Families (DCF) and the Aging Network to protect disabled adults or elderly persons from further occurrences of abuse, neglect or exploitation. Services provided may include protective supervision, placement and in-home and community-based services. The Elder Helpline number is 1-800-96-ELDER (1-800-963-5337). To report elder abuse call 1-800-96-ABUSE (1-800-962-2873).

indication of how this can be done, we offer three examples. First, the following excerpt can be found on the website of the Florida Department of Elder Affairs:

The DCF operates the Florida Abuse Hotline, to which calls alleging abuse, neglect or exploitation of vulnerable adults can be made 24 hours a day. DCF's Protective Investigators visit each person to determine the need for and provision of on-going protective supervision and provision or arrangement of services.

If the person is 60 years of age or older and needs home and community-based services, they are referred to the Aging Network. Much of the information gathered about the elder in need of services then needs to be transferred to the Aging Network. **To improve this process, the Department of Elder Affairs has developed a tool called the APS (Adult Protective Services) Referral Tracking Tool. DCF staff simply enters the information into the web-based tool, and an email is sent automatically to the appropriate agency responsible for providing home and community-based services to elders in that county.** The information provided by DCF's Adult Protective Investigation staff is also made available to the appropriate members of the Aging Network through the APS Referral Tracking Tool.<sup>12</sup> (emphasis added)

*We recommend that similar processes be instituted amongst the other affected agencies with regards to the exchange of information regarding abuse complaints and reports.*

*We further recommend that with any interagency exchange of information, all information regarding abuse complaints and reports should be forwarded to AHCA.*

For our second example, we were informed that years ago all reports or complaints of abuse or neglect that were made or called in to Adult Protective Services were automatically forwarded to the Attorney General's Office. There, a determination was made of whether a criminal investigation should be conducted or whether charges could be filed. As a means of protecting elderly residents in ALFs and other such facilities, we believe this process should be reinstated.

*We recommend that complaints of abuse or neglect called in to Adult Protective Services be forwarded to the Attorney General's Office for any necessary criminal investigation.*

Finally, the Grand Jury would like to note that another step has been taken towards getting appropriate and complete information to the AHCA Evaluator conducting the survey. Recently, AHCA created a central mailbox that allows District Ombudsman Managers from all over the state to file reports of all violations and complaints that are brought to the attention of

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<sup>12</sup> <http://elderaffairs.state.fl.us/english/aps.php>

the Ombudsman program. Once received by AHCA, tracking numbers are assigned to each complaint to: 1) ensure appropriate follow-up; and 2) provide AHCA a means of finding out the results of the investigation. Each of these three examples is a step in the right direction. To ensure that AHCA has the most complete picture of an ALF's performance at the time of the biennial survey, *we recommend that AHCA develop other initiatives to facilitate the efficient delivery of historical information from other agencies.* Doing so should greatly assist the AHCA in its consideration of whether an ALF license should be renewed.

#### **A. A CHANGE OF FOCUS FROM COMPLIANCE WITH REGULATIONS TO A CONCERN FOR RESIDENTS**

AHCA has the discretion to deny, revoke or suspend any license issued to an ALF and may impose an administrative fine for violations of the applicable rules and statutory provisions governing ALFs. AHCA can impose these sanctions for actions committed by a licensee, by a facility employee or by any person subject to level 1 background screening under Florida Statute 408.809, such as the administrator responsible for day-to-day operation or the person who is responsible for the financial operation of the facility. The most egregious acts that might occur at an ALF are classified as Class I or Class II violations.<sup>13</sup> The presence of these provisions in the Florida Statutes is confirmation that imposition of these fines, penalties and sanctions has been approved by the legislature.

We applaud the legislature's decision to allow for the imposition of major fines and possible denial, revocation or suspension of ALF licenses when residents are abused, neglected or when other actions occur that might result in injury or death. This indicates to us that the legislature is not only concerned about the level and type of care residents receive at these

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<sup>13</sup> Florida Statute 408.813 defines the violations as follows:

(a) Class "I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. The agency shall impose an administrative fine as provided by law for a cited class I violation. A fine shall be levied notwithstanding the correction of the violation.

(b) Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. The agency shall impose an administrative fine as provided by law for a cited class II violation. A fine shall be levied notwithstanding the correction of the violation.



facilities, they also want to protect them from abuse, neglect or exploitation.<sup>14</sup> As this appears to be a major concern of the legislature, we feel it should become a greater concern for AHCA. We are not saying that AHCA does not share these concerns. Therefore, it becomes necessary for us to explain this statement.

The members of the Grand Jury heard repeatedly that AHCA is not in the business of closing facilities. Beyond the licensure process, AHCA's primary mission is to ensure ALFs comply with applicable policies, rules and regulations. However, if there are ALFs that are repeat offenders of Class I and II violations, the fact that they are brought into compliance for those specific violations does not undo the injury, hurt or death caused by the intentional or negligent act of the facility or its employees. A portion of the Hippocratic Oath taken by physicians says above all, they will "do no harm." We strongly believe this should be the mantra and goal of all ALFs, their licensees, administrators and employees; *do no harm*. For those ALFs that do harm their residents, especially those facilities that inflict greater harm through repeat violations, we believe the AHCA's mission should be to do all it can, to move as quickly as it can, to ensure that more residents are not harmed.<sup>15</sup> Revoke the licenses. Impose the fines. Hit the offenders where it will hurt most, in their pockets. By failing to take action, or even by taking action in an untimely manner, AHCA may be unwittingly putting other residents at risk of harm.

AHCA presently has the tools to protect our vulnerable Florida residents living in ALFs. AHCA needs to do more effective job of enforcement, and not simply ensure licensees are in compliance with the laws, rules and regulations. AHCA must also ensure that those licensees,

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<sup>14</sup> This belief is corroborated by a review of the Legislative intent for the Adult Protective Services Act, found at Florida Statute 415.101. "The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all disabled adults or elderly persons in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of disabled adults or elderly persons. . ."

<sup>15</sup> It appears AHCA may be shifting its focus in this regard. A new policy has been enacted whereby AHCA receives weekly reports from DCF that list every death occurring in Florida's ALFs. As these weekly reports may signal problems, deficiencies or a need for more training at specified ALFs, we believe the enactment of this new policy is a step in the right direction of providing better protection for ALF residents.

who seek to make as much profit as possible at the expense of providing appropriate care for the residents in their facilities, will not be allowed to operate in this state.

