

By Senator Rossin

35-792D-98

1 A bill to be entitled
 2 An act relating to the care of elderly persons
 3 (RAB); amending s. 400.424, F.S.; providing
 4 requirements for the contract executed between
 5 the licensee and the resident of an assisted
 6 living facility; authorizing the Department of
 7 Elderly Affairs to adopt rules; amending s.
 8 400.427, F.S.; revising requirements for a
 9 facility with respect to obtaining surety
 10 bonds; authorizing the Department of Elderly
 11 Affairs to adopt rules; providing an effective
 12 date.

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 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Subsections (1) and (2), paragraph (c) of
 17 subsection (3), and subsection (5) of section 400.424, Florida
 18 Statutes, are amended, and subsection (8) is added to that
 19 section, to read:

20 400.424 Contracts.--

21 (1) The presence of each resident in a facility shall
 22 be covered by a contract, executed at the time of admission or
 23 prior thereto, between the licensee and the resident or his or
 24 her designee or legal representative. Each party to the
 25 contract shall be provided with a duplicate original thereof,
 26 and the licensee shall keep on file in the facility all such
 27 contracts. The licensee may ~~shall~~ not destroy or otherwise
 28 dispose of any such contract until 5 years after its
 29 expiration ~~or such longer period as may be provided in the~~
 30 ~~rules of the department.~~

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1 (2) Each contract must ~~shall~~ contain express
2 provisions specifically setting forth the services and
3 accommodations to be provided by the facility; the rates or
4 charges; provision for at least 30 days' written notice of a
5 rate increase; the rights, duties, and obligations of the
6 residents, other than those specified in s. 400.428; and other
7 matters that ~~which~~ the parties deem appropriate. Whenever
8 money is deposited or advanced by a resident in a contract as
9 security for performance of the contract agreement or as
10 advance rent for other than the next immediate rental period:

11 (a) Such funds shall be deposited ~~held~~ in a banking
12 institution in this state that is. ~~Funds held shall be kept~~
13 ~~separate from the funds and property of the facility; shall be~~
14 ~~deposited in a bank savings association, trust company, or~~
15 ~~credit union located in this state and, if possible, located,~~
16 if possible, in the same community district in which the
17 facility is located; shall be kept separate from the funds and
18 property of the facility; may ~~shall~~ not be represented as part
19 of the assets of the facility on financial statements; and
20 shall be used, or otherwise expended, only for the account of
21 the resident.

22 (b) The licensee shall, within 30 days of receipt of
23 advance rent or a security deposit, notify the resident or
24 residents in writing of the manner in which the licensee is
25 holding the advance rent or security deposit and state the
26 name and address of the depository where the moneys are being
27 held. The licensee shall notify residents of the facility's
28 policy on advance deposits.

29 (3)

30 (c) The purpose of any advance payment and a refund
31 policy for such payment, including any advance payment for

1 housing, meals, lodging, or personal services, shall be
2 covered in the contract.

3 (5) Neither the ~~No contract nor,~~ or any provision
4 thereof relieves, ~~shall be construed to relieve~~ any licensee
5 of any requirement or obligation imposed upon it by this part
6 or rules adopted under this part ~~act or by standards or rules~~
7 ~~in force pursuant thereto.~~

8 (8) The department may by rule clarify terms,
9 establish procedures, clarify refund policies and contract
10 provisions, and specify documentation as necessary to
11 administer this section.

12 Section 2. Subsections (2), (3), and (7) of section
13 400.427, Florida Statutes, are amended, and subsection (8) is
14 added to that section, to read:

15 400.427 Property and personal affairs of residents.--

16 (2) A facility, or an owner, administrator, employee,
17 or representative thereof, may not act as the guardian,
18 trustee, or conservator for any resident of the assisted
19 living facility or any of such resident's property. An owner,
20 administrator, or staff member, or representative thereof, may
21 not act as a competent resident's payee for social security,
22 veteran's, or railroad benefits without the consent of the
23 resident. Any facility whose owner, administrator, or staff,
24 or representative thereof, serves as representative payee for
25 any resident of the facility shall file a surety bond with the
26 agency in an amount equal to twice the average monthly
27 aggregate income or personal funds due to residents, or
28 expendable for their account, which are received by a
29 facility. Any facility whose owner, administrator, or staff,
30 or a representative thereof, is granted power of attorney for
31 any resident of the facility shall file a surety bond with the

