

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:

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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, quadruplexes, 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 any residential unit which is colocated with a nursing home  
24 licensed under part II or colocated with a facility licensed  
25 under this part in which services are provided through an  
26 outpatient clinic or a nursing home on 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.--  
31

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  
31



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; personnel records;  
30 liability insurance.--The assisted living facility shall be  
31

1 administered on a sound financial basis that is consistent  
2 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) The administrator or owner of a facility shall  
9 maintain personnel records for each staff member which  
10 contain, at a minimum, documentation of background screening,  
11 if applicable, documentation of compliance with all training  
12 requirements of this part or applicable rule, and a copy of  
13 all licenses or certification held by each staff who performs  
14 services for which licensure or certification is required  
15 under this part or rule.

16 (3) The administrator or owner of a facility shall  
17 maintain liability insurance coverage that is in force at all  
18 times.

19 (4) The department may by rule clarify terms,  
20 establish requirements for financial records, accounting  
21 procedures, personnel procedures, insurance coverage, and  
22 reporting procedures, and specify documentation as necessary  
23 to implement the requirements of this section.

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

26 400.441 Rules establishing standards.--

27 (1) It is the intent of the Legislature that rules  
28 published and enforced pursuant to this section shall include  
29 criteria by which a reasonable and consistent quality of  
30 resident care and quality of life may be ensured and the  
31 results of such resident care may be demonstrated. Such rules

1 shall also ensure a safe and sanitary environment that is  
2 residential and noninstitutional in design or nature. It is  
3 further intended that reasonable efforts be made to  
4 accommodate the needs and preferences of residents to enhance  
5 the quality of life in a facility. In order to provide safe  
6 and sanitary facilities and the highest quality of resident  
7 care accommodating the needs and preferences of residents, the  
8 department, in consultation with the agency, the Department of  
9 Children and Family Services, and the Department of Health ~~and~~  
10 ~~Rehabilitative Services,~~ shall adopt rules, policies, and  
11 procedures to administer this part, which must include  
12 reasonable and fair minimum standards in relation to:

13 (a) The requirements for and maintenance of  
14 facilities, not in conflict with the provisions of chapter  
15 553, relating to plumbing, heating, lighting, ventilation,  
16 living space, and other housing conditions, which will ensure  
17 the health, safety, and comfort of residents and protection  
18 from fire hazard, including adequate provisions for fire alarm  
19 and other fire protection suitable to the size of the  
20 structure. Uniform firesafety standards shall be established  
21 and enforced by the State Fire Marshal in cooperation with the  
22 agency, the department, and the Department of Health ~~and~~  
23 ~~Rehabilitative Services.~~

24 1. Evacuation capability determination.--

25 a. The provisions of the National Fire Protection  
26 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used  
27 for determining the ability of the residents, with or without  
28 staff assistance, to relocate from or within a licensed  
29 facility to a point of safety as provided in the fire codes  
30 adopted herein. An evacuation capability evaluation for  
31 initial licensure shall be conducted within 6 months after the

1 date of licensure. For existing licensed facilities that are  
2 not equipped with an automatic fire sprinkler system, the  
3 administrator shall evaluate the evacuation capability of  
4 residents at least annually. The evacuation capability  
5 evaluation for each facility not equipped with an automatic  
6 fire sprinkler system shall be validated, without liability,  
7 by the State Fire Marshal, by the local fire marshal, or by  
8 the local authority having jurisdiction over firesafety,  
9 before the license renewal date. If the State Fire Marshal,  
10 local fire marshal, or local authority having jurisdiction  
11 over firesafety has reason to believe that the evacuation  
12 capability of a facility as reported by the administrator may  
13 have changed, it may, with assistance from the facility  
14 administrator, reevaluate the evacuation capability through  
15 timed exiting drills. Translation of timed fire exiting drills  
16 to evacuation capability may be determined:

17 (I) Three minutes or less: prompt.

18 (II) More than 3 minutes, but not more than 13  
19 minutes: slow.

20 (III) More than 13 minutes: impractical.