## **B. WHY THERE NEEDS TO BE A LEAD AGENCY**

Many state agencies and departments in Florida receive and investigate reports of abuse and neglect of ALF residents. We are concerned that some of these complaints may be neglected (or fall through the cracks) because one entity believes another entity is taking the responsibility for handling or processing a particular investigation. To avoid this problem, we strongly believe there should be a **lead** agency responsible for tracking, directing, assigning and/or conducting the investigations of all such complaints. We believe the agency assigned that role should be AHCA. Why AHCA? AHCA is the agency responsible for determining initially whether a license should be issued, and thereafter, whether facilities should continue to operate. AHCA determines whether ALF licenses should be renewed. This decision is primarily based on the results of the biennial survey. As was reported to the Grand Jury, AHCA presently varies the depth and extent of its biennial survey based on the number and types of violations reported for a specific ALF. Someone needs to make sure that each incoming report or complaint of abuse is actually being investigated. Having done so, AHCA will then have receipt and access to all relevant information that will allow it to conduct the most appropriate type biennial survey. This will result in a more accurate and more complete assessment of each ALF's performance over the past two years.

*We recommend that AHCA be assigned the role of the lead agency responsible for tracking, directing, assigning and/or conducting the investigations of all complaints involving ALFs.*

## **C. A NEED FOR GREATER INTERAGENCY COMMUNICATION**

In connection with improving and increasing the exchange of and access to information and reports between agencies and departments, the Grand Jury believes the effective oversight of Florida ALFs could be enhanced by regular and periodic interagency meetings and discussions.<sup>16</sup> We believe these meetings should, among other things, involve discussions about improving the exchange of information between the agencies and departments involved with and responsible

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<sup>16</sup> The Grand Jury received information that interagency communication has already increased as a result of the attention and public scrutiny presently being focused on ALFs. We applaud those responsible for this effort and encourage them to continue and enhance the process. It is what our most vulnerable ALF residents deserve.

for protecting ALF residents from abuse and neglect. These meetings can also be a convenient vehicle for discussing problematic ALFs and those ALFs which constantly get cited for violations.<sup>17</sup> We recognize that all of the residents at a specific ALF may be affected by a single issue. If remedial measures to correct the issue are not effective or would put other residents at risk, then all affected entities could collaborate on the most effective, expedient and efficient way to suspend or revoke the license and re-locate the residents to another facility. Such collaborative efforts would go a long way towards ridding the state of operators who prey on their residents rather than providing appropriate care for them.

#### **D. A NEED FOR IMPROVED TECHNOLOGY**

Witnesses advised that the computer systems and data bases used by the different agencies are not compatible. They further advised that most of the documents and reports prepared by the various agencies are created on paper and transmitted as paper. Establishing a “lead” agency and creating a policy whereby the agencies and departments engage in greater, more effective, periodic discussions is best done with improvements to the technology presently being used by those entities. For instance, when the surveyor gets ready to conduct his pre-survey, even if he has copies of all relevant reports, the surveyor will be reviewing a ton of paperwork if the ALF to be surveyed is one of the troubled ones. AHCA and the other affected agencies need to focus some time and attention on creating a form, format and data collection system that will allow for computer generated reports. These reports can provide effective summaries of all data collected.

One of the ways to assist in making sure all data on specific ALFs is captured from all entities, departments and agencies that become aware of such information is to have AHCA assign a unique identification number for every ALF operating in Florida. Once established, that

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<sup>17</sup> We are aware that AHCA holds regular meetings to discuss problem ALFs and AHCA’s Health Facility Evaluators (Surveyors) are also present for these meetings. However, we believe there is a need to have the other agencies involved in the regulation and oversight of ALFs to participate in this process. With the advent of webinars, video conferencing and teleconferencing, we believe this can be accomplished with minor budgetary expenditures.

We are also aware that Florida’s Long-Term Care Ombudsman Program publishes Quarterly Newsletters wherein it lists ALFs that are receiving the most complaints, categorizes the nature of the complaints and gives the percentage result for cases closed. This is an additional source of information for focusing on problem ALFs. See [http://ombudsman.myflorida.com/publications/newsletters/Outlook\\_Fall\\_2011.pdf](http://ombudsman.myflorida.com/publications/newsletters/Outlook_Fall_2011.pdf)

number can be used to track all information, reports, complaints or investigations that come in involving that particular ALF. If the data is entered as the information becomes available, a report at the end of the year can reveal the number of elder abuse complaints, the number of reports alleging violations of Residents' Rights, the number and types of Adverse Incident Reports<sup>18</sup> and the number of Category I, II, III and IV violations. Using such a simple system could be an effective tool for identifying problem ALFs. It might also be an effective tool for identifying a need to take early corrective action of ALFs that might be headed toward becoming problematic. By taking early corrective action and/or taking timely administrative action, AHCA might save lives and prevent intentional or negligent acts at ALFs that could harm the health, safety or well-being of residents.

Furthermore, using such a system makes it easier for data to be stored. The storage is easier on a computer hard-drive instead of in paper files. The use of computers for storage and review of documents allows a more efficient review of an ALFs history, performance and compliance with regulations. The documents can also travel with the surveyor to the site. Moreover, the survey tool itself can be modified in such a manner that the AHCA biennial survey results (or interim investigations results) can also be entered into the master database. Capturing and storing the data in such a format also provides for a performance assessment that can be made over a longer period of time (i.e., reviewing the last biennial report as part of the pre-survey).

Finally, using such a system can also help AHCA focus its limited resources on the facilities that are having the greatest challenges or those committing the greatest number of

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<sup>18</sup> See, Florida Administrative Code, Chapter 58A-5.0241 and Florida Statute 429.23(3). "Adverse incident" means an event that results in death, brain or spinal damage, permanent disfigurement, fracture or dislocation of bones or joints, any condition that required medical attention to which the resident has not given his or her consent, including failure to honor advanced directives, any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident's condition before the incident, an event that is reported to law enforcement or its personnel for investigation, or resident elopement, if the elopement places the resident at risk of harm or injury. The incident that occurred must be an event over which the facility's staff could have exercised control (prevented or influenced the occurrence or extent of injury to the resident). Florida Statute 429.23(3). The preliminary adverse incident report must be submitted to AHCA within one (1) business day after the incident. The facility shall submit to AHCA a full report within fifteen (15) days of the incident. Florida Administrative Code, Chapter 58A-5.0241

violations.<sup>19</sup> This could help point out a need for more training at certain facilities and help weed out those ALFs that simply refuse to come into or maintain compliance with mandatory rules and regulations.

