

1
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, 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)~~⁽³⁾ 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.

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