21 b. The Office of the State Fire Marshal shall provide  
22 or cause the provision of training and education on the proper  
23 application of Chapter 5, NFPA 101A, 1995 edition, to its  
24 employees, to staff of the Agency for Health Care  
25 Administration who are responsible for regulating facilities  
26 under this part, and to local governmental inspectors. The  
27 Office of the State Fire Marshal shall provide or cause the  
28 provision of this training within its existing budget, but may  
29 charge a fee for this training to offset its costs. The  
30 initial training must be delivered within 6 months after July  
31 1, 1995, and as needed thereafter.

1           c. The Office of the State Fire Marshal, in  
2 cooperation with provider associations, shall provide or cause  
3 the provision of a training program designed to inform  
4 facility operators on how to properly review bid documents  
5 relating to the installation of automatic fire sprinklers.  
6 The Office of the State Fire Marshal shall provide or cause  
7 the provision of this training within its existing budget, but  
8 may charge a fee for this training to offset its costs. The  
9 initial training must be delivered within 6 months after July  
10 1, 1995, and as needed thereafter.

11           d. The administrator of a licensed facility shall sign  
12 an affidavit verifying the number of residents occupying the  
13 facility at the time of the evacuation capability evaluation.

14           2. Firesafety requirements.--

15           a. Except for the special applications provided  
16 herein, effective January 1, 1996, the provisions of the  
17 National Fire Protection Association, Life Safety Code, NFPA  
18 101, 1994 edition, Chapter 22 for new facilities and Chapter  
19 23 for existing facilities shall be the uniform fire code  
20 applied by the State Fire Marshal for assisted living  
21 facilities, pursuant to s. 633.022.

22           b. Any new facility, regardless of size, that applies  
23 for a license on or after January 1, 1996, must be equipped  
24 with an automatic fire sprinkler system. The exceptions as  
25 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as  
26 adopted herein, apply to any new facility housing eight or  
27 fewer residents. On July 1, 1995, local governmental entities  
28 responsible for the issuance of permits for construction shall  
29 inform, without liability, any facility whose permit for  
30 construction is obtained prior to January 1, 1996, of this  
31 automatic fire sprinkler requirement. As used in this part,

1 the term "a new facility" does not mean an existing facility  
2 that has undergone change of ownership.

3 c. Notwithstanding any provision of s. 633.022 or of  
4 the National Fire Protection Association, NFPA 101A, Chapter  
5 5, 1995 edition, to the contrary, any existing facility  
6 housing eight or fewer residents is not required to install an  
7 automatic fire sprinkler system, nor to comply with any other  
8 requirement in Chapter 23 of NFPA 101, 1994 edition, that  
9 exceeds the firesafety requirements of NFPA 101, 1988 edition,  
10 that applies to this size facility, unless the facility has  
11 been classified as impractical to evacuate. Any existing  
12 facility housing eight or fewer residents that is classified  
13 as impractical to evacuate must install an automatic fire  
14 sprinkler system within the timeframes granted in this  
15 section.

16 d. Any existing facility that is required to install  
17 an automatic fire sprinkler system under this paragraph need  
18 not meet other firesafety requirements of Chapter 23, NFPA  
19 101, 1994 edition, which exceed the provisions of NFPA 101,  
20 1988 edition. The mandate contained in this paragraph which  
21 requires certain facilities to install an automatic fire  
22 sprinkler system supersedes any other requirement.

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

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

28 g. A local government may charge fees only in an  
29 amount not to exceed the actual expenses incurred by local  
30 government relating to the installation and maintenance of an  
31 automatic fire sprinkler system in an existing and properly

1 licensed assisted living facility structure as of January 1,  
2 1996.

3           h. If a licensed facility undergoes major  
4 reconstruction or addition to an existing building on or after  
5 January 1, 1996, the entire building must be equipped with an  
6 automatic fire sprinkler system. Major reconstruction of a  
7 building means repair or restoration that costs in excess of  
8 50 percent of the value of the building as reported on the tax  
9 rolls, excluding land, before reconstruction. Multiple  
10 reconstruction projects within a 5-year period the total costs  
11 of which exceed 50 percent of the initial value of the  
12 building at the time the first reconstruction project was  
13 permitted are to be considered as major reconstruction.  
14 Application for a permit for an automatic fire sprinkler  
15 system is required upon application for a permit for a  
16 reconstruction project that creates costs that go over the  
17 50-percent threshold.

