

By Senator Rossin

35-921B-98

1 A bill to be entitled
2 An act relating to assisted living facilities
3 and adult family-care homes; amending s.
4 400.402, F.S.; revising definitions; amending
5 s. 400.404, F.S.; providing additional
6 exemptions from licensure as an assisted living
7 facility; amending ss. 400.407, 400.408, F.S.;
8 reorganizing and revising provisions relating
9 to unlawful facilities; providing penalties;
10 requiring report of unlicensed facilities by
11 health care practitioners and facility owners
12 or administrators; providing for disciplinary
13 actions; revising provisions relating to
14 referral to unlicensed facilities; providing
15 for certain notice to service providers;
16 amending s. 400.411, F.S.; revising
17 requirements for an initial application for
18 license; providing for a fee; amending s.
19 400.414, F.S.; revising authority and grounds
20 for denial, revocation, or suspension of
21 licenses or imposition of administrative fines;
22 specifying terms for review of proceedings
23 challenging administrative actions; amending s.
24 400.415, F.S.; requiring a facility to post
25 notice of a moratorium on admissions; providing
26 for rules establishing grounds for imposition
27 of a moratorium; amending s. 400.417, F.S.;
28 providing for coordinated expiration of a
29 facility's license; revising requirements for
30 license renewal; providing for rules; amending
31 s. 400.4174, F.S.; providing requirements for

1 background screening of facility owners,
2 administrators, financial officers, corporate
3 officers or board members, and employees;
4 providing for provisional licensure of a
5 facility under certain circumstances, while
6 screening is completed; providing for rules;
7 amending s. 400.4176, F.S.; revising time
8 requirement for notice of change of
9 administrator; amending ss. 400.418, 400.422,
10 400.452, 408.036, F.S., relating to the
11 disposition of fees and fines, receivership
12 proceedings, staff training and education, and
13 the review of certain projects; conforming
14 cross-references to changes made by the act;
15 amending s. 400.419, F.S.; revising procedures
16 relating to violations and penalties;
17 increasing administrative fines for specified
18 classes of violations; authorizing doubled
19 fines under certain circumstances; providing
20 fines for unlicensed operation of a facility
21 and for failure to apply for a change of
22 ownership license; authorizing a survey fee to
23 cover the cost of certain complaint
24 investigations; providing for corrective action
25 plans to correct violations; expanding
26 dissemination of information regarding
27 facilities sanctioned or fined; amending s.
28 400.428, F.S.; providing for surveys to
29 determine compliance with facility standards
30 and residents' rights; amending s. 400.474,
31 F.S.; providing for disciplinary action against

1 a home health agency or employee providing
2 services in an unlicensed assisted living
3 facility or adult family-care home; amending s.
4 400.618, F.S.; revising the definition of
5 "adult-family care home"; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 400.402, Florida Statutes, is
11 amended to read:

12 400.402 Definitions.--When used in this part, ~~unless~~
13 ~~the context otherwise requires,~~the term:

14 (1) "Activities of daily living" means functions and
15 tasks for self-care, including ambulation, bathing, dressing,
16 eating, grooming, and toileting, and other similar tasks.

17 (2) "Administrator" means an individual at least 21
18 years of age who is responsible for the operation and
19 maintenance ~~who has general administrative charge~~ of an
20 assisted living facility.

21 ~~(3) "Assisted living facility," hereinafter referred~~
22 ~~to as "facility," means any building or buildings, section of~~
23 ~~a building, or distinct part of a building, residence, private~~
24 ~~home, boarding home, home for the aged, or other place,~~
25 ~~whether operated for profit or not, which undertakes through~~
26 ~~its ownership or management to provide, for a period exceeding~~
27 ~~24 hours, housing, food service, and one or more personal~~
28 ~~services for four or more adults, not related to the owner or~~
29 ~~administrator by blood or marriage, who require such services,~~
30 ~~or to provide extended congregate care, limited nursing~~
31 ~~services, or limited mental health services, when specifically~~

1 ~~licensed to do so pursuant to s. 400.407, unless the facility~~
2 ~~is licensed as an adult family-care home. A facility offering~~
3 ~~personal services, extended congregate care, limited nursing~~
4 ~~services, or limited mental health services for fewer than~~
5 ~~four adults is within the meaning of this definition if it~~
6 ~~formally or informally advertises to or solicits the public~~
7 ~~for residents or referrals and holds itself out to the public~~
8 ~~to be an establishment which regularly provides such services,~~
9 ~~unless the facility is licensed as an adult family-care home.~~

10 (3)~~(4)~~ "Agency" means the Agency for Health Care
11 Administration.

12 (4)~~(5)~~ "Aging in place" or "age in place" means the
13 process of providing increased or adjusted services to a
14 person to compensate for ~~by which a person chooses to remain~~
15 ~~in a residential environment despite the physical or mental~~
16 ~~decline that may occur with the aging process, in order to~~
17 maximize. ~~For aging in place to occur, needed services are~~
18 ~~added, increased, or adjusted to compensate for the physical~~
19 ~~or mental decline of the individual, while maximizing the~~
20 ~~person's dignity and independence and permit them to remain in~~
21 a familiar, noninstitutional, residential environment for as
22 long as possible. Such services may be provided by facility
23 staff, volunteers, family, or friends, or through contractual
24 arrangements with a third party.

