

By the Committee on Children, Families and Seniors and Senator Rossin

300-1803A-98

1 A bill to be entitled
2 An act relating to the care of elderly persons
3 (RAB); amending s. 400.404, F.S., relating to
4 facilities to be licensed; amending s. 400.424,
5 F.S.; providing requirements for the contract
6 executed between the licensee and the resident
7 of an assisted living facility; authorizing the
8 Department of Elderly Affairs to adopt rules;
9 amending s. 400.427, F.S.; revising
10 requirements for a facility with respect to
11 obtaining surety bonds; authorizing the
12 Department of Elderly Affairs to adopt rules;
13 creating s. 400.4275, F.S., relating to
14 business records; amending s. 400.441, F.S.,
15 relating to rules; amending s. 400.442, F.S.,
16 relating to pharmacy and dietary services;
17 amending s. 400.444, F.S., relating to
18 construction requirements; amending s. 400.619,
19 F.S., relating to licensure; amending s.
20 400.6196, F.S., relating to violations and
21 penalties; amending s. 400.621, F.S., relating
22 to rules for adult family care homes; amending
23 s. 400.6211, F.S., relating to training;
24 amending s. 409.212, F.S., relating to optional
25 supplementation; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (2) of section 400.404, Florida
30 Statutes, is amended to read:

31 400.404 Facilities to be licensed; exemptions.--

1 (2) The following are exempt from this part:

2 (a) Any facility, institution, or other place operated
3 by the Federal Government or any agency of the Federal
4 Government.

5 (b) Any facility or part of a facility licensed under
6 chapter 393 or chapter 394.

7 (c) Any home or facility approved by the United States
8 Department of Veterans Affairs as a residential care home
9 wherein care is provided exclusively to three or fewer
10 veterans.

11 (d) Any facility that has been incorporated in this
12 state for 50 years or more on or before July 1, 1983, and the
13 board of directors of which is nominated or elected by the
14 residents, until the facility is sold or its ownership is
15 transferred; or any facility, with improvements or additions
16 thereto, which has existed and operated continuously in this
17 state for 60 years or more on or before July 1, 1989, is
18 directly or indirectly owned and operated by a nationally
19 recognized fraternal organization, is not open to the public,
20 and accepts only its own members and their spouses as
21 residents.

22 (e) Any facility certified under chapter 651, or a
23 retirement community, may provide services authorized under
24 this part or part IV of this chapter to its residents who live
25 in single-family homes, duplexes, quadplexes, or apartments
26 located on the campus without obtaining a license to operate
27 an assisted living facility if residential units within such
28 buildings are used by residents who do not require staff
29 supervision for that portion of the day when personal services
30 are not being delivered and the owner obtains a home health
31 license to provide such services. However, any building or

1 distinct part of a building on the campus that is designated
2 for persons who receive personal services and require
3 supervision beyond that which is available while such services
4 are being rendered must be licensed in accordance with this
5 part. If a facility provides personal services to residents
6 who do not otherwise require supervision and the owner is not
7 licensed as a home health agency, the buildings or distinct
8 parts of buildings where such services are rendered must be
9 licensed under this part. A resident of a facility that
10 obtains a home health license may contract with a home health
11 agency of his or her choice, provided that the home health
12 agency provides liability insurance and workers' compensation
13 coverage for its employees. Facilities covered by this
14 exemption may establish policies that give residents the
15 option of contracting for services and care beyond that which
16 is provided by the facility to enable them to age in place.
17 For purposes of this section, a retirement community consists
18 of a facility licensed under this part or under part II, and
19 apartments designed for independent living located on the same
20 campus.

21 (f) Any residential unit for independent living which
22 is located within a facility certified under chapter 651 or
23 which is co-located with a nursing home licensed under part II
24 or a facility licensed under this part in which services are
25 provided through an outpatient clinic or the nursing home on
26 an outpatient basis.

27 Section 2. Subsections (1), (2), (3), and (5) of
28 section 400.424, Florida Statutes, are amended, and subsection
29 (8) is added to that section, to read:

30 400.424 Contracts.--
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1 (1) The presence of each resident in a facility shall
2 be covered by a contract, executed at the time of admission or
3 prior thereto, between the licensee and the resident or his or
4 her designee or legal representative. Each party to the
5 contract shall be provided with a duplicate original thereof,
6 and the licensee shall keep on file in the facility all such
7 contracts. The licensee may ~~shall~~ not destroy or otherwise
8 dispose of any such contract until 5 years after its
9 expiration ~~or such longer period as may be provided in the~~
10 ~~rules of the department.~~

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

21 (a) Such funds shall be deposited ~~held~~ in a banking
22 institution in this state that is. ~~Funds held shall be kept~~
23 ~~separate from the funds and property of the facility; shall be~~
24 ~~deposited in a bank savings association, trust company, or~~
25 ~~credit union located in this state and, if possible, located,~~
26 if possible, in the same community district in which the
27 facility is located; shall be kept separate from the funds and
28 property of the facility; may not be represented as part of
29 the assets of the facility on financial statements; and shall
30 be used, or otherwise expended, only for the account of the
31 resident.

1 (b) The licensee shall, within 30 days of receipt of
2 advance rent or a security deposit, notify the resident or
3 residents in writing of the manner in which the licensee is
4 holding the advance rent or security deposit and state the
5 name and address of the depository where the moneys are being
6 held. The licensee shall notify residents of the facility's
7 policy on advance deposits.

