

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

300-1958B-98

1                                   A bill to be entitled  
 2           An act relating to adult family-care homes;  
 3           amending ss. 400.616, 400.617, 400.618,  
 4           400.619, 400.6196, 400.621, 400.6211, 400.622,  
 5           400.625, 400.6255, 400.628, and 400.629, F.S.,  
 6           and creating s. 400.6194, F.S.; revising  
 7           legislative intent and purpose; revising  
 8           definitions; requiring adult family-care home  
 9           providers to meet certain screening  
 10          requirements; revising requirements for  
 11          licensure application and renewal; providing a  
 12          late renewal fee; revising grounds for denial,  
 13          suspension, or revocation of a license;  
 14          revising requirements for rules relating to  
 15          appropriate placement of residents; revising  
 16          provisions relating to injunctive relief;  
 17          requiring certain information to be provided to  
 18          residents' legal representatives; conforming  
 19          terminology, references, and cross-references;  
 20          amending s. 419.001, F.S.; conforming a  
 21          cross-reference; providing an effective date.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1.   Section 400.616, Florida Statutes, is  
 26 amended to read:  
 27           400.616 Short title.--This part Sections  
 28 ~~400.616-400.629~~ may be cited as the "Adult Family-Care Home  
 29 Act."

30           Section 2.   Section 400.617, Florida Statutes, is  
 31 amended to read:

1           400.617 Legislative intent; purpose.--

2           (1) The Legislature encourages the provision of care  
3 for disabled adults and frail elders ~~aged persons~~ in  
4 family-type living arrangements in private homes.

5           (2) Adult family-care homes provide housing and  
6 personal care for disabled adults and frail elders who choose  
7 to live with an individual or family in a private home. The  
8 adult family-care home provider must live in the home.The  
9 purpose of this part ~~ss. 400.616-400.629~~ is to provide for the  
10 health, safety, and welfare of residents of adult family-care  
11 homes in the state.

12           (3) The Legislature recognizes that adult family-care  
13 homes are an important part of the continuum of long-term  
14 care. The personal care ~~services~~ available in these homes,  
15 which may be provided directly or through contract or  
16 agreement, is ~~are~~ intended to help residents remain as  
17 independent as possible in order to delay or avoid placement  
18 in a nursing home or other institution. Regulations governing  
19 adult family-care homes must be sufficiently flexible to allow  
20 residents to age in place if resources are available to meet  
21 their needs and accommodate their preferences.

22           (4) The Legislature further finds and declares that  
23 licensure under this part ~~ss. 400.616-400.629~~ is a public  
24 trust and a privilege, and not an entitlement. This principle  
25 must guide the finder of fact or trier of law at any  
26 administrative proceeding or circuit court action initiated by  
27 the department to enforce this part ~~ss. 400.616-400.629~~.

28           (5) Rules of the department relating to adult  
29 family-care homes shall be as minimal and flexible as possible  
30 to ensure the protection of residents while minimizing the  
31

1 obstacles that could inhibit the establishment of adult  
2 family-care homes.

3 Section 3. Section 400.618, Florida Statutes, is  
4 amended to read:

5 400.618 Definitions.--As used in this part ~~ss.~~  
6 ~~400.616-400.629~~, the term:

7 (1) "Activities of daily living" means functions and  
8 tasks for self-care, including eating, bathing, grooming,  
9 dressing, ambulating, and other similar tasks.

10 (2) "Adult family-care home" means a full-time,  
11 family-type living arrangement, in a private home, under which  
12 a person or persons provide, ~~for profit or not for profit,~~  
13 room, board, and personal care ~~one or more personal services,~~  
14 as appropriate for the level of functional impairment, for no  
15 more than five ~~aged persons or~~ disabled adults or frail elders  
16 who are not relatives. The following establishments are not  
17 adult family-care homes:

18 (a) An arrangement whereby the person who owns or  
19 rents the home provides room, board, and ~~establishment that~~  
20 ~~provides~~ personal services for not more than two ~~three or~~  
21 ~~fewer~~ adults who do not receive optional state supplementation  
22 under s. 409.212, ~~but that does not hold itself out to the~~  
23 ~~public to be an establishment that regularly provides such~~  
24 ~~services.~~ The person who provides the housing, meals, and  
25 personal care must own or rent the home and reside therein.

26 (b) An arrangement whereby the person who owns or  
27 rents the home provides room, board, and ~~establishment in~~  
28 ~~which a person or persons provide~~ personal services only to  
29 his or her ~~their~~ relatives.