25 ~~(6)~~ "Applicant" means ~~any facility owner, or if a~~
26 ~~business entity, a person appointed by such entity to make~~
27 ~~application for a license.~~

28 (5)~~(7)~~ "Assistance with activities of daily living"
29 means direct physical assistance with activities of daily
30 living as defined in subsection (1).

31

1 (6) "Assisted living facility" means any building or
2 buildings, section or distinct part of a building, private
3 home, boarding home, home for the aged, or other residential
4 facility, whether operated for profit or not, which undertakes
5 through its ownership or management to provide housing, meals,
6 and one or more personal services on a 24-hour basis to one or
7 more adults who are not relatives of the owner or
8 administrator, and which may in addition provide extended
9 congregate care or limited nursing services, or house mental
10 health residents, when specifically licensed to do so under
11 this part.

12 (7)~~(8)~~ "Chemical restraint" means a pharmacologic drug
13 that physically limits, restricts, or deprives an individual
14 of movement or mobility, and is used for discipline or
15 convenience and not required for the treatment of medical
16 symptoms.

17 (8)~~(9)~~ "Community living support plan" means a written
18 document prepared by a mental health resident and the mental
19 health case manager of that resident in consultation with the
20 administrator of the facility or the administrator's designee.
21 A copy must be provided to the administrator. The plan must
22 include information about the supports, services, and special
23 needs of the resident which enable the resident to live in the
24 assisted living facility.

25 (9)~~(10)~~ "Cooperative agreement" means a written
26 statement of understanding between a mental health care
27 services provider and the administrator of the assisted living
28 facility with a limited mental health license in which a
29 mental health resident is living. The agreement specifies
30 directions for accessing emergency and after-hours care for
31 the mental health resident and a method by which the staff of

1 the facility can recognize and respond to the signs and
2 symptoms particular to that mental health resident that
3 indicate the need for professional services. The cooperative
4 agreement may be a component of the community living support
5 plan.

6 (10)~~(11)~~ "Department" means the Department of Elderly
7 Affairs.

8 (11)~~(12)~~ "Emergency" means a situation, physical
9 condition, or method of operation which presents imminent
10 danger of death or serious physical or mental harm to facility
11 residents.

12 (12)~~(13)~~ "Extended congregate care" means acts beyond
13 those authorized in subsection(17)~~(16)~~that may be performed
14 pursuant to chapter 464 by persons licensed thereunder while
15 carrying out their professional duties, and other supportive
16 services which may be specified by rule. The purpose of such
17 services is to enable residents to age in place in a
18 residential environment despite mental or physical limitations
19 that might otherwise disqualify them from residency in a
20 facility licensed under this part.

21 (13)~~(14)~~ "Guardian" means a person to whom the law has
22 entrusted the custody and control of the person or property,
23 or both, of a person who has been legally adjudged
24 incapacitated.

25 (14)~~(15)~~ "Limited nursing services" means acts that
26 may be performed pursuant to chapter 464 by persons licensed
27 thereunder while carrying out their professional duties but
28 limited to those acts which the department specifies by rule.
29 Acts which may be specified by rule as allowable limited
30 nursing services shall be for persons who meet the admission
31 criteria established by the department for assisted living

1 facilities and shall not be complex enough to require 24-hour
2 nursing supervision and may include such services as the
3 application and care of routine dressings, and care of casts,
4 braces, and splints.

5 (15)~~(16)~~ "Managed risk" means the process by which the
6 facility staff discuss the service plan and the needs of the
7 resident with the resident and, if applicable, the resident's
8 representative or designee or the resident's surrogate,
9 guardian, or attorney in fact, in such a way that the
10 consequences of a decision, including any inherent risk, are
11 explained to all parties and reviewed periodically in
12 conjunction with the service plan, taking into account changes
13 in the resident's status and the ability of the facility to
14 respond accordingly.

15 (16)~~(17)~~ "Mental health resident" means an individual
16 who receives social security disability income due to a mental
17 disorder as determined by the Social Security Administration
18 or receives supplemental security income due to a mental
19 disorder as determined by the Social Security Administration
20 and receives optional state supplementation.

21 (17)~~(18)~~ "Personal services" include, but are not
22 limited to, such services as: individual assistance with or
23 supervision of essential activities of daily living as defined
24 in subsection (1), and other similar services which the
25 department may define. "Personal services" shall not be
26 construed to mean the provision of medical, nursing, dental,
27 or mental health services by the staff of a facility, except
28 as provided in this part. In addition, an emergency response
29 device installed in the apartment or living area of a resident
30 shall not be classified as a personal service.

31

1 ~~(18)(19)~~ "Physical restraint" means a device which
2 physically limits, restricts, or deprives an individual of
3 movement or mobility, including, but not limited to, a
4 half-bed rail, a full-bed rail, a geriatric chair, and a posey
5 restraint. The term "physical restraint" shall also include
6 any device which was not specifically manufactured as a
7 restraint but which has been altered, arranged, or otherwise
8 used for this purpose. The term shall not include bandage
9 material used for the purpose of binding a wound or injury.