8 (3)(a) The contract shall include a refund policy to
9 be implemented at the time of a resident's transfer,
10 discharge, or death. The refund policy shall provide that the
11 resident or responsible party is entitled to a prorated refund
12 based on the daily rate for any unused portion of payment
13 beyond the termination date after all charges, including the
14 cost of damages to the residential unit resulting from
15 circumstances other than normal use, have been paid to the
16 licensee. For the purpose of this paragraph, the termination
17 date shall be the date the unit is vacated by the resident and
18 cleared of all personal belongings. If the amount of
19 belongings does not preclude renting the unit, the facility
20 may clear the unit and charge the resident or his or her
21 estate for moving and storing the items at a rate equal to the
22 actual cost to the facility, not to exceed 20 percent of the
23 regular rate for the unit, provided that 14 days' advance
24 written notification is given. If the resident's possessions
25 are not claimed within 45 days after notification, the
26 facility may dispose of them. The contract shall also specify
27 any other conditions under which claims will be made against
28 the refund due the resident. Except in the case of death or a
29 discharge due to medical reasons, the refunds shall be
30 computed in accordance with the notice of relocation
31 requirements specified in the contract. However, a resident

1 may not be required to provide the licensee with more than 30
2 days' notice of termination. If after a contract is
3 terminated, the facility intends to make a claim against a
4 refund due the resident, the facility shall notify the
5 resident or responsible party in writing of the claim and
6 shall provide said party with a reasonable time period of no
7 less than 14 calendar days to respond. The facility shall
8 provide a refund to the resident or responsible party within
9 45 days after the transfer, discharge, or death of the
10 resident. The agency shall impose a fine upon a facility that
11 fails to comply with the refund provisions of the paragraph,
12 which fine shall be equal to three times the amount due to the
13 resident. One-half of the fine shall be remitted to the
14 resident or his or her estate, and the other half to the
15 Health Care Trust Fund to be used for the purpose specified in
16 s. 400.418.

17 (b) If a licensee agrees to reserve a bed for a
18 resident who is admitted to a medical facility, including, but
19 not limited to, a nursing home, health care facility, or
20 psychiatric facility, the resident or his or her responsible
21 party shall notify the licensee of any change in status that
22 would prevent the resident from returning to the facility.
23 Until such notice is received, the agreed upon daily rate may
24 be charged by the licensee.

25 (c) The purpose of any advance payment and a refund
26 policy for such payment, including any advance payment for
27 housing, meals, lodging, or personal services, shall be
28 covered in the contract.

29 (5) Neither the ~~No~~ contract nor, ~~or~~ any provision
30 thereof relieves, ~~shall be construed to relieve~~ any licensee
31 of any requirement or obligation imposed upon it by this part

1 or rules adopted under this part ~~act or by standards or rules~~
2 ~~in force pursuant thereto.~~

3 (8) The department may by rule clarify terms,
4 establish procedures, clarify refund policies and contract
5 provisions, and specify documentation as necessary to
6 administer this section.

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

10 400.427 Property and personal affairs of residents.--

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

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

24 (3) A facility, upon mutual consent with the resident,
25 shall provide for the safekeeping in the facility of personal
26 effects not in excess of \$500 and funds of the resident not in
27 excess of \$200 cash, and. ~~A facility~~ shall keep complete and
28 accurate records of all such funds and personal effects
29 received ~~for safekeeping~~. If ~~When~~ a resident is absent from a
30 facility for 24 hours or more, the facility may provide for
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1 the safekeeping of the resident's personal effects in excess
2 of \$500.

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

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

27 Section 4. Section 400.4275, Florida Statutes, is
28 created to read:

29 400.4275 Business practice; penalty; personnel
30 records; liability insurance.--The assisted living facility
31

1 shall be administered on a sound financial basis that is
2 consistent with good business practices.

3 (1) The administrator or owner of a facility shall
4 maintain accurate business records that identify, summarize,
5 and classify funds received and expenses disbursed and shall
6 use written accounting procedures and a recognized accounting
7 system.

8 (2) Evidence of filed bankruptcy of any owner;
9 issuance of checks returned for insufficient funds; delinquent
10 accounts; nonpayment of local, state, or federal taxes or
11 fees; unpaid utility expenses; tax or judgment liens against a
12 facility or the property of an owner of a facility; failure to
13 meet employee payroll; confirmed complaints to the agency or
14 ombudsman council regarding withholding of refunds or funds
15 due residents; failure to maintain liability insurance due to
16 nonpayment of premiums; nonpayment of rent or a mortgage;
17 nonpayment for essential services; or an adverse court action
18 that concerns the financial viability of the facility or any
19 other facility that is licensed under part II of this chapter
20 or under this part, constitutes prima facie evidence that the
21 owner lacks satisfactory proof of financial ability to operate
22 the facility in accordance with the requirements of this part.

23 (3) The administrator or owner of a facility shall
24 maintain personnel records for each staff member which
25 contain, at a minimum, documentation of background screening,
26 if applicable, documentation of compliance with all training
27 requirements of this part or applicable rule, and a copy of
28 all licenses or certification held by each staff who performs
29 services for which licensure or certification is required
30 under this part or rule.

31

1 (4) The administrator or owner of a facility shall
2 maintain liability insurance coverage that is in force at all
3 times.

4 (5) The department may by rule clarify terms,
5 establish requirements for financial records, accounting
6 procedures, personnel procedures, insurance coverage, and
7 reporting procedures, and specify documentation as necessary
8 to implement the requirements of this section.