Until the agencies develop systems that communicate with each other, agencies can share information by allowing specially assigned individuals in each agency access to data in the other agencies data base. We hope that fear of abuse does not prevent agencies from utilizing this option. Control and oversight can be easily accomplished by providing a special user ID that grants access to limited data fields. Doing so could provide needed information to all agencies.

#### **E. REMOVING AND KEEPING OUT BAD ADMINISTRATORS**

Testimony showed that most of the ALFs operating in Florida do a good job of complying with the applicable rules and regulations that govern the operation of ALFs. They take care to make sure that they provide a safe home for their residents and look out for their health, safety and welfare. However, other testimony we received convinces us that there are other facilities that do not seek this goal. It is clear that the violations and deficiencies that occur at ALFs are due to the actions or inactions of the administrators, staff members or licensees of the ALFs. It is their actions that threaten the lives and well being of the residents. Some ALF owners own or have ownership interest in multiple facilities. We are also aware that regardless of who owns the facility, the law requires someone to be present and to be responsible for the day-to-day operation of each of the facilities - an Administrator. The owner/licensee and the Administrator must both be held accountable for the actions that take place in ALF facilities.

The Administrator serves a critical role in ensuring that a facility is operating correctly. The Administrator is the one who should oversee all of the employees, ensure that employees receive the appropriate training, make sure policies and procedures are being followed and guides and oversees actions inside the facility. If a certain ALF is a chronic rule violator, the Administrator knows that. He or she has to be complicit in allowing the activity or, if acting on instructions from an unscrupulous owner, may be powerless to correct it. The Administrator's role is so important that as part of the licensure process, Florida Statutes requires AHCA to

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<sup>19</sup> We are pleased to report that effective October 1, 2011, AHCA has already initiated "abbreviated inspection" for facilities that have a history of being in compliance. The specific eligibility requirements for abbreviated inspections are found at Chapter 58A-6.014(3), Florida Administrative Code.

conduct background checks on each person who will serve as an Administrator<sup>20</sup> and also requires the licensee to notify AHCA of any change in Administrators.<sup>21</sup>

Presently, applicants for licensure must provide the name, address, date of birth, social security number, education, and experience of the prospective Administrator, if different from the applicant.<sup>22</sup> This Grand Jury does not believe this is sufficient. As Administrators are such essential players in the operation of the ALFs, we strongly believe AHCA should focus on developing procedures or rules that specifically preclude problematic Administrators who work in one ALF from transferring to another facility. We also believe there should be a mechanism in place to track the performance of ALF Administrators. A suggestion for doing that might be the licensing of the Administrators.

In that regard, *the Grand Jury recommends that Administrators be subject to a licensure process that requires each prospective Administrator to submit an application for license.* The application would have each Administrator provide all of the information presently required to be submitted with an initial application for license (i.e., the name, address, date of birth, social security number, education, and experience of the Administrator). Additionally, the Administrator's application should also require the Administrator to disclose: all prior work history; prior work experience in any ALF, nursing home or other long-term care facility; advise whether the applicant has previously been terminated by any such facility; and whether the applicant has ever had a request to serve as Administrator denied. Level 2 background screening would also be conducted as presently provided for in Florida Statutes 429.174 and 408.809 (1) (e).

If the Administrator application is approved, we recommend that a unique identification number be assigned for each Administrator. Similar to the process in place that allows AHCA to impose administrative sanctions and penalties against ALFs for violations,<sup>23</sup> we believe that the ACHA should track the intentional and/or negligent acts of Administrators and use that data to determine whether the licenses of the Administrators should be renewed. The use of a unique

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<sup>20</sup> Florida Statutes 429.174 and 408.809(1)(e)

<sup>21</sup> Florida Statute 429.176

<sup>22</sup> Florida Statute 429.11(1)(c) This is not necessary if the person seeking the license will serve as the Administrator. In that case, the background check will only be performed on the person seeking the licensure.

<sup>23</sup> Florida Statute 429.19

identification number for each Administrator will allow AHCA to track problem Administrators as they move through the industry. The Grand Jury strongly believes this will be an effective way to help protect residents from Administrators who have demonstrated that their presence at a facility is a threat to the health, safety or well-being of residents. Instituting such a process will result in accountability of the licensee **and** Administrator for the conditions, actions and quality of care provided at each facility.

### **III. FLORIDA'S LONG-TERM CARE OMBUDSMAN PROGRAM – THE RESIDENT ADVOCATE**

Recognizing that there are a lot of agencies and entities involved in the oversight and regulation of ALFs, we decided we would focus on one of which members of the public probably have limited knowledge. The Grand Jury was educated during this process with its receipt of information about Florida's Long-Term Care Ombudsman Program (LTCOP). We believe it is a wonderful program and have several recommendations that we hope will bring in more volunteers as well as result in more effective and efficient service.

The Long-Term Care Ombudsman Program in Florida has been in existence for more than 35 years. It was created by the Florida Legislature in 1975 and its functions, duties, responsibilities and powers are found in Florida Statute 400.0065. Briefly, the LTCOP, operating under the Department of Elder Affairs, is comprised of state employees, local council<sup>24</sup> and state council<sup>25</sup> members (volunteers) who serve in 17 district offices spread throughout the state.<sup>26</sup> The local council members are the heart and soul of the program and they are the ones who primarily fulfill LTCOP's mission of being resident advocates. In its literature, the ombudsman is defined as "a voice for people living in Florida's Nursing Homes, Assisted Living Facilities and Adult Family-Care Homes."<sup>27</sup> As many of the elderly residents living in ALFs do

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<sup>24</sup> "Local council" means a local long-term care ombudsman council designated by the ombudsman pursuant to s. 400.0069. Local councils are also known as district long-term care ombudsman councils or district councils. Florida Statute 400.060(4).

<sup>25</sup> "State council" means the State Long-Term Care Ombudsman Council created by s. 400.0067. Florida Statute 400.060(10). The state council, among other things, supports the local councils in performing their duties and responsibilities.

<sup>26</sup> For fiscal year 2010, there were approximately 50 paid staff members and 375 volunteers working with Florida's Long-Term Care Ombudsman Program.