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

18 (20) "Resident" means a person 18 years of age or
19 older, residing in and receiving care from a facility.

20 (21) "Resident's representative or designee" means a
21 person other than the owner, or an agent or employee of the
22 facility, designated in writing by the resident, if legally
23 competent, to receive notice of changes in the contract
24 executed pursuant to s. 400.424; to receive notice of and to
25 participate in meetings between the resident and the facility
26 owner, administrator, or staff concerning the rights of the
27 resident; to assist the resident in contacting the ombudsman
28 council if the resident has a complaint against the facility;
29 or to bring legal action on behalf of the resident pursuant to
30 s. 400.429.

31

1 (22) "Service plan" means a written plan, developed
2 and agreed upon by the resident and, if applicable, the
3 resident's representative or designee or the resident's
4 surrogate, guardian, or attorney in fact, if any, and the
5 administrator or designee representing the facility, which
6 addresses the unique physical and psychosocial needs,
7 abilities, and personal preferences of each resident receiving
8 extended congregate care services. The plan shall include a
9 brief written description, in easily understood language, of
10 what services shall be provided, who shall provide the
11 services, when the services shall be rendered, and the
12 purposes and benefits of the services.

13 (23) "Shared responsibility" means exploring the
14 options available to a resident within a facility and the
15 risks involved with each option when making decisions
16 pertaining to the resident's abilities, preferences, and
17 service needs, thereby enabling the resident and, if
18 applicable, the resident's representative or designee, or the
19 resident's surrogate, guardian, or attorney in fact, and the
20 facility to develop a service plan which best meets the
21 resident's needs and seeks to improve the resident's quality
22 of life.

23 (24) "Supervision of activities of daily living" means
24 reminding residents to engage in activities of daily living,
25 and, when necessary, observing or providing verbal cuing to
26 residents while they perform these activities.

27 (25) "Supervision of self-administered medication"
28 means reminding residents to take medication, opening bottle
29 caps for residents, opening prepackaged medication for
30 residents, reading the medication label to residents,
31 observing residents while they take medication, checking the

1 self-administered dosage against the label of the container,
2 reassuring residents that they have obtained and are taking
3 the dosage as prescribed, keeping daily records of when
4 residents receive supervision pursuant to this subsection, and
5 immediately reporting noticeable changes in the condition of a
6 resident to the resident's physician and the resident's case
7 manager, if one exists. Residents who are capable of
8 administering their own medication shall be allowed to do so.

9 (26) "Supplemental security income," Title XVI of the
10 Social Security Act, means a program through which the Federal
11 Government guarantees a minimum monthly income to every person
12 who is age 65 or older, or disabled, or blind and meets the
13 income and asset requirements.

14 (27) "Supportive services" means services designed to
15 encourage and assist aged persons or adults with disabilities
16 to remain in the least restrictive living environment and to
17 maintain their independence as long as possible.

18 (28) "Twenty-four-hour nursing supervision" means
19 services that are ordered by a physician for a resident whose
20 condition requires the supervision of a physician and
21 continued monitoring of vital signs and physical status. Such
22 services shall be: medically complex enough to require
23 constant supervision, assessment, planning, or intervention by
24 a nurse; required to be performed by or under the direct
25 supervision of licensed nursing personnel or other
26 professional personnel for safe and effective performance;
27 required on a daily basis; and consistent with the nature and
28 severity of the resident's condition or the disease state or
29 stage.

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

1 400.404 Facilities to be licensed; exemptions.--
2 (2) The following are exempt from licensure under this
3 part:
4 (a) Any facility, institution, or other place operated
5 by the Federal Government or any agency of the Federal
6 Government.
7 (b) Any facility or part of a facility licensed under
8 chapter 393 or chapter 394.
9 (c) Any facility licensed as an adult family-care home
10 under part VII.
11 (d) Any person who provides housing, meals, and one or
12 more personal services on a 24-hour basis in the person's own
13 home to not more than two adults who do not receive optional
14 state supplementation. The person who provides the housing,
15 meals, and personal services must own or rent the home.
16 ~~(e)~~ Any home or facility approved by the United
17 States Department of Veterans Affairs as a residential care
18 home wherein care is provided exclusively to three or fewer
19 veterans.
20 ~~(f)~~ ~~(d)~~ Any facility that has been incorporated in this
21 state for 50 years or more on or before July 1, 1983, and the
22 board of directors of which is nominated or elected by the
23 residents, until the facility is sold or its ownership is
24 transferred; or any facility, with improvements or additions
25 thereto, which has existed and operated continuously in this
26 state for 60 years or more on or before July 1, 1989, is
27 directly or indirectly owned and operated by a nationally
28 recognized fraternal organization, is not open to the public,
29 and accepts only its own members and their spouses as
30 residents.
31