18           i. Any facility licensed before January 1, 1996, that  
19 is required to install an automatic fire sprinkler system  
20 shall ensure that the installation is completed within the  
21 following timeframes based upon evacuation capability of the  
22 facility as determined under subparagraph 1.:

23           (I) Impractical evacuation capability, 24 months.

24           (II) Slow evacuation capability, 48 months.

25           (III) Prompt evacuation capability, 60 months.

26  
27 The beginning date from which the deadline for the automatic  
28 fire sprinkler installation requirement must be calculated is  
29 upon receipt of written notice from the local fire official  
30 that an automatic fire sprinkler system must be installed. The  
31 local fire official shall send a copy of the document

1 indicating the requirement of a fire sprinkler system to the  
2 Agency for Health Care Administration.

3 j. It is recognized that the installation of an  
4 automatic fire sprinkler system may create financial hardship  
5 for some facilities. The appropriate local fire official  
6 shall, without liability, grant two 1-year extensions to the  
7 timeframes for installation established herein, if an  
8 automatic fire sprinkler installation cost estimate and proof  
9 of denial from two financial institutions for a construction  
10 loan to install the automatic fire sprinkler system are  
11 submitted. However, for any facility with a class I or class  
12 II, or a history of uncorrected class III, firesafety  
13 deficiencies, an extension must not be granted. The local  
14 fire official shall send a copy of the document granting the  
15 time extension to the Agency for Health Care Administration.

16 k. A facility owner whose facility is required to be  
17 equipped with an automatic fire sprinkler system under Chapter  
18 23, NFPA 101, 1994 edition, as adopted herein, must disclose  
19 to any potential buyer of the facility that an installation of  
20 an automatic fire sprinkler requirement exists. The sale of  
21 the facility does not alter the timeframe for the installation  
22 of the automatic fire sprinkler system.

23 l. Existing facilities required to install an  
24 automatic fire sprinkler system as a result of  
25 construction-type restrictions in Chapter 23, NFPA 101, 1994  
26 edition, as adopted herein, or evacuation capability  
27 requirements shall be notified by the local fire official in  
28 writing of the automatic fire sprinkler requirement, as well  
29 as the appropriate date for final compliance as provided in  
30 this subparagraph. The local fire official shall send a copy  
31 of the document to the Agency for Health Care Administration.



1           m. Except in cases of life-threatening fire hazards,  
2 if an existing facility experiences a change in the evacuation  
3 capability, or if the local authority having jurisdiction  
4 identifies a construction-type restriction, such that an  
5 automatic fire sprinkler system is required, it shall be  
6 afforded time for installation as provided in this  
7 subparagraph.

8           ~~n. There is created a study-work group consisting of~~  
9 ~~representatives of the Office of the State Fire Marshal,~~  
10 ~~Florida Fire Chiefs' Association, Florida Fire Marshals'~~  
11 ~~Association, Florida Assisted Living Association, Florida~~  
12 ~~Association of Homes for the Aging, Florida Health Care~~  
13 ~~Association, Florida League of Cities, Florida Association of~~  
14 ~~Counties, Florida State Firemen's Association, Building~~  
15 ~~Officials' Association of Florida, the Aging and Adult~~  
16 ~~Services Program Office of the Department of Health and~~  
17 ~~Rehabilitative Services, and the Agency for Health Care~~  
18 ~~Administration. Each entity involved shall select its~~  
19 ~~representative to the study-work group. The Florida Fire~~  
20 ~~Chiefs' Association shall coordinate study-work group~~  
21 ~~activities. The study-work group shall examine the National~~  
22 ~~Fire Protection Association, NFPA 101, Chapter 23, 1994~~  
23 ~~edition, and shall report to the Legislature by December 31,~~  
24 ~~1995, its recommendations for firesafety standards that will~~  
25 ~~provide a reasonable level of firesafety for the protection of~~  
26 ~~assisted living facility residents without imposing~~  
27 ~~unnecessary economic impact on facilities regulated under this~~  
28 ~~part. Expenses incurred while participating in this study-work~~  
29 ~~group activity shall be borne by the participants.~~

30  
31

1 Facilities that are fully sprinkled and in compliance with  
2 other firesafety standards are not required to conduct more  
3 than one of the required fire drills between the hours of 11  
4 p.m. and 7 a.m., per year. In lieu of the remaining drills,  
5 staff responsible for residents during such hours may be  
6 required to participate in a mock drill that includes a review  
7 of evacuation procedures. Such standards must be included or  
8 referenced in the rules adopted by the ~~department after~~  
9 ~~consultation with the~~ State Fire Marshal. Pursuant to s.  
10 633.022(1)(b), the State Fire Marshal is the final  
11 administrative authority for firesafety standards established  
12 and enforced pursuant to this section. All licensed facilities  
13 must have an annual fire inspection conducted by the local  
14 fire marshal or authority having jurisdiction.