30 (c) An establishment that is licensed as an assisted  
31 living facility under part III.

1           ~~(3) "Aged person" means any person age 60 or over who~~  
2 ~~is currently a resident of the state and who, because of a~~  
3 ~~functional impairment, requires one or more personal services~~  
4 ~~but does not require 24-hour skilled nursing home or~~  
5 ~~institutional care.~~

6           (3)~~(4)~~ "Agency" means the Agency for Health Care  
7 Administration.

8           (4)~~(5)~~ "Aging in place" means remaining in a  
9 noninstitutional living environment despite the physical or  
10 mental changes that may occur in a person who is aging. For  
11 aging in place to occur, needed services are added, increased,  
12 or adjusted to compensate for a person's physical or mental  
13 changes.

14           (5) "Appropriate placement" means that the resident's  
15 needs can be met by the adult family-care home or can be met  
16 by services arranged by the adult family-care home or the  
17 resident.

18           (6) "Chemical restraint" means a pharmacologic drug  
19 that physically limits, restricts, or deprives an individual  
20 of movement or mobility, and is used for discipline or  
21 convenience and not required for the treatment of medical  
22 symptoms.

23           (7) "Department" means the Department of Elderly  
24 Affairs.

25           (8) "Disabled adult" means any person between 18 and  
26 59 years of age, inclusive, who is a resident of the state and  
27 who has one or more permanent physical or mental limitations  
28 that restrict the person's ability to perform the normal  
29 activities of daily living.

30           (9) "Frail elder" means a functionally impaired  
31 elderly person who is 60 years of age or older and who has

1 physical or mental limitations that restrict the person's  
2 ability to perform the normal activities of daily living and  
3 that impede the person's capacity to live independently.

4 (10)(9) "Personal services" or "personal care"  
5 includes include, but are not limited to, individual  
6 assistance with or supervision of the activities of daily  
7 living and the self-administration of medication, ~~supervision~~  
8 of self-administered medication, and other similar services  
9 that the department defines by rule.

10 (11)(10) "Provider" means a person who is licensed to  
11 operate an adult family-care home.

12 (12)(11) "Relative" means an individual who is the  
13 father, mother, son, daughter, brother, sister, grandfather,  
14 grandmother, greatgrandfather, and greatgrandmother, uncle,  
15 aunt, first cousin, nephew, niece, husband, wife,  
16 father-in-law, mother-in-law, son-in-law, daughter-in-law,  
17 brother-in-law, sister-in-law, stepfather, stepmother,  
18 stepson, stepdaughter, stepbrother, stepsister, half brother,  
19 or half sister of a provider.

20 (13) "Relief person" means an adult designated by the  
21 provider to supervise the residents during the provider's  
22 absence.

23 (14) "Resident" means a person receiving room, board,  
24 and personal care in an adult family-care home.

25 Section 4. Section 400.619, Florida Statutes, is  
26 amended to read:

27 400.619 Licensure application and renewal  
28 requirements.--

29 (1) Each person who intends to be ~~a provider of an~~  
30 adult family-care home provider must apply for obtain a  
31 license from the agency ~~before caring for a disabled adult or~~

1 ~~an aged person in the adult family-care home. Such~~  
2 ~~application must be made~~ at least 90 days before the applicant  
3 intends to operate the adult family-care home.

4 (2) A person who intends to be ~~a provider of an adult~~  
5 family-care home provider must own or rent, and live in, the  
6 adult family-care home that is to be licensed.

7 (3) Application for a license or annual license  
8 ~~renewal to operate an adult family-care home~~ must be made on a  
9 form provided by the agency, signed under oath, and must be  
10 accompanied by a licensing fee of \$100 per year ~~to offset the~~  
11 ~~cost of training and education programs by the Department of~~  
12 ~~Elderly Affairs for providers.~~

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

21 (5) Access to a licensed adult family-care home must  
22 be provided at reasonable times for the appropriate officials  
23 of the department, the Department of Health, the Department of  
24 Children and Family and Rehabilitative Services, the agency,  
25 and the State Fire Marshal, who are responsible for the  
26 development and maintenance of fire, health, sanitary, and  
27 safety standards, to inspect the facility to assure compliance  
28 with these standards. In addition, access to a licensed adult  
29 family-care home must be provided at reasonable times for the  
30 district long-term care ombudsman council.