1 (g)~~(e)~~ Any facility certified under chapter 651, or a
2 retirement community, may provide services authorized under
3 this part or part IV of this chapter to its residents who live
4 in single-family homes, duplexes, quadruplexes, or apartments
5 located on the campus without obtaining a license to operate
6 an assisted living facility if residential units within such
7 buildings are used by residents who do not require staff
8 supervision for that portion of the day when personal services
9 are not being delivered and the owner obtains a home health
10 license to provide such services. However, any building or
11 distinct part of a building on the campus that is designated
12 for persons who receive personal services and require
13 supervision beyond that which is available while such services
14 are being rendered must be licensed in accordance with this
15 part. If a facility provides personal services to residents
16 who do not otherwise require supervision and the owner is not
17 licensed as a home health agency, the buildings or distinct
18 parts of buildings where such services are rendered must be
19 licensed under this part. A resident of a facility that
20 obtains a home health license may contract with a home health
21 agency of his or her choice, provided that the home health
22 agency provides liability insurance and workers' compensation
23 coverage for its employees. Facilities covered by this
24 exemption may establish policies that give residents the
25 option of contracting for services and care beyond that which
26 is provided by the facility to enable them to age in place.
27 For purposes of this section, a retirement community consists
28 of a facility licensed under this part or under part II, and
29 apartments designed for independent living located on the same
30 campus.

31

1 Section 3. Subsection (1) of section 400.407, Florida
2 Statutes, is amended to read:

3 400.407 License required; fee, display.--

4 (1)(a) A license issued by the agency is required for
5 an assisted living facility operating in this state.~~It is~~
6 ~~unlawful to operate or maintain a facility without first~~
7 ~~obtaining from the agency a license authorizing such~~
8 ~~operation.~~

9 (b)~~1~~. Any person found guilty of violating paragraph
10 (a) who, upon notification by the agency, fails, within 10
11 working days after receiving such notification, to apply for a
12 license commits a felony of the third degree, punishable as
13 provided in s. 775.082, s. 775.083, or s. 775.084.

14 ~~2. Any person found to be in violation of paragraph~~
15 ~~(a) due to a change in s. 400.402(3), (18), (24), or (25) or a~~
16 ~~modification in department policy pertaining to personal~~
17 ~~services as provided for in s. 400.402 and who, upon~~
18 ~~notification by the agency, fails, within 10 working days~~
19 ~~after receiving such notification, to apply for a license~~
20 ~~commits a felony of the third degree, punishable as provided~~
21 ~~in s. 775.082, s. 775.083, or s. 775.084.~~

22 ~~3. Except as provided for in subparagraph 2., any~~
23 ~~person who violates paragraph (a) who previously operated a~~
24 ~~licensed facility or concurrently operates a licensed facility~~
25 ~~and an unlicensed facility commits a felony of the third~~
26 ~~degree, punishable as provided in s. 775.082, s. 775.083, or~~
27 ~~s. 775.084.~~

28 ~~4. Any person who fails to obtain a license after~~
29 ~~agency notification may be fined for each day of noncompliance~~
30 ~~pursuant to s. 400.419(1)(b).~~

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1 ~~5. When an owner has an interest in more than one~~
2 ~~facility, and fails to license any one of these facilities,~~
3 ~~the agency may revoke the license or impose a moratorium on~~
4 ~~any or all of the licensed facilities until such time as the~~
5 ~~delinquent facility is licensed.~~

6 ~~6. If the agency determines that an owner is operating~~
7 ~~or maintaining a facility without obtaining a license~~
8 ~~authorizing such operation and determines that a condition~~
9 ~~exists in the facility that poses a threat to the health,~~
10 ~~safety, or welfare of a resident of the facility, the owner~~
11 ~~commits neglect as defined in s. 415.102 and is subject to the~~
12 ~~same actions and penalties specified in ss. 400.414 and~~
13 ~~400.419 for a negligent act seriously affecting the health,~~
14 ~~safety, or welfare of a resident of the facility.~~

15 Section 4. Section 400.408, Florida Statutes, is
16 amended to read:

17 400.408 Unlicensed facilities; referral of person for
18 residency to unlicensed facility; penalties penalty;
19 verification of licensure status.--

20 (1)(a) It is unlawful to own, operate, or maintain an
21 assisted living facility without obtaining a license under
22 this part.

23 (b) Except as provided under paragraph (d), any person
24 found guilty of violating paragraph (a) who, upon notification
25 by the agency, fails within 10 working days after receiving
26 such notification, to apply for a license commits a felony of
27 the third degree, punishable as provided in s. 775.082, s.
28 775.083, or s. 775.084.

29 (c) Any person found guilty of violating paragraph (a)
30 a second or subsequent time, commits a felony of the second
31

1 degree, punishable as provided under s. 775.082, s. 775.083,
2 or s. 775.084.

3 (d) Any person who owns, operates, or maintains an
4 unlicensed assisted living facility due to a change in this
5 part or a modification in department policy or rule within 6
6 months after the effective date of such change and who, within
7 10 working days after receiving notification from the agency,
8 fails to cease operation or apply for a license under this
9 part commits a felony of the third degree, punishable as
10 provided in s. 775.082, s. 775.083, or s. 775.084.