15 (b) The preparation and annual update of a  
16 comprehensive emergency management plan. Such standards must  
17 be included in the rules adopted by the department after  
18 consultation with the Department of Community Affairs. At a  
19 minimum, the rules must provide for plan components that  
20 address emergency evacuation transportation; adequate  
21 sheltering arrangements; postdisaster activities, including  
22 provision of emergency power, food, and water; postdisaster  
23 transportation; supplies; staffing; emergency equipment;  
24 individual identification of residents and transfer of  
25 records; communication with families; and responses to family  
26 inquiries. The comprehensive emergency management plan is  
27 subject to review and approval by the local emergency  
28 management agency. During its review, the local emergency  
29 management agency shall ensure that the following agencies, at  
30 a minimum, are given the opportunity to review the plan: the  
31 Department of Elderly Affairs, the Department of Health ~~and~~

1 ~~Rehabilitative Services~~, the Agency for Health Care  
2 Administration, and the Department of Community Affairs.  
3 Also, appropriate volunteer organizations must be given the  
4 opportunity to review the plan. The local emergency  
5 management agency shall complete its review within 60 days and  
6 either approve the plan or advise the facility of necessary  
7 revisions.

8 (c) The number, training, and qualifications of all  
9 personnel having responsibility for the care of residents.  
10 The rules must require adequate staff to provide for the  
11 safety of all residents. Facilities licensed for 17 or more  
12 residents are required to maintain an alert staff for 24 hours  
13 per day.

14 (d) All sanitary conditions within the facility and  
15 its surroundings, ~~including water supply, sewage disposal,~~  
16 ~~food handling, and general hygiene, and maintenance thereof,~~  
17 which will ensure the health and comfort of residents. The  
18 rules must clearly delineate the responsibilities of the  
19 agency's licensure and survey staff, ~~and the responsibilities~~  
20 ~~of the county health departments, and the local authority~~  
21 having jurisdiction over fire safety and ensure that  
22 inspections are not duplicative. The agency may collect fees  
23 for food service inspections conducted by the county health  
24 departments and transfer such fees to the Department of Health  
25 ~~and Rehabilitative Services~~.

26 (e) License application and license renewal, transfer  
27 of ownership, proper management of resident funds and personal  
28 property, surety bonds, resident contracts, refund policies,  
29 financial ability to operate, and facility and staff records.

30 (f) ~~(e)~~ Inspections, complaint investigations,  
31 moratoriums, classification of deficiencies,

1           ~~The~~ levying and enforcement of penalties, and use of  
2 income from fees and fines.

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

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

7           1. The supervision of residents;

8           ~~2.1.~~ The provision of personal services;

9           ~~3.2.~~ The provision of, or arrangement for, social and  
10 leisure activities;

11           ~~4.3.~~ The arrangement for appointments and  
12 transportation to appropriate medical, dental, nursing, or  
13 mental health services, as needed by residents;

14           ~~4. The provision of limited nursing services;~~

15           5. The management of medication;~~The provision of~~  
16 ~~extended congregate care services;~~ and

17           6. The nutritional needs of residents; and ~~The~~  
18 ~~provision of limited mental health services.~~

19           7. Resident records.

20           (i) Facilities holding a limited nursing, extended  
21 congregate care, or limited mental health license.

22           ~~(j)(h)~~ The establishment of specific criteria to  
23 define appropriateness of resident admission and continued  
24 residency in a facility holding a standard, limited nursing,  
25 extended congregate care, and limited mental health license.