<sup>27</sup> This section of our report and recommendations will focus solely on the work the LTCOP does with ALFs.

not have family members, the role played by the local ombudsman council members in speaking out on their behalf becomes even more critically important. Their characterization of being the “voice for people” is corroborated by the Legislative Intent set forth in the Florida Statutes:

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not fully ensured by rules of the Department of Elder Affairs or the Agency for Health Care Administration or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident, a representative of a long-term care facility resident, or any other concerned citizen may make a complaint against the facility or its employees, or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of a long-term care facility resident. The Legislature finds that **concerned citizens are often more effective advocates for the rights of others than governmental agencies**. The Legislature further finds that in order to be eligible to receive an allotment of funds authorized and appropriated under the federal Older Americans Act, the state must establish and operate an Office of State Long-Term Care Ombudsman, to be headed by the State Long-Term Care Ombudsman, and carry out a long-term care ombudsman program. (emphasis added)

(2) It is the intent of the Legislature, therefore, to utilize voluntary citizen ombudsman councils under the leadership of the ombudsman, and through them to operate an ombudsman program which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the ombudsman and ombudsman councils and their designated representatives not be required to obtain warrants in order to enter into or conduct investigations or onsite administrative assessments of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by ombudsman councils shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.<sup>28</sup>

Working together, the LTCOP staff, local council and state council members perform a number of tasks directed at protecting the health, safety, welfare and rights of residents in long-term care facilities. Those tasks include the following:

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<sup>28</sup> Florida Statute 400.0061



- a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.
- (b) Provide services that assist in protecting the health, safety, welfare, and rights of residents.
- (c) Inform residents, their representatives, and other citizens about obtaining the services of the State Long-Term Care Ombudsman Program and its representatives.
- (d) Ensure that residents have regular and timely access to the services provided through the office and that residents and complainants receive timely responses from representatives of the office to their complaints.
- (e) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.<sup>29</sup>

In connection with the aforementioned duties, one of the major responsibilities of the LTCOP is to receive and investigate complaints involving ALF residents. The complaints may range from care and health to privacy considerations. Complaints and allegations of violations of the Resident's Bill of Rights can be made on behalf of a resident by anyone. Accordingly, the LTCOP has received anonymous complaints as well as complaints from residents, friends, and family members of residents, ALF employees, health care workers and sometimes, even other agencies. Once a complaint is received, a local ombudsman council member is assigned to conduct an investigation.

A local ombudsman council member is authorized to enter any long-term care facility without notice or first obtaining a warrant in the performance of his investigative function.<sup>30</sup> ALF operators and their staff must allow local council members entry and contact with the residents so that the investigation can be conducted. If the Ombudsman or any state or local ombudsman council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state

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<sup>29</sup> Florida Statute 400.0065. See Florida Statute 400.0069.

<sup>30</sup> Florida Statute 400.0069(3)

council, or the local council in the performance of official duties. The ombudsman is required to report to the Agency for Health Care Administration any facility's refusal to allow entry.<sup>31</sup> The goal of the LTCOP is not to determine whether the ALF is in compliance with regulations and statutes. The chief goal of every local and state ombudsman council member is to advocate for the rights of the men and women living in Florida's long-term care facilities. If the ombudsman council member finds that a violation has occurred, he brings it to the attention of the long-term care facility administrator in writing. Thereafter, he tries to reach a resolution between the facility and the resident. The local ombudsman council members here in Miami-Dade County seek to close out investigations within ninety days of receipt of an initial complaint. Once the investigation has concluded, a report is prepared detailing the nature of the complaint and describing what was done to resolve the complaint.

#### **A. THE ASSESSMENT PROCESS**

One of the other critical functions carried out by the LTCOP is the administrative assessment. As provided for in the statute, "[i]n addition to any specific investigation conducted pursuant to a complaint, the local council shall conduct, at least annually, an onsite administrative assessment of each . . . assisted living facility, . . . within its jurisdiction. This administrative assessment shall focus on factors affecting the rights, health, safety, and welfare of the residents."<sup>32</sup> Advance notice of the administrative assessment is not to be given to the ALF.<sup>33</sup> An onsite administrative assessment may not be accomplished by forcible entry. However, similar to the statutory provisions governing *investigations*, if the ombudsman or a state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the local council in the performance of official duties.<sup>34</sup>

The administrative assessment conducted by the local ombudsman council member may result in a finding that a facility may need to correct certain deficiencies that are impacting the health, safety or well-being of its residents. If that occurs, the ALF is given a time frame within which it must correct the deficiency. Follow-up visits are conducted to ensure that corrections

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<sup>31</sup> Florida Statute 400.0073 (4)

<sup>32</sup> Florida Statute 400.0074 (1)

<sup>33</sup> Florida Statute 400.0074 (2)(c)

<sup>34</sup> Florida Statute 400.0074 (4)

are made and any remedial actions have been completed. Notwithstanding the corrections, depending on the nature of the deficiencies or violations, referrals may be made to other agencies.

During our investigation, we discovered that a recent change has been made to the assessment form. The implementation of a new assessment form has resulted in a change to the scope and focus of the assessment itself. For instance, when conducting an assessment using the old form, local council members were encouraged, as part of their assessment of the facility, to:

- Check bed frames and mattresses for cleanliness.
- Look for mildew on floor, walls and ceilings.
- Check the length of privacy curtains in the resident's room to ensure it affords privacy to the resident.
- Ask the persons who supervise medications what training they have had in assisting with self-administered medications.
- Pull on cart drawers or check storage areas to make sure that medications are always locked up when they are not being dispensed.
- Make sure all food is covered, labeled and dated in the refrigerator and freezer.
- Look at the expiration date for food items that will be used.
- Ask to see the water supply and check the expiration date of any bottled water.
- Check the thermometers in all refrigerators and freezers.
- Determine how many residents within the facility have pressure sores, and, with consent, review the log kept by the ALF that is used to record which residents have pressure sores.
- With consent (or with redaction of patients' names) review medication records to ensure that residents are receiving the correct medication and at the right time.
- Determine whether the medical logs are being kept appropriately.

In addition to investigating a specific complaint received about a specific resident, with the widespread areas of inquiry permitted under the old assessment form, Ombudsmen were also able to make a thorough assessment of the specific facility and thereby make a determination of whether the ALF, its staff or its procedures were endangering the health, safety or welfare of any of its residents. A plan would be put in place to address any deficiencies or violations uncovered or discovered by the ombudsman during the assessment.