9 Section 5. Subsections (1) and (3) of section 400.441,
10 Florida Statutes, are amended to read:

11 400.441 Rules establishing standards.--

12 (1) It is the intent of the Legislature that rules
13 published and enforced pursuant to this section shall include
14 criteria by which a reasonable and consistent quality of
15 resident care and quality of life may be ensured and the
16 results of such resident care may be demonstrated. Such rules
17 shall also ensure a safe and sanitary environment that is
18 residential and noninstitutional in design or nature. It is
19 further intended that reasonable efforts be made to
20 accommodate the needs and preferences of residents to enhance
21 the quality of life in a facility. In order to provide safe
22 and sanitary facilities and the highest quality of resident
23 care accommodating the needs and preferences of residents, the
24 department, in consultation with the agency, the Department of
25 Children and Family Services, and the Department of Health ~~and~~
26 ~~Rehabilitative Services~~, shall adopt rules, policies, and
27 procedures to administer this part, which must include
28 reasonable and fair minimum standards in relation to:

29 (a) The requirements for and maintenance of
30 facilities, not in conflict with the provisions of chapter
31 553, relating to plumbing, heating, lighting, ventilation,

1 living space, and other housing conditions, which will ensure
2 the health, safety, and comfort of residents and protection
3 from fire hazard, including adequate provisions for fire alarm
4 and other fire protection suitable to the size of the
5 structure. Uniform firesafety standards shall be established
6 and enforced by the State Fire Marshal in cooperation with the
7 agency, the department, and the Department of Health ~~and~~
8 ~~Rehabilitative Services~~.

9 1. Evacuation capability determination.--

10 a. The provisions of the National Fire Protection
11 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
12 for determining the ability of the residents, with or without
13 staff assistance, to relocate from or within a licensed
14 facility to a point of safety as provided in the fire codes
15 adopted herein. An evacuation capability evaluation for
16 initial licensure shall be conducted within 6 months after the
17 date of licensure. For existing licensed facilities that are
18 not equipped with an automatic fire sprinkler system, the
19 administrator shall evaluate the evacuation capability of
20 residents at least annually. The evacuation capability
21 evaluation for each facility not equipped with an automatic
22 fire sprinkler system shall be validated, without liability,
23 by the State Fire Marshal, by the local fire marshal, or by
24 the local authority having jurisdiction over firesafety,
25 before the license renewal date. If the State Fire Marshal,
26 local fire marshal, or local authority having jurisdiction
27 over firesafety has reason to believe that the evacuation
28 capability of a facility as reported by the administrator may
29 have changed, it may, with assistance from the facility
30 administrator, reevaluate the evacuation capability through
31

1 | timed exiting drills. Translation of timed fire exiting drills
2 | to evacuation capability may be determined:

3 | (I) Three minutes or less: prompt.

4 | (II) More than 3 minutes, but not more than 13
5 | minutes: slow.

6 | (III) More than 13 minutes: impractical.

7 | b. The Office of the State Fire Marshal shall provide
8 | or cause the provision of training and education on the proper
9 | application of Chapter 5, NFPA 101A, 1995 edition, to its
10 | employees, to staff of the Agency for Health Care
11 | Administration who are responsible for regulating facilities
12 | under this part, and to local governmental inspectors. The
13 | Office of the State Fire Marshal shall provide or cause the
14 | provision of this training within its existing budget, but may
15 | charge a fee for this training to offset its costs. The
16 | initial training must be delivered within 6 months after July
17 | 1, 1995, and as needed thereafter.

18 | c. The Office of the State Fire Marshal, in
19 | cooperation with provider associations, shall provide or cause
20 | the provision of a training program designed to inform
21 | facility operators on how to properly review bid documents
22 | relating to the installation of automatic fire sprinklers.
23 | The Office of the State Fire Marshal shall provide or cause
24 | the provision of this training within its existing budget, but
25 | may charge a fee for this training to offset its costs. The
26 | initial training must be delivered within 6 months after July
27 | 1, 1995, and as needed thereafter.

28 | d. The administrator of a licensed facility shall sign
29 | an affidavit verifying the number of residents occupying the
30 | facility at the time of the evacuation capability evaluation.

31 | 2. Firesafety requirements.--

1 a. Except for the special applications provided
2 herein, effective January 1, 1996, the provisions of the
3 National Fire Protection Association, Life Safety Code, NFPA
4 101, 1994 edition, Chapter 22 for new facilities and Chapter
5 23 for existing facilities shall be the uniform fire code
6 applied by the State Fire Marshal for assisted living
7 facilities, pursuant to s. 633.022.

8 b. Any new facility, regardless of size, that applies
9 for a license on or after January 1, 1996, must be equipped
10 with an automatic fire sprinkler system. The exceptions as
11 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
12 adopted herein, apply to any new facility housing eight or
13 fewer residents. On July 1, 1995, local governmental entities
14 responsible for the issuance of permits for construction shall
15 inform, without liability, any facility whose permit for
16 construction is obtained prior to January 1, 1996, of this
17 automatic fire sprinkler requirement. As used in this part,
18 the term "a new facility" does not mean an existing facility
19 that has undergone change of ownership.