11 (e) Pursuant to this subsection, any facility that
12 fails to become licensed or ceases operation after agency
13 notification may be fined for each day of noncompliance
14 pursuant to s. 400.419.

15 (f) When an owner has an interest in more than one
16 assisted living facility, and fails to license any one of
17 these facilities, the agency may revoke the license or impose
18 a moratorium on any or all of the licensed facilities until
19 such time as the unlicensed facility is licensed or ceases
20 operation.

21 (g) If the agency determines that an owner is
22 operating or maintaining an assisted living facility without
23 obtaining a license and determines that a condition exists in
24 the facility that poses a threat to the health, safety, or
25 welfare of a resident of the facility, the owner is subject to
26 the same actions and fines imposed against a licensed facility
27 as specified in ss. 400.414 and 400.419.

28 (h) Any health care practitioner licensed by the
29 Department of Health, or any owner or administrator of a
30 facility licensed by the agency, who has knowledge of an
31 unlicensed assisted living facility and fails to report that

1 facility to the agency or law enforcement entity shall cause
2 the licensed health care practitioner or licensed facility to
3 be subject to disciplinary action by the appropriate licensing
4 department, agency, or board.

5 ~~(2)(1)~~ It is unlawful to knowingly refer a person for
6 residency to an unlicensed ~~facility that provides services~~
7 ~~that may only be provided by an~~ assisted living facility; to
8 an assisted living facility the license of which is under
9 denial or has been suspended or revoked; or to an assisted
10 living ~~a~~ facility that has a moratorium on admissions. Any
11 person who violates this subsection commits ~~is guilty of~~ a
12 noncriminal violation, punishable by a fine not exceeding \$500
13 as provided in s. 775.083.

14 (a) Any employee of the agency or department, or the
15 Department of Children and Family ~~Health and Rehabilitative~~
16 Services, who knowingly refers a person for residency to an
17 unlicensed facility; to a facility the license of which is
18 under denial or has been suspended or revoked; or to a
19 facility that has a moratorium on admissions is subject to
20 disciplinary action by the agency or department, or the
21 Department of Children and Family ~~Health and Rehabilitative~~
22 Services.

23 (b) The employer of any person who is under contract
24 with the agency or department, or the Department of Children
25 and Family ~~Health and Rehabilitative~~ Services, and who
26 knowingly refers a person for residency to an unlicensed
27 facility; to a facility the license of which is under denial
28 or has been suspended or revoked; or to a facility that has a
29 moratorium on admissions shall be fined and required to
30 prepare a corrective action plan designed to prevent such
31 referrals.

1 ~~(c)(2)~~ The agency shall provide the department and the
2 Department of Children and Family Health and Rehabilitative
3 Services with a list of licensed facilities within each county
4 and shall update the list at least quarterly ~~monthly~~.

5 ~~(d)(3)~~ At least annually, the agency shall notify, in
6 appropriate trade publications ~~as defined by rule~~, physicians
7 licensed under chapter 458 or chapter 459 ~~pursuant to chapter~~
8 ~~458, osteopathic physicians licensed pursuant to chapter 459,~~
9 hospitals licensed under ~~pursuant to part I of~~ chapter 395,
10 ~~and~~ nursing home facilities licensed under ~~pursuant to~~ part II
11 of this chapter, and employees of the agency or the
12 department, or the Department of Children and Family Health
13 ~~and Rehabilitative~~ Services, who are responsible ~~having a~~
14 ~~responsibility~~ for referring persons for residency, that it is
15 unlawful to knowingly refer a person for residency to an
16 unlicensed assisted living facility and shall notify them of
17 the penalty for violating such prohibition. The department and
18 the Department of Children and Family Services shall, in turn,
19 notify service providers under contract to the respective
20 departments who have responsibility for resident referrals to
21 facilities. Further, the notice must direct each noticed
22 facility and individual to contact the appropriate agency
23 office in order to verify the licensure status of any facility
24 prior to referring any person for residency. Each notice must
25 include the name, telephone number, and mailing address of the
26 appropriate office to contact.

27 Section 5. Section 400.411, Florida Statutes, is
28 amended to read:

29 400.411 Initial application for license; provisional
30 license.--

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1 (1) Application for license shall be made to the
2 agency on forms furnished by it and shall be accompanied by
3 the appropriate license fee. The agency may charge a
4 reasonable fee to cover the cost of duplication and postage
5 for all application forms and printed information provided.

6 ~~The application shall contain sufficient information, as~~
7 ~~required by rules of the department, to establish that the~~
8 ~~applicant can provide adequate care.~~

9 (2) The applicant may be an individual owner,
10 corporation, partnership, firm, association, or governmental
11 entity.

12 ~~(3)~~(2) The application shall be signed by the
13 applicant under oath and shall contain the following:

14 (a) The name, address, date of birth, and social
15 security number of the applicant and the name by which the
16 facility is to be known. ~~Pursuant thereto:~~

17 ~~1-~~ If the applicant is a firm, partnership, or
18 association, the application shall contain the name, address,
19 date of birth, and social security number of every member
20 thereof.