31

1           (6) A license is effective for 1 year after the date  
2 of issuance unless revoked sooner. Each license must state  
3 the name of the provider, the address of the home to which the  
4 license applies, and the maximum number of residents of the  
5 home. Failure to timely file a license renewal application  
6 shall result in a late fee equal to 50 percent of the license  
7 fee. ~~A license may be issued with or without restrictions~~  
8 ~~governing the residents or care offered in the adult~~  
9 ~~family-care home.~~

10           (7) A license is not transferable or applicable to any  
11 location or person other than the location and ~~or~~ person  
12 indicated on the license ~~application for licensure.~~

13           (8) The licensed maximum capacity of each adult  
14 family-care home is based on the service needs of the  
15 residents and the capability of the provider to meet the needs  
16 of the residents. Any relative who lives in the adult  
17 family-care home and who is ~~an aged person or~~ a disabled adult  
18 or frail elder must be included in that limitation.

19           (9) Each adult family-care home must designate at  
20 least one licensed space for a resident receiving optional  
21 state supplementation as defined in s. 409.212. The  
22 ~~department of Health and Rehabilitative Services~~ shall specify  
23 by rule the procedures to be followed for referring residents  
24 who receive optional state supplementation to adult  
25 family-care homes. Those homes licensed as adult foster homes  
26 or assisted living facilities prior to January 1, 1994, that  
27 convert to adult family-care homes, are exempt from this ~~the~~  
28 ~~requirement of designating one space for a resident receiving~~  
29 ~~optional state supplementation.~~

30           (10) The agency may issue a conditional license to a  
31 provider for the purpose of bringing the adult family-care

1 home into compliance with licensure requirements. A  
2 conditional license must be limited to a specific period, not  
3 exceeding 6 months, ~~as determined by the department, in~~  
4 ~~consultation with the agency.~~ The department shall, by rule,  
5 establish criteria for issuing conditional licenses.

6 ~~(11) The agency may deny, suspend, or revoke a license~~  
7 ~~for any of the following reasons:~~

8 ~~(a) A confirmed report, obtained under s. 415.1075, of~~  
9 ~~abuse, neglect, or exploitation, or conviction of a crime~~  
10 ~~related to abuse, neglect, or exploitation.~~

11 ~~(b) A proposed confirmed report that remains unserved~~  
12 ~~and is maintained in the central abuse registry and tracking~~  
13 ~~system pursuant to s. 415.1065(2)(c).~~

14 ~~(c) An intentional or negligent act materially~~  
15 ~~affecting the health, safety, or welfare of the adult~~  
16 ~~family-care home residents.~~

17 ~~(d) A violation of ss. 400.616-400.629 or rules~~  
18 ~~adopted under ss. 400.616-400.629, including the failure to~~  
19 ~~comply with any restrictions specified in the license.~~

20 ~~(e) Submission of fraudulent or inaccurate information~~  
21 ~~to the agency.~~

22 ~~(f) Conviction of a felony involving violence to a~~  
23 ~~person.~~

24 ~~(g) Failure to pay a civil penalty assessed under this~~  
25 ~~part.~~

26 ~~(11)(12)~~ All moneys collected under this section must  
27 be deposited into the Department of Elderly Affairs  
28 Administrative Trust Fund and ~~must be~~ used to offset the  
29 expenses of departmental training and education for adult  
30 family-care home providers.

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1           ~~(12)(13)~~ The department shall adopt rules to implement  
2 this section.

3           Section 5. Section 400.6194, Florida Statutes, is  
4 created to read:

5           400.6194 Denial or revocation of a license.--The  
6 agency may deny or revoke a license for any of the following  
7 reasons:

8           (1) Failure of any of the persons required to undergo  
9 background screening under s. 400.619 to meet the level 1  
10 screening standards of s. 435.03.

11           (2) An intentional or negligent act materially  
12 affecting the health, safety, or welfare of the adult  
13 family-care home residents.

14           (3) Failure to comply with any restrictions specified  
15 in the license.

16           (4) Submission of fraudulent information or omission  
17 of any material fact on a license application or any other  
18 document required by the agency.

19           (5) Failure to pay an administrative fine assessed  
20 under this part.

21           (6) A violation of this part or adopted rules which  
22 results in conditions or practices that directly threaten the  
23 physical or emotional health, safety, or welfare of residents.