The revised (or new) assessment form encourages the local ombudsman council member to make sensory observations. In other words, they should use their eyes, nose and ears to make observations about the facility and its conditions. However, these observations are to be made while they are engaged in the primary focus under the new form, namely, interviews of the residents. The local ombudsman council members are encouraged to engage residents in conversation, ask open-ended questions and try to get residents to share information with them.

Instead of conducting physical inspections of facilities and checking logs to ensure residents' rights are not being violated, the local council member must now rely on the ability<sup>35</sup> and willingness<sup>36</sup> of residents to be forthcoming in their discussions with Ombudsmen. A failure of either aspect (ability or willingness) may result in the systematic continuation of violations of residents' rights.

*We recommend that the Ombudsmen not be limited in their assessment of ALFs.*

## **B. RETALIATION**

One of the concerns we had about the ability of local ombudsman council members to effectively conduct their investigations was the collective fear of intimidation and retaliation some residents share if they cooperate with such investigations. That fear of intimidation and retaliation is real for some of the residents as they know of residents who were discharged from ALFs (their homes) subsequent to filing complaints or providing information to local ombudsman council members during investigations or the administrative assessment process. In fact, the council members themselves are so mindful of this concern that they try to hide the true focus of their investigations by intentionally speaking to a number of residents during the actual visit to the facility. This misdirection was easier to do when using the old assessment form because facts could be confirmed, established and / or corroborated by inspections and not just resident interviews. This is indeed a serious concern. As it was pointed out to the Grand Jury, although there are certain regulations and protections that govern discharging residents from nursing homes, there are no similar regulations or protections for residents in ALFs. ALF

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<sup>35</sup> Many ALF residents are elderly and suffering from certain diseases that limit their mental capacity. They are unable to provide full, complete and accurate information about what might be happening to them at the facility.

<sup>36</sup> Residents who are mentally stable may be unwilling to provide full, complete and accurate information about what might be happening to them at the facility out of fear of retaliation.

residents should have the comfort level to be able to talk openly about issues or problems even with the administrators, staff and licensees of their facility.

The unfortunate reality is that the fear of intimidation and retaliation exists in spite of the existence of a statute that makes retaliation unlawful.<sup>37</sup> In fact, any person, ALF, or other entity that violates this provision commits a misdemeanor of the second degree (punishable by a maximum fine of \$500) and may be liable for damages and equitable relief.<sup>38</sup> It may very well be that the penalty is so inconsequential that there is no fear on the part of those who are in a position (and have a motive) to retaliate. In that regard, *the Grand Jury recommends that the penalty for violating the retaliation provision of this section be changed from a misdemeanor to a third degree felony.* We believe this greater potential punishment will serve as a greater deterrent.

As to retaliation, local council members conduct administrative assessments and investigations at other long-term care facilities, including nursing homes. However, the Grand Jury believes nursing home residents are at a lower risk for retaliation because they have specific rights that govern their discharge from that type long-term care facility. Specifically, they have:

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action . . .<sup>39</sup>

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<sup>37</sup> Florida Statute 400.0083(2) provides, "It shall be unlawful for any person, long-term care facility, or other entity to knowingly or willfully take action or retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the office, the state council, or a local council."

<sup>38</sup> Florida Statute 400.0083(3)

<sup>39</sup> Florida Statute 400.022(p)

The Grand Jury believes these statutory protections lessen the probability of retaliatory discharges by licensees or administrators against nursing home residents. We believe these same protections and rights should be afforded to ALF residents.

***We recommend that the legislature adopt for the benefit of ALF residents the same protection and rights found in Florida Statute 400.022(p) that presently protects nursing home residents.***

### **C. AGENCY REFERRALS BY DISTRICT OMBUDSMAN MANAGERS**

Once the assessment has been completed, verified problems have been brought to the attention of the ALF administrator and target dates have been agreed on for remediation of any problems, an Administrative Assessment Form (AAF) is prepared and forwarded to the District Ombudsman Manager (the DOM) for review. The AAF contains information regarding the complaint, investigation, findings and results of the investigations. It is our understanding that upon receipt and review of the Administrative Assessment Form, the DOM has the “option” of forwarding the form and/or other information to the Agency for Health Care Administration, the Department of Children and Families Adult Protective Services or other agencies. A failure to forward the AAF may result in a skewed assessment of the effectiveness or efficiency of a specific facility.

As previously reported, AHCA conducts a biennial investigation (referred to as a “survey”) of every ALF in Florida. The purpose of the survey is to determine whether the ALF is operating within statutory and regulatory guidelines. The survey begins with a “pre-survey” evaluation that includes the review of prior AHCA surveys, any complaints or investigative reports and any Administrative Assessment Forms received from District Ombudsmen Managers. Because the Ombudsmen have more contact with the ALFs, have visited the ALFs on a more frequent basis and have investigated complaints from the residents of those ALFs, they have a more extensive knowledge of the performance of the ALFs over an extended period of time. For the AHCA Health Facility Evaluator, we believe having as much information as possible will lead to a more complete survey. We also understand that the results of the survey will factor into whether or not the license of a specific ALF will be renewed.

***The Grand Jury recommends that all Administrative Assessment Forms should be forwarded by the District Ombudsman Manager to ACHA.***

#### D. THE LONG-TERM CARE OMBUDSMAN PROGRAM NEEDS YOU

Many members of the Grand Jury were not aware of the existence of Florida's Long-Term Care Ombudsman Program (LTCOP) nor were we aware of what they do. In an environment of successive agency budget cuts, the LTCOP's volunteers serve a critical role in assisting with protecting the rights of ALF residents. Although these volunteers are reimbursed for mileage, they receive no salary or other benefits for the work they do. As reflected in Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report, the Program "is proud to boast the remarkable accomplishments of its dedicated volunteers" which, from October 1, 2009 to September 30, 2010 did the following:

- Investigated and resolved more complaints than any other year in the program's 35-year history: 9,098 total;
- Traveled a cumulative total of **405,336** miles in 67 counties to visit residents, conducted annual facility assessments, train facility staff and investigate complaints;
- Contributed **20,221** hours of unpaid service to long-term care residents;
- Saved the State of Florida over **\$1.8 million** in salaries and administrative cost for long-term care residents.
- With fewer resources than previous years, completed **100 percent** of the prescribed annual facility assessments, meaning that ombudsmen saw the inside of every licensed long-term care facility in Florida this year.