21 ~~2-~~ If the applicant is a corporation, the application
22 shall contain the corporation's ~~its~~ name and address, the
23 name, address, date of birth, and social security number of
24 each of its directors and officers, and the name and address
25 of each person having at least a 5-percent ownership
26 ~~10-percent~~ interest in the corporation.

27 (b) The name and address of any professional service,
28 firm, association, partnership, or corporation that is to
29 provide goods, leases, or services to the facility ~~for which~~
30 ~~the application is made~~, if a 5-percent ~~10-percent~~ or greater
31 interest in the service, firm, association, partnership, or

1 corporation is owned by a person whose name must be listed on
2 the application under paragraph (a).

3 ~~(c) Information that provides a source to establish~~
4 ~~the suitable character, financial stability, and competency of~~
5 ~~the applicant and of each person specified in the application~~
6 ~~under subparagraph (a)1. or subparagraph (a)2. who has at~~
7 ~~least a 10-percent interest in the firm, partnership,~~
8 ~~association, or corporation and, if applicable, of the~~
9 ~~administrator, including~~ The name and address of any long-term
10 care facility with which the applicant, or administrator, or
11 financial officer has been affiliated through ownership or
12 employment within 5 years of the date of this license ~~the~~
13 ~~application for a license;~~ and a signed affidavit disclosing
14 any financial or ownership interest that the applicant, or any
15 person listed in paragraph (a) principal, partner, or
16 ~~shareholder thereof~~, holds or has held within the last 5 years
17 in any ~~other~~ facility licensed under this part, or in any
18 other entity licensed by this ~~the~~ state or another state to
19 provide health or residential care, which facility or entity
20 closed or ceased to operate as a result of financial problems,
21 or has had a receiver appointed or a license denied, suspended
22 or revoked, or was subject to a moratorium on admissions, or
23 had an injunctive proceeding initiated against it.

24 (d) A description and explanation of any exclusions,
25 permanent suspensions, or terminations of the applicant from
26 the Medicare or Medicaid programs. Proof of compliance with
27 requirements for disclosure of ownership and controlling
28 interest under the Medicaid or Medicare programs shall be
29 accepted in lieu of this submission.

30 ~~(e)(d)~~ The names and addresses of ~~other~~ persons of
31 whom the agency may inquire as to the character, and

1 reputation, and financial responsibility of the owner and, if
2 different from the applicant, the administrator and financial
3 officer applicant and, if applicable, of the administrator.

4 ~~(e) The names and addresses of other persons of whom~~
5 ~~the agency may inquire as to the financial responsibility of~~
6 ~~the applicant.~~

7 (f) Identification of all other homes or facilities,
8 including the addresses and the license or licenses under
9 which they operate, if applicable, which are currently
10 operated by the applicant or administrator and which provide
11 housing, meals, and personal services to residents ~~adults~~.

12 ~~(g) Such other reasonable information as may be~~
13 ~~required by the agency to evaluate the ability of the~~
14 ~~applicant to meet the responsibilities entailed under this~~
15 ~~part.~~

16 ~~(g)(h)~~ (g) The location of the facility for which a
17 license is sought and documentation, signed by the appropriate
18 local government official, which states that the applicant has
19 met local zoning requirements.

20 ~~(h)(i)~~ (h) The name, address, date of birth, social
21 security number, education, and experience of the
22 administrator if different from the applicant.

23 (i) Documentation of a satisfactory sanitation
24 inspection of the facility by the county health department.

25 (j) Such other reasonable information as may be
26 required by department rule to establish that the applicant
27 can provide adequate care.

28 ~~(4)(3)~~ (4) The applicant shall furnish satisfactory proof
29 of financial ability to operate and conduct the facility in
30 accordance with the requirements of this part. A certificate
31 of authority may be provided as proof of financial ability.~~An~~

1 ~~applicant applying for an initial license shall submit a~~
2 ~~balance sheet setting forth the assets and liabilities of the~~
3 ~~owner and a statement projecting revenues, expenses, taxes,~~
4 ~~extraordinary items, and other credits or charges for the~~
5 ~~first 12 months of operation of the facility.~~

6 (5)(4) If the applicant is a continuing care facility
7 certified under chapter 651, a copy of the facility's
8 certificate of authority must be provided ~~offers continuing~~
9 ~~care agreements, as defined in chapter 651, proof shall be~~
10 ~~furnished that the applicant has obtained a certificate of~~
11 ~~authority as required for operation under that chapter.~~

12 (6)(5) The applicant shall provide proof of liability
13 insurance as defined in s. 624.605.