24           (7) Failure to correct cited fire code violations that  
25 threaten the health, safety, or welfare of residents.

26           (8) Failure to submit a completed initial license  
27 application, or to complete a license renewal application  
28 within the specified timeframe.

29           Section 6. Paragraph (b) of subsection (1) of section  
30 400.6196, Florida Statutes, is amended to read:

31           400.6196 Violations; penalties.--

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

4           (b) Violating any rule adopted under this part ~~ss.~~  
5 ~~400.616-400.629~~.

6           Section 7. Paragraph (f) of subsection (1) and  
7 subsection (4) of section 400.621, Florida Statutes, are  
8 amended to read:

9           400.621 Rules and standards relating to adult  
10 family-care homes.--

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

16           (f) Assure that an adult family-care home is the  
17 appropriate living arrangement for each resident. A resident  
18 who requires 24-hour nursing supervision may not be retained  
19 in an adult family-care home unless such resident is an  
20 enrolled hospice patient and the resident's continued  
21 residency is mutually agreeable to the resident and the  
22 provider. ~~A person who would not be an appropriate resident in~~  
23 ~~any assisted living facility under s. 400.426 would not be an~~  
24 ~~appropriate resident in an adult family care home.~~

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

30  
31

1           Section 8. Paragraph (c) of subsection (2) and  
2 subsections (3) and (4) of section 400.6211, Florida Statutes,  
3 are amended to read:

4           400.6211 Training and education programs.--

5           (2) Training and education programs must include, but  
6 are not limited to, information relating to:

7           (c) Identifying and meeting the special needs of ~~aged~~  
8 ~~persons and disabled adults~~ and frail elders.

9           (3) Providers must complete the training and education  
10 program within a reasonable time determined by the department.  
11 Failure to complete the training and education program within  
12 the time set by the department is a violation of this part ss.  
13 ~~400.616-400.629~~ and subjects the provider to revocation of the  
14 license.

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

22           Section 9. Section 400.622, Florida Statutes, is  
23 amended to read:

24           400.622 Injunctive proceedings.--

25           ~~(1)~~ The department, the Department of Children and  
26 Family Health and Rehabilitative Services, or the agency may  
27 institute injunctive proceedings in a court of competent  
28 jurisdiction to:

29           ~~(1)(a)~~ Enforce the provisions of this part ss.  
30 ~~400.616-400.629~~ or any license requirement, minimum standard,  
31

1 rule, or order issued or entered into under this part ~~ss.~~  
2 ~~400.616-400.629~~; or

3 (2)(b) Terminate the operation of an adult family-care  
4 home when violations of any license requirement, standard, or  
5 rule adopted under this part ~~ss. 400.616-400.629~~ exist which  
6 materially affect the health, safety, or welfare of residents.

7 ~~(2) Such injunctive relief may be temporary or~~  
8 ~~permanent.~~

9 Section 10. Subsection (2) of section 400.625, Florida  
10 Statutes, is amended to read:

11 400.625 Residency agreements.--

12 (2) Each residency agreement must specify the personal  
13 care services and accommodations to be provided by the adult  
14 family-care home, the rates or charges, a requirement of at  
15 least 30 days' notice before a rate increase, and any other  
16 provisions required by rule of the department.

17 Section 11. Section 400.6255, Florida Statutes, is  
18 amended to read:

19 400.6255 Residents ~~Patients~~ with Alzheimer's disease  
20 or other related disorders; certain disclosures.--An adult  
21 family-care home licensed under this part which claims that it  
22 provides special care for persons who have Alzheimer's disease  
23 or other related disorders must disclose in its advertisements  
24 or in a separate document those services that distinguish the  
25 care as being especially applicable to, or suitable for, such  
26 persons. The home must give a copy of all such advertisements  
27 or a copy of the document to each person who requests  
28 information about programs and services for persons with  
29 Alzheimer's disease or other related disorders offered by the  
30 home and must maintain a copy of all such advertisements and  
31 documents in its records. The agency ~~department~~ shall examine

1 all such advertisements and documents in the home's records as  
2 part of the license renewal procedure.

3 Section 12. Subsections (2) and (6) and paragraph (c)  
4 of subsection (4) of section 400.628, Florida Statutes, are  
5 amended to read:

6 400.628 Residents' bill of rights.--

7 (2) The provider shall ensure that residents and their  
8 legal representatives are made aware of the rights,  
9 obligations, and prohibitions set forth in this part ~~ss.~~  
10 ~~400.616-400.629~~. Residents must also be given the names,  
11 addresses, and telephone numbers of the district ombudsman  
12 council and the adult abuse registry where they may lodge  
13 complaints.