Because these volunteers are doing such a great job, we believe the public should be educated about what they do and be inspired to serve as local council members.<sup>40</sup> We are also aware that all of the ALFs are required to post ombudsman-provided posters that provide residents, staff and visitors with information about the existence of the LTCOP and what it does. Increasing the number of posters in conspicuous locations inside ALFs and posting such posters in other public health care facilities should also be done. We hope that this will have a two-fold benefit: One, it will result in an increase in the number of volunteers and two, it will make friends, relatives and others aware that they can (and should) report any violation observed in any ALF. We are aware that each Ombudsman District Manager is responsible for recruiting volunteers to perform this

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<sup>40</sup> In addition to the local council volunteers family members can play an important role in protecting their friends and loved ones residing at ALFs by visiting more frequently, keeping a watchful eye on the conditions of their loved one as well as the condition and operation of the facility itself. It would probably also be a good idea for visits to be made at different times of the day. The extra eyes and ears might in some manner also contribute to the improved treatment of ALF residents. Any violations observed could be anonymously reported to the LTCOP.

important work. A review of the Florida Long-Term Care Ombudsman Program website reveals that earlier this year the Acting Director of the Program issued a press release announcing the need for more volunteers in each of its 17 local councils throughout the state.<sup>41</sup> To increase the number of volunteers, LTCOP District Managers will need to do a more effective job in outreach through education and marketing to their respective communities. This must become a priority. As we consider the recent statewide increase in the number of ALFs and the anticipated need for more long-term care facilities (including ALFs), it is clear that there will need to be a concomitant statewide increase in the number of council members. Individuals who are interested in volunteering to serve with the LTCOP or who just want to learn more about the program may call toll-free 1-888-831-0404. Persons with internet access can visit online at <http://ombudsman.myflorida.com>. As indicated on the website, “All it takes to volunteer . . . is a caring spirit and a willingness to learn the “ins and outs” of being a long-term care ombudsman.”<sup>42</sup>

As the LTCOP plays such a critical role in protecting the health, safety, welfare and rights of residents in all long-term care facilities, *we strongly recommend that Florida residents not only get the word out about the program, but that they also sign up to serve as volunteers for this worthy cause.*

#### **IV. SUPPLEMENTAL RECOMMENDATIONS FROM FLORIDA SENATE**

##### **INTERIM REPORT**

On July 28, 2011, Governor Rick Scott announced the creation of a task force that would conduct an inquiry and investigation of alleged abuses and neglectful treatment occurring at many of Florida’s Assisted Living Facilities (ALFs). During our term the Task Force, made up of legislators, consumer advocates and industry representatives, held several meetings in various locations across the state, where they heard from an assortment of witnesses.

On a related note, and as indicated in the Introduction to this Report, The Committee on Health Regulation of the Florida Senate released its Florida Senate Interim Report 2012-128 September 2011, Review Regulatory Oversight of Assisted Living Facilities in Florida. We read the interim report, considered many of the recommendations contained therein and having done so, we wish to prioritize, a few of the recommendations we believe will have the greatest impact

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<sup>41</sup> [http://ombudsman.myflorida.com/press\\_03042011.php](http://ombudsman.myflorida.com/press_03042011.php)

<sup>42</sup> <http://ombudsman.myflorida.com/Volunteer.php>



on improving conditions at and resolving regulatory deficiencies in ALFs. The Florida Legislature will soon consider creating new laws or refining existing legislation to improve the safety, health, welfare and morals of Florida residents, particularly those residing in Assisted Living Facilities. In that regard and for their consideration, we offer the following observations and additional recommendations to the Governor, his Task Force and members of the Florida Legislature.

- Currently, Florida law requires the same age, education, and testing requirements of those applying to become an administrator of an ALF, regardless of the size of the ALF or whether that ALF has a specialty license. *We recommend that the Florida Legislature change the qualification requirements for administrators of ALFs to ensure an administrator's education and experience levels correlate to the type of residents or the size of the facility that he or she oversees.*
- As estimates from various studies indicate that 45 to 67 percent of residents of ALFs have Alzheimer's disease or other dementia and that over 60 percent of those with dementia will wander at some point, *we recommend that staff receive a certain number of hours of specified training on elopement.*<sup>43</sup>
- *We recommend Florida's core training curriculum be expanded to include subject matter to better prepare administrators for carrying out their responsibilities.*

## V. CONCLUSIONS AND RECOMMENDATIONS

As reflected in this report, a number of agencies and entities are involved in the oversight and regulation of Assisted Living Facilities and other long-term care facilities. They all have a desire to protect the health, safety and well being of residents. With a growing elderly population and an ever increasing number of licensed facilities, there is clearly a need for improved interagency communication and a need for a lead agency. AHCA should be that agency. All of the agencies must do a better job of communicating so that AHCA has all available and relevant information when considering applications for licensure, re-licensing, and even possibly imposing administrative sanctions against ALFS. AHCA must also strive to keep "resident safety" a top priority in all of its investigations, surveys and licensing requests.

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<sup>43</sup> Elopement is the term used for residents who wander away from their facility

We discovered during our investigation that local council members with Florida's Long-Term Care Ombudsman Program also have regular and routine contact with ALFs. The assessments and investigations they conduct help improve conditions at ALFs and ensure that Patient's Rights are being honored. The reports they prepare and the information they acquire should also be shared with AHCA. The LTCOP volunteers do a great job and there are less than 400 council members statewide. There is clearly a need to increase the number of such volunteers and we hope Florida residents respond to our call for individuals to apply to serve with this worthy program.

It saddens us to note that as we were in the final stages of preparing this report, we received information regarding an undercover investigation that revealed a major scam that was putting "at risk" hundreds of residents in ALFs and other long-term care facilities in Miami-Dade County. The information provided below underscores the importance of interagency communication and the need for cooperation between agencies to address any and all deficiencies or violations that threaten the health, safety or well-being of ALF residents. The incident has led us to prepare this addendum and make additional recommendations directed at this "breaking news".

The AHCA regulations require that "at all times" there must be at least one trained staff member present at each ALF facility who has received training and is certified in administering cardio-pulmonary resuscitation (CPR).<sup>44</sup> To determine whether the long-term care facility is in compliance with this requirement, the ACHA reviews a sampling of employee files during each facility biennial survey. The presence of a CPR card in the file is deemed proof that a staff member received the training and is qualified to administer CPR to a resident in the event of an emergency.