26           ~~(k)(i)~~ ~~The definition and~~ use of physical or chemical  
27 restraints. The use of physical restraints is limited to  
28 half-bed rails as prescribed and documented by the resident's  
29 physician with the consent of the resident or, if applicable,  
30 the resident's representative or designee or the resident's  
31 surrogate, guardian, or attorney in fact. The use of chemical

1 restraints is limited to prescribed dosages of medications  
2 authorized by the resident's physician and must be consistent  
3 with the resident's diagnosis. Residents who are receiving  
4 medications that can serve as chemical restraints must be  
5 evaluated by their physician at least annually to assess:

- 6 1. The continued need for the medication.
- 7 2. The level of the medication in the resident's  
8 blood.
- 9 3. The need for adjustments in the prescription.

10 (3) The department shall submit a copy of proposed  
11 rules to the Speaker of the House of Representatives, the  
12 President of the Senate, and appropriate committees of  
13 substance for review and comment prior to the promulgation  
14 thereof.

15 (a) Rules promulgated by the department shall  
16 encourage the development of homelike facilities which promote  
17 the dignity, individuality, personal strengths, and  
18 decisionmaking ability of residents.

19 (b) The agency, in consultation with the department,  
20 may waive rules promulgated pursuant to this part in order to  
21 demonstrate and evaluate innovative or cost-effective  
22 congregate care alternatives which enable individuals to age  
23 in place. Such waivers may be granted only in instances where  
24 there is reasonable assurance that the health, safety, or  
25 welfare of residents will not be endangered. To apply for a  
26 waiver, the licensee shall submit to the agency a written  
27 description of the concept to be demonstrated, including  
28 goals, objectives, and anticipated benefits; the number and  
29 types of residents who will be affected, if applicable; a  
30 brief description of how the demonstration will be evaluated;  
31 and any other information deemed appropriate by the agency.

1 Any facility granted a waiver shall submit a report of  
2 findings to the agency and the department within 12 months.  
3 At such time, the agency may renew or revoke the waiver or  
4 pursue any regulatory or statutory changes necessary to allow  
5 other facilities to adopt the same practices. The department  
6 may by rule clarify terms and establish waiver application  
7 procedures, criteria for reviewing waiver proposals, and  
8 procedures for reporting findings, as necessary to implement  
9 this subsection.

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

12 400.442 Pharmacy and dietary services.--

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

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

18 400.444 Construction and renovation; requirements.--

19 (3) The department may adopt rules to establish  
20 procedures and specify the documentation necessary to  
21 implement this section.

22 Section 8. Subsections (3), (4), and (13) of section  
23 400.619, Florida Statutes, are amended to read:

24 400.619 Licensure requirements.--

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

31

1           (4) Upon receipt of a completed license application or  
2 license renewal, and the fee, the agency shall conduct a level  
3 1 background screening as provided under chapter 435 on ~~must~~  
4 ~~check with the abuse registry and the Department of Law~~  
5 ~~Enforcement concerning~~ the adult family-care home provider  
6 applicant, the designated relief person, all adult household  
7 members, and all staff members. The agency shall ~~also~~ conduct  
8 an onsite visit to the home that is to be licensed.

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

12           Section 9. Section 400.6196, Florida Statutes, is  
13 amended to read:

14           400.6196 Violations; penalties.--

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

18           (a) Class I 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 present an imminent danger to the residents or  
22 guests of the facility or a substantial probability that death  
23 or serious physical or emotional harm would result therefrom.  
24 The condition or practice that constitutes a class I violation  
25 must be abated or eliminated within 24 hours, unless a fixed  
26 period, as determined by the agency, is required for  
27 correction. A class I deficiency is subject to an  
28 administrative fine in an amount not less than \$500 and not  
29 exceeding \$1,000 for each violation. A fine may be levied  
30 notwithstanding the correction of the deficiency.

31

1           (b) Class II violations are those conditions or  
2 practices related to the operation and maintenance of an adult  
3 family-care home or to the care of residents which the agency  
4 determines directly threaten the physical or emotional health,  
5 safety, or security of the residents, other than class I  
6 violations. A class II violation is subject to an  
7 administrative fine in an amount not less than \$250 and not  
8 exceeding \$500 for each violation. A citation for a class II  
9 violation must specify the time within which the violation is  
10 required to be corrected. If a class II violation is corrected  
11 within the time specified, no civil penalty shall be imposed,  
12 unless it is a repeated offense.