14 (4) A provider or staff of an adult family-care home  
15 may not serve notice upon a resident to leave the premises or  
16 take any other retaliatory action against any person who:

17 (c) Files a civil action alleging a violation of this  
18 part ~~ss. 400.616-400.629~~ or notifies a state attorney or the  
19 Attorney General of a possible violation of this part ~~these~~  
20 ~~sections~~.

21 (6) Any person who reports a complaint concerning a  
22 suspected violation of this part ~~ss. 400.616-400.629~~ or the  
23 services and conditions in an adult family-care home, or who  
24 testifies in any administrative or judicial proceeding arising  
25 from such a complaint, is immune from any civil or criminal  
26 liability therefor, unless the person acted in bad faith or  
27 with malicious purpose or the court finds that there was a  
28 complete absence of a justiciable issue of either law or fact  
29 raised by the losing party.

30 Section 13. Section 400.629, Florida Statutes, is  
31 amended to read:

1           400.629 Civil actions to enforce rights.--Any person  
2 or resident whose rights as specified in this part ~~ss.~~  
3 ~~400.616-400.629~~ are violated has a cause of action against any  
4 adult family-care home, provider, or staff responsible for the  
5 violation. The action may be brought by the resident or the  
6 resident's guardian, or by a person or organization acting on  
7 behalf of a resident with the consent of the resident or the  
8 resident's guardian, to enforce the right. The action may be  
9 brought in any court of competent jurisdiction to enforce such  
10 rights and to recover actual damages, and punitive damages  
11 when malicious, wanton, or willful disregard of the rights of  
12 others can be shown. Any plaintiff who prevails in any such  
13 action is entitled to recover reasonable attorney's fees,  
14 costs of the action, and damages, unless the court finds that  
15 the plaintiff has acted in bad faith or with malicious purpose  
16 or that there was a complete absence of a justiciable issue of  
17 either law or fact. A prevailing defendant is entitled to  
18 recover reasonable attorney's fees pursuant to s. 57.105. The  
19 remedies provided in this section are in addition to other  
20 legal and administrative remedies available to a resident or  
21 to the agency ~~department~~.

22           Section 14. Paragraph (d) of subsection (1) of section  
23 419.001, Florida Statutes, is amended to read:

24           419.001 Site selection of community residential  
25 homes.--

26           (1) For the purposes of this section, the following  
27 definitions shall apply:

28           (d) "Resident" means any of the following: a frail  
29 elder ~~an aged person~~ as defined in s. 400.618(3); a physically  
30 disabled or handicapped person as defined in s. 760.22(7)(a);  
31 a developmentally disabled person as defined in s.

1 393.063(11); a nondangerous mentally ill person as defined in  
2 s. 394.455(18)~~(16)~~; or a child as defined in s. 39.01(12) and  
3 (14).

4 Section 15. This act shall take effect on October 1,  
5 1998.

6  
7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8 COMMITTEE SUBSTITUTE FOR  
9 Senate Bill 1872

- 10 - The section on legislative intent is amended to provide  
11 that rules regulating adult family care homes be as  
12 minimal and flexible as possible.
- 13 - A resident's "legal representative" must also be made  
14 aware of the resident's rights.
- 15 - Definitions of "relief person" and "resident" are added;  
16 the definition of "adult family care home" is modified.
- 17 - The term "personal care" is changed to "personal services  
18 or personal care" and is amended to include the  
19 self-administration of medication; reference to  
20 assistance with prescribed medications, as well as other  
21 services not specifically excluded by rule, are deleted.
- 22 - Grandmother, grandfather, great-grandmother, and  
23 great-grandfather are added to the definition of  
24 "relative."
- 25 - The application for an adult family care home license  
26 must be signed under oath.
- 27 - A level 1 screening must be conducted with licensure  
28 renewal.
- 29 - A late fee of 50 percent of the license fee is added for  
30 facilities that do not timely renew their licenses.
- 31 - All provisions relevant to the denial or revocation of a  
license are moved to a new section; two new provisions--  
the failure to correct cited fire code violations and the  
failure to submit a completed licensure application--are  
added.
- A person who is enrolled in hospice and who needs 24-hour  
nursing supervision may continue to live in an adult  
family-care home.