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<sup>44</sup> Florida Administrative Code 58A-5.0191 (4)

(4) FIRST AID AND CARDIOPULMONARY RESUSCITATION (CPR). A staff member who has completed courses in First Aid and CPR and holds a currently valid card documenting completion of such courses must be in the facility at all times.

(a) Documentation of attendance at First Aid or CPR course offered by an accredited college, university or vocational school; a licensed hospital; the American Red Cross, American Heart Association, or National Safety Council; or a provider approved by the Department of Health, shall satisfy this requirement.

Similarly, unlicensed persons who will be providing assistance with self-administered medications must receive training before they are able to assume those responsibilities with ALF residents.<sup>45</sup> The training must be provided by a nurse or licensed pharmacist and as part of the training the trainee must, among other things, demonstrate the ability to “recognize the general signs of adverse reactions to medications and report such reactions.”<sup>46</sup> The presence of a training certificate in the file is deemed proof that the staff members received the training and are qualified to assist ALF residents with taking their self-administered medications. Clearly, both of these training requirements are designed to help provide for the health, safety and welfare of the elderly and frail residents in ALFs.

The undercover investigation revealed that some facilities in Miami-Dade County were at risk of receiving fines or other administrative sanction for failure to have documentation that staff had received the requisite CPR or “assistance with self-administered medication” training. Specifically, such documentation should have been present in each employee’s file. Potentially, the facility might not have had its license renewed if these training deficiencies were not resolved. The AHCA officials returned to ensure the facility had met the deadline for coming into compliance on the training issues. They discovered documents that purported to show that training had been provided, the person whose name was on the certificate had attended the training and that person was now qualified to perform all acts required to be taught as part of the training. Neither representation was true. Unfortunately, the undercover investigation revealed that someone was selling the cards and certificates without the recipients actually receiving the required training. Instead of attending the training, the “care givers”, including an administrator, paid money to obtain illegally prepared and fraudulent training certificates and CPR cards. An inspection of the employee file of the administrator at one ALF revealed training certificates covering topics from “Alzheimer’s Disease or Related Disorders” and “Safe Food Handling” to

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<sup>45</sup> Florida Administrative Code 58A-5.0191(5) (a) Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in assisted living facilities; procedures and techniques for assisting the resident with self-administration of medication including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training shall include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises.

<sup>46</sup> Florida Administrative Code 58A-5.0191(5) (b)

“Fire Safe Requirements Fire Evacuation Procedure Fire Drills” and “Biohazard/Infection Control.” The eleven training certificates were all issued in March 2011 and were all signed by the person who produced the fraudulent CPR cards and Assistance with Medication certificates. That ALF administrator has been arrested and charged with having committed the offenses of Organized Scheme to Defraud, Forgery, Uttering a Forged Instrument, and Misrepresentation of Association with or Academic Standing at a Post Educational Institution, in violation of Florida Statute, 817.0374 (4)(a)(3), Florida Statute 831.01, Florida Statute 831.02, and Florida Statute 817.566.

The fraudulently obtained CPR cards actually read, “American Heart Association Cardio Pulmonary Resuscitation (CPR) and Automated External Defibrillator (AED) card.” The CPR/AED cards were issued complete with the “American Red Cross” symbol and appeared to be properly issued by an authorized training facility complete with a training facility number. The fraudulently obtained certificate, purportedly from “A&F Health Review Training, Inc.”, certified that the person named in the certificate was trained in “Assisting Client with Self-Administered Medication” which is a requirement to work in certain Health Care facilities. As a result, we ended up with individuals working in a long-term **care** facility who apparently had no **care** or concern for the residents at their facility. If the administrators at these facilities are aware of and complicit in this fraud being perpetrated on AHCA and the local council members of the LTCOP, they too demonstrated their lack of concern for the health, safety and welfare of the residents under their care. Any resident who needed this life-saving technique or needed assistance with certain medications was at a greater risk of dying due to the unlawful acts of these employees.

We are unaware of how long this scam has gone on. We also do not know how widespread this problem is. Is it occurring in other counties? Is it happening with other Assisted Living Facilities? Have residents died from complications with medications? Were the general signs of adverse reactions to medications missed because an ALF staff member had the certificate but did not have the training? Did ALF residents who were in need of CPR in an emergency lose their lives because the ALF staff member on duty never received training in Cardio Pulmonary Resuscitation and Automated External Defibrillation? We do not know the answers to these questions. However, this investigation appears to have uncovered an

underground industry of possible certification mills which **will** pass the eye-scan test for paper training competency. It is extremely unlikely that such a criminal enterprise is unique. This reality cannot be ignored in Miami-Dade County nor statewide. Unless all certifications are provided to AHCA and thoroughly evaluated to separate the “paper mills” from the “proper trainers,” lives will remain at risk. Because we now believe that thousands of these elderly residents may be at risk, we make the following recommendations:

*We recommend that AHCA immediately meet with the State Ombudsman and representatives of Florida’s Long-Term Care Ombudsman Program to:*

- 1. Develop a process whereby within the next 180 days, the file of every staff member and employee working in an Assisted Living Facility is checked for the presence of training certificates and CPR/AED cards.*
- 2. Check all such certificates and cards for authenticity and compliance with Florida Administrative Code 58A-5.0191(12).<sup>47</sup>*
- 3. Forward to law enforcement any and all fraudulent documents discovered in this process, especially any and all training certificates and CPA/AED cards issued by the person who sold the documents referred to above.*
- 4. Impose maximum fines and revoke the license of any facility whose administrator or licensee was aware of or complicit in perpetrating this fraud.*
- 5. Have AHCA work with the Department of Elder Affairs to work on new policies that allow the local ombudsman council member to check employees files for compliance during the annual assessment conducted by the Florida’s Long-Term Care Ombudsman Program.*

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<sup>47</sup> (12) TRAINING DOCUMENTATION AND MONITORING.

(a) Except as otherwise noted, certificates, or copies of certificates, of any training required by this rule must be documented in the facility’s personnel files. The documentation must include the following:

1. The title of the training program;
2. The subject matter of the training program;
3. The training program agenda;
4. The number of hours of the training program;
5. The trainee’s name, dates of participation, and location of the training program;
6. The training provider’s name, dated signature and credentials, and professional license number, if applicable.

(b) Upon successful completion of training pursuant to this rule, the training provider must issue a certificate to the trainee as specified in this rule.