14 (7)(6) If the applicant is a community residential
15 home, the applicant must provide proof that it has met the
16 requirements specified in chapter 419 ~~shall apply to community~~
17 ~~residential homes zoned single-family or multifamily.~~

18 (8)(7) The applicant must provide the agency with
19 proof of legal right to occupy the property. ~~This proof may~~
20 ~~include, but is not limited to, copies of recorded warranty~~
21 ~~deeds, or copies of lease or rental agreements, contracts for~~
22 ~~deeds, quitclaim deeds, or other such documentation.~~

23 (9)(8) The applicant must furnish proof that the
24 facility has received a satisfactory firesafety inspection.
25 The local ~~fire marshal or other~~ authority having jurisdiction
26 or the State Fire Marshal must conduct the inspection within
27 30 days after ~~the~~ written request by the applicant. ~~if an~~
28 ~~authority having jurisdiction does not have a certified~~
29 ~~firesafety inspector, the State Fire Marshal shall conduct the~~
30 ~~inspection.~~

31

1 (10) The applicant must furnish proof of compliance
2 with background screening as required under s. 400.4174.

3 ~~(11)(9)~~ A provisional license may be issued to an
4 applicant making initial application for licensure or making
5 application for a change of ownership. A provisional license
6 shall be limited in duration to a specific period of time not
7 to exceed 6 months, as determined by the agency.

8 ~~(12)(10)~~ No county or municipality shall issue an
9 occupational license which is being obtained for the purpose
10 of operating a facility regulated under this part without
11 first ascertaining that the applicant has been licensed to
12 operate such facility at the specified location or locations
13 by the agency. The agency shall furnish to local agencies
14 responsible for issuing occupational licenses sufficient
15 instruction for making such ~~the above-required~~ determinations.

16 (13) The department may by rule establish application
17 procedures, identify forms, and specify documentation
18 necessary to administer this section.

19 Section 6. Section 400.414, Florida Statutes, is
20 amended to read:

21 400.414 Denial, revocation, or suspension of license;
22 imposition of administrative fine; grounds.--

23 (1) The agency may deny, revoke, or suspend a license
24 issued under this part or impose an administrative fine in the
25 manner provided in chapter 120. At the chapter 120 hearing,
26 the agency shall prove by a preponderance of the evidence that
27 its actions are warranted.

28 ~~(2)~~ Any of the following actions by an assisted living
29 facility, any person subject to level 2 background screening
30 under s. 400.4174, or any facility employee ~~a facility or its~~
31

1 ~~employee~~ shall be grounds for action by the agency against a
2 licensee:

3 (a) An intentional or negligent act seriously
4 affecting the health, safety, or welfare of a resident of the
5 facility.

6 (b) The determination by the agency that ~~the facility~~
7 ~~owner or administrator is not of suitable character or~~
8 ~~competency, or that the owner lacks the financial ability, to~~
9 provide continuing adequate care to residents, ~~pursuant to the~~
10 ~~information obtained through s. 400.411, s. 400.417, or s.~~
11 ~~400.434.~~

12 (c) Misappropriation or conversion of the property of
13 a resident of the facility.

14 (d) Failure to follow the criteria and procedures
15 provided under part I of chapter 394 relating to the
16 transportation, voluntary admission, and involuntary
17 examination of a facility resident.

18 (e) Two or more class I, three or more class II, or
19 five or more repeated or recurring identical or similar class
20 III violations of this part which were identified by the
21 agency during the previous survey ~~last biennial inspection,~~
22 monitoring visit, or complaint investigation and which, in the
23 aggregate, affect the health, safety, or welfare of the
24 facility residents.

25 (f) A determination that persons subject to level 2
26 background screening under s. 400.4174(1) do not meet the
27 screening standards of s. 435.04, or that the facility is
28 retaining an employee subject to level 1 background screening
29 standards under s. 400.4174(2) who does not meet the screening
30 standards of s. 435.03 and for whom exemptions from
31 disqualification have not been provided by the agency.

1 (g)~~(f)~~ A confirmed report of adult abuse, neglect, or
2 exploitation, as defined in s. 415.102, which has been upheld
3 following a chapter 120 hearing or a waiver of such
4 proceedings where the perpetrator is an employee, volunteer,
5 administrator, or owner, or otherwise has access to the
6 residents of a facility, and the owner or administrator has
7 not taken action to remove the perpetrator. Exemptions from
8 disqualification may be granted as set forth in s. 435.07. No
9 administrative action may be taken against the facility if the
10 perpetrator is granted an exemption.

11 (h)~~(g)~~ Violation of a moratorium.

12 (i)~~(h)~~ Failure of the license applicant, the licensee
13 during relicensure, or ~~failure of~~ a licensee that holds a a
14 provisional ~~an initial or change of ownership~~ license, to meet
15 minimum license ~~standards or the~~ requirements of ~~rules adopted~~
16 under this part, or related rules, at the time of license
17 application or renewal.

18 (j)~~(i)~~ A fraudulent statement or omission of any
19 material fact on an application for a license or any other
20 document required by the agency, including the submission of a
21 license application that conceals the ownership interest of
22 any owner, officer, board member, partner, or shareholder who
23 may not meet the background screening requirements of s.
24 400.4174 that is signed and notarized.

25 (k)~~(j)~~ An intentional or negligent life-threatening
26 act in violation of the uniform firesafety standards for
27 assisted living facilities or other firesafety standards
28 ~~established by the State Fire Marshal,~~ that threatens the
29 health, safety, or welfare of a resident of a facility, as
30 communicated to the agency by the local ~~State Fire Marshal, a~~
31

1 ~~local fire marshal, or other~~ authority having jurisdiction or
2 the State Fire Marshal.