20 c. Notwithstanding any provision of s. 633.022 or of
21 the National Fire Protection Association, NFPA 101A, Chapter
22 5, 1995 edition, to the contrary, any existing facility
23 housing eight or fewer residents is not required to install an
24 automatic fire sprinkler system, nor to comply with any other
25 requirement in Chapter 23 of NFPA 101, 1994 edition, that
26 exceeds the firesafety requirements of NFPA 101, 1988 edition,
27 that applies to this size facility, unless the facility has
28 been classified as impractical to evacuate. Any existing
29 facility housing eight or fewer residents that is classified
30 as impractical to evacuate must install an automatic fire
31

1 sprinkler system within the timeframes granted in this
2 section.

3 d. Any existing facility that is required to install
4 an automatic fire sprinkler system under this paragraph need
5 not meet other firesafety requirements of Chapter 23, NFPA
6 101, 1994 edition, which exceed the provisions of NFPA 101,
7 1988 edition. The mandate contained in this paragraph which
8 requires certain facilities to install an automatic fire
9 sprinkler system supersedes any other requirement.

10 e. This paragraph does not supersede the exceptions
11 granted in NFPA 101, 1988 edition or 1994 edition.

12 f. This paragraph does not exempt facilities from
13 other firesafety provisions adopted under s. 633.022 and local
14 building code requirements in effect before July 1, 1995.

15 g. A local government may charge fees only in an
16 amount not to exceed the actual expenses incurred by local
17 government relating to the installation and maintenance of an
18 automatic fire sprinkler system in an existing and properly
19 licensed assisted living facility structure as of January 1,
20 1996.

21 h. If a licensed facility undergoes major
22 reconstruction or addition to an existing building on or after
23 January 1, 1996, the entire building must be equipped with an
24 automatic fire sprinkler system. Major reconstruction of a
25 building means repair or restoration that costs in excess of
26 50 percent of the value of the building as reported on the tax
27 rolls, excluding land, before reconstruction. Multiple
28 reconstruction projects within a 5-year period the total costs
29 of which exceed 50 percent of the initial value of the
30 building at the time the first reconstruction project was
31 permitted are to be considered as major reconstruction.

1 Application for a permit for an automatic fire sprinkler
2 system is required upon application for a permit for a
3 reconstruction project that creates costs that go over the
4 50-percent threshold.

5 i. Any facility licensed before January 1, 1996, that
6 is required to install an automatic fire sprinkler system
7 shall ensure that the installation is completed within the
8 following timeframes based upon evacuation capability of the
9 facility as determined under subparagraph 1.:

10 (I) Impractical evacuation capability, 24 months.

11 (II) Slow evacuation capability, 48 months.

12 (III) Prompt evacuation capability, 60 months.

13

14 The beginning date from which the deadline for the automatic
15 fire sprinkler installation requirement must be calculated is
16 upon receipt of written notice from the local fire official
17 that an automatic fire sprinkler system must be installed. The
18 local fire official shall send a copy of the document
19 indicating the requirement of a fire sprinkler system to the
20 Agency for Health Care Administration.

21 j. It is recognized that the installation of an
22 automatic fire sprinkler system may create financial hardship
23 for some facilities. The appropriate local fire official
24 shall, without liability, grant two 1-year extensions to the
25 timeframes for installation established herein, if an
26 automatic fire sprinkler installation cost estimate and proof
27 of denial from two financial institutions for a construction
28 loan to install the automatic fire sprinkler system are
29 submitted. However, for any facility with a class I or class
30 II, or a history of uncorrected class III, firesafety
31 deficiencies, an extension must not be granted. The local

1 fire official shall send a copy of the document granting the
2 time extension to the Agency for Health Care Administration.

3 k. A facility owner whose facility is required to be
4 equipped with an automatic fire sprinkler system under Chapter
5 23, NFPA 101, 1994 edition, as adopted herein, must disclose
6 to any potential buyer of the facility that an installation of
7 an automatic fire sprinkler requirement exists. The sale of
8 the facility does not alter the timeframe for the installation
9 of the automatic fire sprinkler system.

10 l. Existing facilities required to install an
11 automatic fire sprinkler system as a result of
12 construction-type restrictions in Chapter 23, NFPA 101, 1994
13 edition, as adopted herein, or evacuation capability
14 requirements shall be notified by the local fire official in
15 writing of the automatic fire sprinkler requirement, as well
16 as the appropriate date for final compliance as provided in
17 this subparagraph. The local fire official shall send a copy
18 of the document to the Agency for Health Care Administration.

19 m. Except in cases of life-threatening fire hazards,
20 if an existing facility experiences a change in the evacuation
21 capability, or if the local authority having jurisdiction
22 identifies a construction-type restriction, such that an
23 automatic fire sprinkler system is required, it shall be
24 afforded time for installation as provided in this
25 subparagraph.

26 ~~n. There is created a study work group consisting of~~
27 ~~representatives of the Office of the State Fire Marshal,~~
28 ~~Florida Fire Chiefs' Association, Florida Fire Marshals'~~
29 ~~Association, Florida Assisted Living Association, Florida~~
30 ~~Association of Homes for the Aging, Florida Health Care~~
31 ~~Association, Florida League of Cities, Florida Association of~~