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
(A) VENISE METAYER and (B) STEVE CARLO ARMAN	First Degree Murder Armed Robbery- Weapon Kidnapping With a Weapon, Firearm or Aggravated Battery Grand Theft 3 <sup>rd</sup> Degree	True Bill
TIMOTHY L. FULLWOOD (A) and SANTONIO MILLER (B)	First Degree Murder Burglary/Armed	True Bill
JUAN CARLOS PORTIELES, Also known as "DJ SEASUNZ"	First Degree Murder	True Bill
(A) MARQUIS ANTWON REYNOLDS, and (C) TRACY DOUGLAS, JR	First Degree Murder Robbery Using Deadly Weapon or Firearm	True Bill
JESUS ALVAREZ	First Degree Murder Burglary With Assault or Battery Battery on Person 65 Years of Age Or Older	True Bill
RENE ROJAS-TELLEZ	First Degree Murder Carrying a Concealed Firearm	True Bill
(A) RAYON MATHEW SAMUELS, (B) SEAN N. CONDELL, (C) DAMIAN DEWAYNE LEWIS (D) BJON RASHID LEE, and (E) JOSE LAUREL ESTACHE	Murder First Degree Murder First Degree Murder / Premeditated / Attempt Deadly Weapon or Aggravated Battery Murder / Premeditated / Attempt Deadly Weapon or Aggravated Battery Murder / Premeditated / Attempt Deadly Weapon or Aggravated Battery Murder / Premeditated / Attempt Deadly Weapon or Aggravated Battery Attempted Felony Murder With a Deadly Weapon or Aggravated Battery Attempted Felony Murder With a Deadly Weapon or Aggravated Battery Attempted Felony Murder With a Deadly Weapon or Aggravated Battery Burglary With Assault or Battery Therein While Armed Robbery / Home Invasion /Armed/ Attempt Attempted Armed Robbery Unlawful Possession of a Firearm While Engaged in a Criminal Offense (B only) Unlawful Possession of a Firearm While Engaged in a Criminal Offense (E only)	True Bill

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
MARK ANTHONY PINA	First Degree Felony Murder	True Bill
(A) KENDRICK CLARENCE SILVER and (B) ONIEL PEDLEY	First Degree Murder (A&B) Robbery Using Deadly Weapon or Firearm (A&B)	True Bill
JOSE ANTONIO PUPO	First Degree Murder	True Bill
ADOLFO PEREZ	First Degree Murder	True Bill
(A) KEITH SCRUGGS (B) JOHNNIE A. COLLINS	First Degree Murder Dealing in Stolen Property Burglary With Assault or Battery or Armed Remaining In Robbery Using Deadly Weapon or Firearm	True Bill
ERICK GABRIEL BARRIENTOS, Also known as GABO	Murder First Degree Burglary With Assault or Battery Therein While Armed Stalking/Aggravated/Court Order/Prior Injunction/ Restraint Violation of Injunction Against Domestic Violence Violation of Injunction Against Domestic Violence Violation of Injunction Against Domestic Violence	True Bill
KELVIN J. GONZALEZ	Murder/Premeditated/Attempt Robbery Using Deadly Weapon or Firearm Burglary With Assault or Battery Therein / While Armed Kidnapping/Attempt	True Bill
(A) TYRONE JENKINS	First Degree Murder Attempted Armed Robbery Attempted Armed Robbery	True Bill
(A) JANET WHISBY BARR, (B) JAVON QUENTIN ROBINSON	First Degree Murder Murder 1 <sup>st</sup> Degree / Conspiracy Solicitation of First Degree Murder	True Bill
DAVID WHITMORE JOHNSON and CHARLES WARREN JOHNSON	First Degree Murder Murder/Premeditated/Attempt Deadly Weapon or Aggravated Battery Murder Second Degree Attempt/Deadly Weapon Firearm Murder Second Degree Attempt/Deadly Weapon Firearm Murder Second Degree Attempt/Deadly Weapon Firearm Murder Second Degree Attempt/Deadly Weapon Firearm Shooting or Throwing Deadly Missile	True Bill
DAMU KAREEM BRIDGEWATER, JR.	First Degree Murder Robbery/ Deadly Weapon/ Firearm/ Attempt	True Bill

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
KEVIN JOSEPH BOYD	Sexual Battery – Victim Under 12 Years Sexual Battery – Victim Under 12 Years Sexual Battery – Victim Under 12 Years Lewd & Lascivious Molestation on a Child Under 12/ Def Under 18 Lewd & Lascivious Molestation on a Child Under 12/ Def Under 18 Sexual Battery – Victim Under 12 Years	True Bill
(A) ERIC RONALD ELLINGTON, (B) WAYNE WILLIAMS and (C) DYLAN J. McFARLANE	First Degree Murder First Degree Murder Robbery/ Carjacking/ Armed Robbery/ Carjacking/ Armed Burglary With Assault or Battery Therein/ While Armed Robbery/ Armed/ Conspiracy	True Bill
JAMES CHERRY III	First Degree Murder	True Bill



### ACKNOWLEDGMENTS

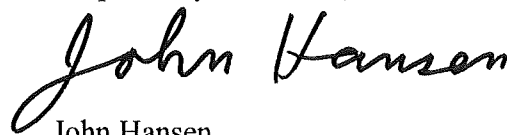
We, the Miami-Dade County Grand Jury for the Spring Term 2011, would like to thank Honorable Judge Gisela Cardonne Ely and Miami-Dade County State Attorney Katherine Fernandez Rundle.

We would especially like to thank Chief Assistant State Attorney Don L. Horn, our legal advisor, for his expert guidance and broad knowledge. He has personally inspired our belief in the criminal justice system. His professionalism and skills made our task easier to perform. We also wish to thank our Administrative Assistant, Rose Anne Dare and our Bailiff, Nelido Gil, who graciously attended to the myriad of administrative details of the Grand Jury.

We also would like to thank Assistant State Attorney Susan Dechovitz and Court Reporters Tanya Settel and Fernando Subirats for their assistance. We gratefully acknowledge all of the dedicated law enforcement and government agencies of Miami-Dade County, all of whom contributed greatly in assisting this Grand Jury in the performance of its duties.

Our grand jury's term was filled with representatives from our multi-ethnic community. Our term proved to be a most memorable and worthwhile experience to all of us that were chosen to serve our community.

Respectfully submitted,



John Hansen  
Miami-Dade County Grand Jury  
Spring Term 2011

ATTEST:



Martha Ramirez-Gonzalez  
Clerk

Date: December 8, 2011