1 agency for each resident for whom such power of attorney is
2 granted. The surety bond shall be in an amount equal to twice
3 the average monthly income of the resident, plus the value of
4 any resident's ~~other property of the resident, which income~~
5 ~~and property are~~ under the control of the attorney in fact.
6 The bond shall be executed by the facility as principal and a
7 licensed surety company ~~authorized and licensed to do business~~
8 ~~in the state as surety~~. The bond shall be conditioned upon
9 the faithful compliance of the facility with this section and
10 shall run to the agency for the benefit of any resident who
11 suffers a financial loss as a result of the misuse or
12 misappropriation by a facility of funds held pursuant to this
13 subsection. Any surety company that ~~which~~ cancels or does not
14 renew the bond of any licensee shall notify the agency in
15 writing not less than 30 days in advance of such action,
16 giving the reason for the cancellation or nonrenewal. ~~The~~
17 ~~agency, in cooperation with insurance companies, associations,~~
18 ~~and organizations representing facilities licensed under this~~
19 ~~part, and the Department of Insurance shall develop procedures~~
20 ~~to implement the bonding requirements of this subsection.~~ Any
21 facility owner, administrator, or staff, or representative
22 thereof, who is granted power of attorney for any resident of
23 the facility shall, on a monthly basis, be required to provide
24 the resident a written statement of any transaction made on
25 behalf of the resident pursuant to this subsection, and a copy
26 of such statement given to the resident shall be retained ~~in~~
27 ~~the facility~~ in each resident's file and available for agency
28 inspection.

29 (3) A facility, upon mutual consent with the resident,
30 shall provide for the safekeeping in the facility of personal
31 effects not in excess of \$500 and funds of the resident not in

1 excess of \$200 cash, and. ~~A facility~~ shall keep complete and
2 accurate records of all such funds and personal effects
3 received ~~for safekeeping~~. If ~~when~~ a resident is absent from a
4 facility for 24 hours or more, the facility may provide for
5 the safekeeping of the resident's personal effects in excess
6 of \$500.

7 (7) In the event of the death of a resident, a
8 licensee shall return all refunds, funds, and property held in
9 trust to the resident's personal representative, if one has
10 been appointed at the time the facility disburses such funds,
11 and, if not, to the resident's spouse or adult next of kin
12 named in a beneficiary designation form provided by the
13 facility to the resident. If ~~in the event~~ the resident has no
14 spouse or adult next of kin or such person cannot be located,
15 funds due the resident shall be placed in an interest-bearing
16 account, and all property held in trust by the facility shall
17 be safeguarded until such time as the funds and property are
18 disbursed pursuant to the Florida Probate Code. Such funds
19 shall be kept separate from the funds and property of the
20 facility and other residents of the facility. If ~~in the event~~
21 the funds of the deceased resident are not disbursed pursuant
22 to ~~the provisions of~~ the Florida Probate Code within 2 years
23 after ~~of~~ the resident's death, the funds shall be deposited in
24 the Health Care Trust Fund administered by the agency as
25 provided in s. 400.418.

26 (8) The department may by rule clarify terms and
27 specify procedures and documentation necessary to administer
28 the provisions of this section relating to the proper
29 management of residents' funds and personal property and the
30 execution of surety bonds.

31 Section 3. This act shall take effect July 1, 1998.

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SENATE SUMMARY

Revises requirements for a contract executed between a licensee who operates an assisted living facility and the residents. Revises requirements for a facility with respect to the surety bond required if the facility holds the power of attorney for a resident. Provides rulemaking authority to the Department of Elderly Affairs with respect to contract provisions, the management of residents' property, and the execution of surety bonds.