1 ~~Counties, Florida State Firemen's Association, Building~~
2 ~~Officials' Association of Florida, the Aging and Adult~~
3 ~~Services Program Office of the Department of Health and~~
4 ~~Rehabilitative Services, and the Agency for Health Care~~
5 ~~Administration. Each entity involved shall select its~~
6 ~~representative to the study-work group. The Florida Fire~~
7 ~~Chiefs' Association shall coordinate study-work group~~
8 ~~activities. The study-work group shall examine the National~~
9 ~~Fire Protection Association, NFPA 101, Chapter 23, 1994~~
10 ~~edition, and shall report to the Legislature by December 31,~~
11 ~~1995, its recommendations for firesafety standards that will~~
12 ~~provide a reasonable level of firesafety for the protection of~~
13 ~~assisted living facility residents without imposing~~
14 ~~unnecessary economic impact on facilities regulated under this~~
15 ~~part. Expenses incurred while participating in this study-work~~
16 ~~group activity shall be borne by the participants.~~

17
18 Facilities that are fully sprinkled and in compliance with
19 other firesafety standards are not required to conduct more
20 than one of the required fire drills between the hours of 11
21 p.m. and 7 a.m., per year. In lieu of the remaining drills,
22 staff responsible for residents during such hours may be
23 required to participate in a mock drill that includes a review
24 of evacuation procedures. Such standards must be included or
25 referenced in the rules adopted by the ~~department after~~
26 ~~consultation with the~~ State Fire Marshal. Pursuant to s.
27 633.022(1)(b), the State Fire Marshal is the final
28 administrative authority for firesafety standards established
29 and enforced pursuant to this section. All licensed facilities
30 must have an annual fire inspection conducted by the local
31 fire marshal or authority having jurisdiction.

1 (b) The preparation and annual update of a
2 comprehensive emergency management plan. Such standards must
3 be included in the rules adopted by the department after
4 consultation with the Department of Community Affairs. At a
5 minimum, the rules must provide for plan components that
6 address emergency evacuation transportation; adequate
7 sheltering arrangements; postdisaster activities, including
8 provision of emergency power, food, and water; postdisaster
9 transportation; supplies; staffing; emergency equipment;
10 individual identification of residents and transfer of
11 records; communication with families; and responses to family
12 inquiries. The comprehensive emergency management plan is
13 subject to review and approval by the local emergency
14 management agency. During its review, the local emergency
15 management agency shall ensure that the following agencies, at
16 a minimum, are given the opportunity to review the plan: the
17 Department of Elderly Affairs, the Department of Health ~~and~~
18 ~~Rehabilitative Services~~, the Agency for Health Care
19 Administration, and the Department of Community Affairs.
20 Also, appropriate volunteer organizations must be given the
21 opportunity to review the plan. The local emergency
22 management agency shall complete its review within 60 days and
23 either approve the plan or advise the facility of necessary
24 revisions.

25 (c) The number, training, and qualifications of all
26 personnel having responsibility for the care of residents.
27 The rules must require adequate staff to provide for the
28 safety of all residents. Facilities licensed for 17 or more
29 residents are required to maintain an alert staff for 24 hours
30 per day.

31

1 (d) All sanitary conditions within the facility and
2 its surroundings, ~~including water supply, sewage disposal,~~
3 ~~food handling, and general hygiene, and maintenance thereof,~~
4 which will ensure the health and comfort of residents. The
5 rules must clearly delineate the responsibilities of the
6 agency's licensure and survey staff,~~and the responsibilities~~
7 ~~of the county health departments and the local authority~~
8 having jurisdiction over fire safety and ensure that
9 inspections are not duplicative. The agency may collect fees
10 for food service inspections conducted by the county health
11 departments and transfer such fees to the Department of Health
12 ~~and Rehabilitative Services.~~

13 (e) License application and license renewal, transfer
14 of ownership, proper management of resident funds and personal
15 property, surety bonds, resident contracts, refund policies,
16 financial ability to operate, and facility and staff records.

17 (f)~~(e)~~ Inspections, complaint investigations,
18 moratoriums, the classification of deficiencies, and

19 ~~The~~ levying and enforcement of penalties and use of
20 income from fees and fines.

21 (g)~~(f)~~ The enforcement of the resident bill of rights
22 specified in s. 400.428.

23 (h)~~(g)~~ The care and maintenance of residents, which
24 must include, but is not limited to:

25 1. The supervision of residents;

26 2.1. The provision of personal services;

27 3.2. The provision of, or arrangement for, social and
28 leisure activities;

29 4.3. The arrangement for appointments and
30 transportation to appropriate medical, dental, nursing, or
31 mental health services, as needed by residents;

1 ~~4. The provision of limited nursing services;~~
2 5. The management of medication;~~The provision of~~
3 ~~extended congregate care services; and~~
4 6. The nutritional needs of residents; and ~~The~~
5 ~~provision of limited mental health services.~~
6 7. Resident records.
7 (h) Facilities holding a limited nursing, extended
8 congregate care, or limited mental health license.
9 (i)(h) The establishment of specific criteria to
10 define appropriateness of resident admission and continued
11 residency in a facility holding a standard, limited nursing,
12 extended congregate care, and limited mental health license.
13 (j)(i) ~~The definition and~~ use of physical or chemical
14 restraints. The use of physical restraints is limited to
15 half-bed rails as prescribed and documented by the resident's
16 physician with the consent of the resident or, if applicable,
17 the resident's representative or designee or the resident's
18 surrogate, guardian, or attorney in fact. The use of chemical
19 restraints is limited to prescribed dosages of medications
20 authorized by the resident's physician and must be consistent
21 with the resident's diagnosis. Residents who are receiving
22 medications that can serve as chemical restraints must be
23 evaluated by their physician at least annually to assess:
24 1. The continued need for the medication.
25 2. The level of the medication in the resident's
26 blood.
27 3. The need for adjustments in the prescription.
28 (3) The department shall submit a copy of proposed
29 rules to the Speaker of the House of Representatives, the
30 President of the Senate, and appropriate committees of
31

1 substance for review and comment prior to the promulgation
2 thereof.