13           (c) Class III violations are those conditions or  
14 practices related to the operation and maintenance of an adult  
15 family-care home or to the care of residents which the agency  
16 determines indirectly or potentially threaten the physical or  
17 emotional health, safety, or security of residents, other than  
18 class I or class II violations. A class III violation is  
19 subject to an administrative fine in an amount not less than  
20 \$100 and not exceeding \$250 for each violation. A citation for  
21 a class III violation shall specify the time within which the  
22 violation is required to be corrected. If a class III  
23 violation is corrected within the time specified, no civil  
24 penalty shall be imposed, unless it is a repeated offense.

25           (d) Class IV violations are those conditions or  
26 occurrences related to the operation and maintenance of an  
27 adult family-care home, or related to the required reports,  
28 forms, or documents, which do not have the potential of  
29 negatively affecting the residents. A provider that does not  
30 correct a class IV violation within the time limit specified  
31 by the agency is subject to an administrative fine in an



1 amount not less than \$50 and not exceeding \$100 for each  
2 violation. Any class IV violation that is corrected during the  
3 time the agency survey is conducted will be identified as an  
4 agency finding and not as a violation.

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

9 Unclassified violations include:

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

11 (b) Violating any rule adopted under this part ~~ss.~~  
12 ~~400.616-400.629.~~

13 (c) Failure to follow the criteria and procedures  
14 provided under part I of chapter 394 relating to the  
15 transportation, voluntary admission, and involuntary  
16 examination of adult family-care home residents.

17 (d) Exceeding licensed capacity.

18 (e) Providing services beyond the scope of the  
19 license.

20 (f) Violating a moratorium.

21 ~~(3)(2)~~ Each day during which a violation occurs  
22 constitutes a separate offense violation.

23 ~~(4)(3)~~ In determining whether a penalty is to be  
24 imposed, and in fixing the amount of any penalty to be  
25 imposed, the agency must consider:

26 (a) The gravity of the violation.

27 (b) Actions taken by the provider to correct a  
28 violation.

29 (c) Any previous violation by the provider.

30 (d) The financial benefit to the provider of  
31 committing or continuing the violation.

1           ~~(5)(4)~~ As an alternative to or in conjunction with an  
 2 administrative action against a provider, the agency may  
 3 request a plan of corrective action that demonstrates a good  
 4 faith effort to remedy each violation by a specific date,  
 5 subject to the approval of the agency ~~department~~.

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

10           ~~(7)(6)~~ Civil penalties paid by a provider must be  
 11 deposited into the Department of Elderly Affairs  
 12 Administrative Trust Fund and used to offset the expenses of  
 13 departmental training and education for adult family-care home  
 14 providers.

15           ~~(8)(7)~~ The agency may impose an immediate moratorium  
 16 on admissions to any adult family-care home if the agency  
 17 finds that a condition in the home presents a threat to the  
 18 health, safety, or welfare of its residents. The department  
 19 may by rule establish facility conditions that constitute  
 20 grounds for imposing a moratorium and establish procedures for  
 21 imposing and lifting a moratorium.

22           Section 10. Section 400.621, Florida Statutes, is  
 23 amended to read:

24           400.621 Rules and standards relating to adult  
 25 family-care homes.--

26           (1) The department ~~shall~~, in consultation with the  
 27 Department of Health, the Department of Children and Family  
 28 Services, and Rehabilitative Services and the agency shall, by  
 29 rule, establish minimum standards to ensure ~~and licensure~~  
 30 ~~procedures for adult family-care homes. The rules must, at a~~  
 31 ~~minimum:~~

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

4           (a) Requirements for the physical site of the facility  
5 and facility maintenance.

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

9                 1. Room and board.

10                2. Assistance necessary to perform the activities of  
11 daily living.

12                3. Assistance necessary to administer medication.

13                4. Supervision of residents.

14                5. Health monitoring.

15                6. Social and leisure activities.

16           ~~(c)(b) Standards and Provide~~ procedures for license  
17 application and annual license renewal, advertising prevention  
18 of abuse, proper management of each resident's funds and  
19 personal property and personal affairs, financial ability to  
20 operate, medication management, inspections, complaint  
21 investigations, and facility, staff, and resident and records  
22 and reports.

23           (d) Qualifications, training, standards, and  
24 responsibilities for providers and staff.

25           ~~(c) Promote the growth of adult family-care homes as a~~  
26 ~~component of a long-term care system.~~

27           ~~(d) Promote the goal of aging in place.~~

28           ~~(e) Mandate~~ Compliance with chapter 419, relating to  
29 community residential homes.