3 (a) Rules promulgated by the department shall
4 encourage the development of homelike facilities which promote
5 the dignity, individuality, personal strengths, and
6 decisionmaking ability of residents.

7 (b) The agency, in consultation with the department,
8 may waive rules promulgated pursuant to this part in order to
9 demonstrate and evaluate innovative or cost-effective
10 congregate care alternatives which enable individuals to age
11 in place. Such waivers may be granted only in instances where
12 there is reasonable assurance that the health, safety, or
13 welfare of residents will not be endangered. To apply for a
14 waiver, the licensee shall submit to the agency a written
15 description of the concept to be demonstrated, including
16 goals, objectives, and anticipated benefits; the number and
17 types of residents who will be affected, if applicable; a
18 brief description of how the demonstration will be evaluated;
19 and any other information deemed appropriate by the agency.
20 Any facility granted a waiver shall submit a report of
21 findings to the agency and the department within 12 months.
22 At such time, the agency may renew or revoke the waiver or
23 pursue any regulatory or statutory changes necessary to allow
24 other facilities to adopt the same practices. The department
25 may by rule clarify terms and establish waiver application
26 procedures, criteria for reviewing waiver proposals, and
27 procedures for reporting findings, as necessary to implement
28 this subsection.

29 Section 6. Subsection (3) is added to section 400.442,
30 Florida Statutes, to read:

31 400.442 Pharmacy and dietary services.--

1 (3) The department may by rule establish procedures
2 and specify documentation as necessary to implement this
3 section.

4 Section 7. Subsection (3) is added to section 400.444,
5 Florida Statutes, to read:

6 400.444 Construction and renovation; requirements.--

7 (3) The department may adopt rules to establish
8 procedures and specify the documentation necessary to
9 implement this section.

10 Section 8. Subsections (3), (4), and (13) of section
11 400.619, Florida Statutes, are amended to read:

12 400.619 Licensure requirements.--

13 (3) Application for a license or annual license
14 renewal to operate an adult family-care home must be made on a
15 form provided by the agency, signed under oath, and must be
16 accompanied by a licensing fee of \$100 per year to offset the
17 cost of training and education programs by the Department of
18 Elderly Affairs for providers.

19 (4) Upon receipt of a completed license application or
20 license renewal, and the fee, the agency shall conduct a level
21 1 background screening as provided under chapter 435 on ~~must~~
22 check with the abuse registry and the Department of Law
23 Enforcement concerning the adult family-care home provider
24 applicant, the designated relief person, all adult household
25 members, and all staff members. The agency shall ~~also~~ conduct
26 an onsite visit to the home that is to be licensed.

27 (13) The department may ~~shall~~ adopt rules to establish
28 procedures, identify forms, specify documentation, and clarify
29 terms, as necessary, to administer ~~implement~~ this section.

30 Section 9. Section 400.6196, Florida Statutes, is
31 amended to read:

1 400.6196 Violations; penalties.--

2 (1) In addition to any other liability or penalty
3 provided by law, the agency may impose a civil penalty on a
4 provider according to the following classification ~~person for:~~

5 (a) Class I violations are those conditions or
6 practices related to the operation and maintenance of an adult
7 family-care home or to the care of residents which the agency
8 determines present an imminent danger to the residents or
9 guests of the facility or a substantial probability that death
10 or serious physical or emotional harm would result therefrom.
11 The condition or practice that constitutes a class I violation
12 must be abated or eliminated within 24 hours, unless a fixed
13 period, as determined by the agency, is required for
14 correction. A class I deficiency is subject to an
15 administrative fine in an amount not less than \$500 and not
16 exceeding \$1,000 for each violation. A fine may be levied
17 notwithstanding the correction of the deficiency.

18 (b) Class II violations are those conditions or
19 practices related to the operation and maintenance of an adult
20 family-care home or to the care of residents which the agency
21 determines directly threaten the physical or emotional health,
22 safety, or security of the residents, other than class I
23 violations. A class II violation is subject to an
24 administrative fine in an amount not less than \$250 and not
25 exceeding \$500 for each violation. A citation for a class II
26 violation must specify the time within which the violation is
27 required to be corrected. If a class II violation is corrected
28 within the time specified, no civil penalty shall be imposed,
29 unless it is a repeated offence.

30 (c) Class III violations are those conditions or
31 practices related to the operation and maintenance of an adult

1 family-care home or to the care of residents which the agency
2 determines indirectly or potentially threaten the physical or
3 emotional health, safety, or security of residents, other than
4 class I or class II violations. A class III violation is
5 subject to an administrative fine in an amount not less than
6 \$100 and not exceeding \$250 for each violation. A citation for
7 a class III violation shall specify the time within which the
8 violation is required to be corrected. If a class III
9 violation is corrected within the time specified, no civil
10 penalty shall be imposed, unless it is a repeated offense.

11 (d) Class IV violations are those conditions or
12 occurrences related to the operation and maintenance of an
13 adult family-care home, or related to the required reports,
14 forms or documents which do not have the potential of
15 negatively affecting the residents. A provider that does not
16 correct a class IV violation within the time limit specified
17 by the agency is subject to an administrative fine in an
18 amount not less than \$50 and not exceeding \$100 for each
19 violation. Any class IV violation that is corrected during the
20 time the agency survey is conducted will be identified as an
21 agency finding and not as a violation.