30           (f) Criteria and procedures for determining the  
31 appropriateness of a resident's placement and continued

1 residency in ~~Assure that~~ an adult family-care home ~~is the~~  
2 ~~appropriate living arrangement for each resident.~~ A resident  
3 who requires 24-hour nursing supervision may not be retained  
4 in an adult family-care home. A person who would not be an  
5 appropriate resident in any assisted living facility under s.  
6 400.426 would not be an appropriate resident in an adult  
7 family-care home.

8 (g) Procedures for providing notice and assuring  
9 ~~Assure~~ the least possible disruption of residents' lives when  
10 residents are relocated, an adult family-care home is closed,  
11 or the ownership of an adult family-care home is transferred.

12 (h) ~~Provide~~ Procedures to protect the residents'  
13 rights as provided in s. 400.628.

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

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

18 (2) The department shall by rule provide minimum  
19 standards and procedures for emergencies. Minimum firesafety  
20 standards shall be established and enforced by the State Fire  
21 Marshal in cooperation with the department and the agency.  
22 Such standards must be included in the rules adopted by the  
23 department after consultation with the State Fire Marshal and  
24 the agency.

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

27 (3)(4) The provider of any adult family-care home that  
28 is in operation at the time any rules are adopted or amended  
29 under this part ~~ss. 400.616-400.629~~ may be given a reasonable  
30 time, not exceeding 6 months, within which to comply with the  
31 ~~those~~ new or revised rules and standards.

1 Section 11. Section 400.6211, Florida Statutes, is  
2 amended to read:

3 400.6211 Training and education programs.--

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

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

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

12 (b) Identifying and reporting abuse, neglect, and  
13 exploitation.

14 (c) Identifying and meeting the special needs of aged  
15 persons and disabled adults.

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

18 (3) Providers must complete the training and education  
19 program within a reasonable time determined by the department  
20 by rule. Failure to complete the training and education  
21 program within the time set by the department ~~is a violation~~  
22 ~~of ss. 400.616-400.629~~ and subjects the provider to revocation  
23 or denial of the license under this part.

24 (4) If the Department of Children and Family Services  
25 ~~Health and Rehabilitative Services~~, the agency, or the  
26 department determines that there are problems in an adult  
27 family-care home which could be reduced through specific  
28 training or education beyond that required under this section,  
29 the department may require the provider or staff to complete  
30 such training or education.

31

1           (5) The department shall specify by rule training and  
2 education programs, training requirements and the assignment  
3 of training responsibilities for staff, training procedures,  
4 and training fees as necessary to administer this section.

5           Section 12. Present subsections (3) and (4) of section  
6 409.212, Florida Statutes, are redesignated as subsections (4)  
7 and (5), respectively, present subsection (4) is amended, and  
8 a new subsection (3) is added to that section, to read:

9           409.212 Optional supplementation.--

10           (3) Assisted living facilities, adult family-care  
11 homes, family placement, or any other specialized living  
12 arrangement accepting residents who receive optional  
13 supplementation payments must comply with the requirements of  
14 42 U.S.C. s. 1382e(e).

15           ~~(4)~~<sup>(3)</sup> In addition to the amount of optional  
16 supplementation provided by the state, a person may receive  
17 additional supplementation from third parties to contribute to  
18 his or her cost of care. Additional supplementation may be  
19 provided under the following conditions:

20           (a) Payments shall be made to the assisted living  
21 facility, or to the operator of an adult family-care home,  
22 family placement, or other special living arrangement, on  
23 behalf of the person and not directly to the optional state  
24 supplementation recipient.

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

28           (c) The additional supplementation shall not exceed  
29 two times the provider rate recognized under the optional  
30 state supplementation program.

31

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

4 (5)~~(4)~~ When contributions are made in accordance with  
5 the provisions of subsection(4)~~(3)~~, the department shall not  
6 count such supplements as income to the client for purposes of  
7 determining eligibility for, or computing the amount of,  
8 optional state supplementation benefits, nor shall the  
9 department increase an optional state supplementation payment  
10 to offset the reduction in Supplemental Security Income  
11 benefits that will occur because of the third-party  
12 contribution.

13 Section 13. This act shall take effect July 1 of the  
14 year in which enacted.