22 (2) The agency may impose an administrative fine for
23 violations which do not qualify as class I, class II, class
24 III, or class IV violations. The amount of the fine shall not
25 exceed \$250 for each violation or \$2,000 in the aggregate.

26 Unclassified violations include:

27 (a) Violating any term or condition of a license. ~~or~~

28 (b) Violating any rule adopted under this part ~~ss.~~

29 ~~400.616-400.629.~~

30 (c) Failure to follow the criteria and procedures
31 provided under part I of chapter 394 relating to the

1 transportation, voluntary admission, and involuntary
2 examination of adult family-care home residents.

3 (d) Exceeding licensed capacity.

4 (e) Providing services beyond the scope of the
5 license.

6 (f) Violating a moratorium.

7 ~~(3)(2)~~ Each day during which a violation occurs
8 constitutes a separate offense ~~violation~~.

9 ~~(4)(3)~~ In determining whether a penalty is to be
10 imposed, and in fixing the amount of any penalty to be
11 imposed, the agency must consider:

12 (a) The gravity of the violation.

13 (b) Actions taken by the provider to correct a
14 violation.

15 (c) Any previous violation by the provider.

16 (d) The financial benefit to the provider of
17 committing or continuing the violation.

18 ~~(5)(4)~~ As an alternative to or in conjunction with an
19 administrative action against a provider, the agency may
20 request a plan of corrective action that demonstrates a good
21 faith effort to remedy each violation by a specific date,
22 subject to the approval of the agency ~~department~~.

23 ~~(6)(5)~~ The department shall set forth, by rule, notice
24 requirements and procedures for correction of deficiencies
25 ~~classifications of violations and civil penalties to be~~
26 ~~levied~~.

27 ~~(7)(6)~~ Civil penalties paid by a provider must be
28 deposited into the Department of Elderly Affairs
29 Administrative Trust Fund and used to offset the expenses of
30 departmental training and education for adult family-care home
31 providers.

1 ~~(8)(7)~~ The agency may impose an immediate moratorium
2 on admissions to any adult family-care home if the agency
3 finds that a condition in the home presents a threat to the
4 health, safety, or welfare of its residents. The department
5 may by rule establish facility conditions that constitute
6 grounds for imposing a moratorium and establish procedures for
7 imposing and lifting a moratorium.

8 Section 10. Section 400.621, Florida Statutes, is
9 amended to read:

10 400.621 Rules and standards relating to adult
11 family-care homes.--

12 (1) The department ~~shall~~, in consultation with the
13 Department of Health, the Department of Children and Family
14 Services, and Rehabilitative Services and the agency shall, by
15 rule, establish minimum standards to ensure ~~and licensure~~
16 ~~procedures for adult family-care homes.~~ The rules must, at a
17 ~~minimum:~~

18 ~~(a) Provide for~~ the health, safety, and well-being of
19 each resident in the adult family-care home. The rules must
20 address:

21 (a) Requirements for the physical site of the facility
22 and facility maintenance.

23 (b) Services that must be provided to all residents of
24 an adult family-care home and standards for such services,
25 which must include, but need not be limited to:

- 26 1. Room and board.
- 27 2. Assistance necessary to perform the activities of
28 daily living.
- 29 3. Assistance necessary to administer medication.
- 30 4. Supervision of residents.
- 31 5. Health monitoring.

- 1 6. Social and leisure activities.
- 2 ~~(c)(b)~~ Standards and Provide procedures for license
- 3 application and annual license renewal, advertising prevention
- 4 ~~of abuse~~, proper management of each resident's funds and
- 5 personal property and personal affairs, financial ability to
- 6 operate, medication management, inspections, complaint
- 7 investigations, and facility, staff and resident and records
- 8 and reports.
- 9 (d) Qualifications, training, standards, and
- 10 responsibilities for providers and staff.
- 11 ~~(c) Promote the growth of adult family-care homes as a~~
- 12 ~~component of a long-term care system.~~
- 13 ~~(d) Promote the goal of aging in place.~~
- 14 (e) Mandate compliance with chapter 419, relating to
- 15 community residential homes.
- 16 (f) Criteria and procedures for determining the
- 17 appropriateness of a resident's placement and continued
- 18 residency in ~~Assure that an adult family-care home is the~~
- 19 ~~appropriate living arrangement for each resident.~~ A resident
- 20 who requires 24-hour nursing supervision may not be retained
- 21 in an adult family-care home. A person who would not be an
- 22 appropriate resident in any assisted living facility under s.
- 23 400.426 would not be an appropriate resident in an adult
- 24 family-care home.
- 25 (g) Procedures for providing notice and assuring
- 26 ~~Assure~~ the least possible disruption of residents' lives when
- 27 residents are relocated, an adult family-care home is closed,
- 28 or the ownership of an adult family-care home is transferred.
- 29 (h) ~~Provide~~ Procedures to protect the residents'
- 30 rights as provided in s. 400.628.
- 31

1 (i) Procedures to promote the growth of adult
2 family-care homes as a component of a long-term-care system.

3 (j) Procedures to promote the goal of aging in place
4 for residents of adult family-care homes.

5 (2) The department shall by rule provide minimum
6 standards and procedures for emergencies. Minimum firesafety
7 standards shall be established and enforced by the State Fire
8 Marshal in cooperation with the department and the agency.
9 Such standards must be included in the rules adopted by the
10 department after consultation with the State Fire Marshal and
11 the agency.

12 ~~(3) The department shall by rule establish standards~~
13 ~~for the adequate supervision of adult family-care residents.~~

14 (3)(4) The provider of any adult family-care home that
15 is in operation at the time any rules are adopted or amended
16 under this part ss. 400.616-400.629 may be given a reasonable
17 time, not exceeding 6 months, within which to comply with the
18 ~~those~~ new or revised rules and standards.

19 Section 11. Section 400.6211, Florida Statutes, is
20 amended to read:

21 400.6211 Training and education programs.--

22 (1) The department ~~of Elderly Affairs~~ must provide
23 training and education programs for all adult family-care home
24 providers.

25 (2) Training and education programs must include, ~~but~~
26 ~~are not limited to~~, information relating to:

27 (a) State law and rules governing adult family-care
28 homes, with emphasis on appropriateness of placement of
29 residents in an adult family-care home.

30 (b) Identifying and reporting abuse, neglect, and
31 exploitation.

1 (c) Identifying and meeting the special needs of aged
2 persons and disabled adults.

3 (d) Monitoring the health of residents, including
4 guidelines for prevention and care of pressure ulcers.

5 (3) Providers must complete the training and education
6 program within a reasonable time determined by the department
7 by rule. Failure to complete the training and education
8 program within the time set by the department ~~is a violation~~
9 ~~of ss. 400.616-400.629~~ and subjects the provider to revocation
10 or denial of the license under this part.

11 (4) If the Department of Children and Family Services
12 ~~Health and Rehabilitative Services~~, the agency, or the
13 department determines that there are problems in an adult
14 family-care home which could be reduced through specific
15 training or education beyond that required under this section,
16 the department may require the provider or staff to complete
17 such training or education.

18 (5) The department shall specify by rule training and
19 education programs, training requirements and the assignment
20 of training responsibilities for staff, training procedures,
21 and training fees as necessary to administer this section.

22 Section 12. Present subsections (3) and (4) of section
23 409.212, Florida Statutes, are redesignated as subsections (4)
24 and (5), respectively, and amended, and a new subsection (3)
25 is added to that section, to read:

26 409.212 Optional supplementation.--

27 (3) Assisted living facilities, adult family-care
28 homes, family placement, or any other specialized living
29 arrangement accepting residents who receive optional
30 supplementation payments must comply with the requirements of
31 42 U.S.C. s. 1382e(e).

1 (4)~~(3)~~ In addition to the amount of optional
2 supplementation provided by the state, a person may receive
3 additional supplementation from third parties to contribute to
4 his or her cost of care. Additional supplementation may be
5 provided under the following conditions:

6 (a) Payments shall be made to the assisted living
7 facility, or to the operator of an adult family-care home,
8 family placement, or other special living arrangement, on
9 behalf of the person and not directly to the optional state
10 supplementation recipient.

11 (b) Contributions made by third parties shall be
12 entirely voluntary and shall not be a condition of providing
13 proper care to the client.

14 (c) The additional supplementation shall not exceed
15 two times the provider rate recognized under the optional
16 state supplementation program.

17 (d) Rent vouchers issued pursuant to a federal, state,
18 or local housing program may be issued directly to a recipient
19 of optional state supplementation.

20 (5)~~(4)~~ When contributions are made in accordance with
21 the provisions of subsection(4)~~(3)~~, the department shall not
22 count such supplements as income to the client for purposes of
23 determining eligibility for, or computing the amount of,
24 optional state supplementation benefits, nor shall the
25 department increase an optional state supplementation payment
26 to offset the reduction in Supplemental Security Income
27 benefits that will occur because of the third-party
28 contribution.

29 Section 13. This act shall take effect July 1, 1998.
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1706

- 4 - Amending section 400.404, F.S., relating to exemption
5 from licensure as an assisted living facility, to comply
6 with a well-established departmental rule that
7 residential units providing outpatient clinic-type
8 services are exempt from licensure.
- 9 - Creating section 400.4275, F.S., regarding business
10 practices, personnel records, penalties, and liability
11 insurance for assisted living facilities, to relocate
12 many portions of rule to statute and to provide rule
13 authority.
- 14 - Amending section 400.442, F.S., relating to rules
15 establishing standards for a reasonable and consistent
16 quality of residential care, to clarify that the State
17 Fire Marshall, in cooperation with the agency, the
18 department, and the Department of Health (not the
19 Department of Health and Rehabilitative Services) will
20 establish and enforce uniform fire safety standards and
21 to provide for rule authority in this area. Obsolete
22 language, regarding a work study group, is deleted.
- 23 - Amending sections 400.442, F.S., relating to pharmacy and
24 dietary services; section 400.444, F.S., relating to
25 construction and renovation; section 400.619, F.S.,
26 relating to licensure of adult family care homes; section
27 400.621 F.S., relevant to rules and standards for adult
28 family care homes; and section 400.6211, F.S., relevant
29 to training and education programs for adult family care
30 homes; to provide the department necessary rule
31 authority.
- Amending section 400.6196, F.S., relating to penalties in
adult family care homes, to establish penalties for
violation of a rule, procedures for unclassified
violation, and rule authority for the department.
- Amending section 409.212, F.S., relating to optional
supplementation to clarify that those providers at
assisted living facilities will comply with federal
requirements in this area.