3 (1) Exclusion, permanent suspension, or termination
4 from the Medicare or Medicaid programs.

5 (m) Operating any unlicensed facility or providing
6 without a license any service which must be licensed in this
7 state.

8
9 Administrative proceedings challenging agency action under
10 this subsection shall be reviewed on the basis of the facts
11 and conditions that resulted in the agency action.

12 ~~(3) Proceedings brought under paragraphs (2)(a), (c),~~
13 ~~(e), and (j) shall not be subject to de novo review.~~

14 ~~(2)(4)~~ Upon notification by the local State Fire
15 ~~Marshal, local fire marshal, or other~~ authority having
16 jurisdiction or the State Fire Marshal, the agency may deny or
17 revoke the license of an assisted living a facility that fails
18 to correct cited fire code violations ~~issued by the State Fire~~
19 ~~Marshal, a local fire marshal, or other authority having~~
20 ~~jurisdiction,~~that affect or threaten the health, safety, or
21 welfare of a resident of a facility.

22 ~~(3)(5)~~ The agency may deny a license to an applicant
23 who owns or owned 25 percent or more of, or operates or
24 operated, an assisted living, a facility which, during the 5
25 years prior to the application for a license, has had a
26 license denied, suspended, or revoked ~~pursuant to subsection~~
27 ~~(2)~~, or, during the 2 years prior to the application for a
28 license, has had a moratorium imposed on admissions, has had
29 an injunctive proceeding initiated against it, has had a
30 receiver appointed, was closed due to financial inability to
31 operate, or has an outstanding fine assessed under this part.

1 (4) The agency may deny a license to any applicant who
2 has had any state administrative action related to the
3 administration or operation of an assisted living facility
4 under this part taken against the applicant during the 2 years
5 prior to the application for a license, or has been previously
6 found by any state licensing or certifying board or agency to
7 have violated professional standards relating to licensure or
8 certification.

9 (5) The agency may deny a license to any applicant
10 that has had a license issued by any state licensing or
11 certifying board or state agency denied, suspended, or
12 revoked, during the 5 years prior to the application for
13 licensure if the denial, suspension, or revocation was related
14 to the administration or operation of an assisted living
15 facility under this part.

16 (6) An action taken by the agency to suspend, deny, or
17 revoke a facility's license under this part, in which the
18 agency claims that the facility owner or an employee of the
19 facility has threatened the health, safety, or welfare of a
20 resident of the facility, shall, upon receipt of the
21 facility's request for a hearing, be heard by the Division of
22 Administrative Hearings of the Department of Management
23 Services within 120 days after the request for a hearing,
24 unless that time period is waived by both parties. The
25 administrative law judge must render a decision within 30 days
26 after the hearing.

27 (7) The agency shall provide to the Division of Hotels
28 and Restaurants of the Department of Business and Professional
29 Regulation, on a monthly basis, a list of those assisted
30 living facilities which have had their licenses denied,
31 suspended, or revoked or which are involved in an appellate

1 proceeding pursuant to s. 120.60 related to the denial,
2 suspension, or revocation of a license.

3 (8) When a notification of a license suspension,
4 revocation, or denial of a license renewal has been received,
5 that notice shall be posted and visible to the public at the
6 facility.

7 Section 7. Section 400.415, Florida Statutes, is
8 amended to read:

9 400.415 Moratorium on admissions; notice.--The agency
10 may impose an immediate moratorium on admissions to any
11 assisted living facility if ~~when~~ the agency determines that
12 any condition in the facility presents a threat to the health,
13 safety, or welfare of the residents in the facility.

14 (1) A facility the license of which is denied,
15 revoked, or suspended pursuant to ~~as a result of a violation~~
16 ~~of s. 400.414~~ may be subject to immediate imposition of a
17 moratorium on admissions to run concurrently with licensure
18 denial, revocation, or suspension.

19 (2) When a moratorium is placed on a facility, notice
20 of the moratorium shall be posted and visible to the public at
21 the facility.

22 (3) The department may by rule establish conditions
23 that constitute grounds for imposing a moratorium on a
24 facility and procedures for imposing and lifting a moratorium,
25 as necessary to administer this section.

26 Section 8. Section 400.417, Florida Statutes, is
27 amended to read:

28 400.417 Expiration of license; renewal; conditional
29 license.--

30 (1) Standard Biennial ~~licenses issued for the~~
31 ~~operation of a facility,~~ unless sooner suspended or revoked,

1 shall expire ~~automatically~~ 2 years from the date of issuance.
2 Limited nursing, extended congregate care, and limited mental
3 health licenses shall expire at the same time as the
4 facility's standard license, regardless of when issued.The
5 agency shall notify the facility by certified mail at least
6 120 days prior to ~~the expiration of the license~~ that a renewal
7 license relicensure is necessary to continue operation.
8 Ninety days prior to the expiration date, an application for
9 renewal shall be submitted to the agency. ~~A license shall be~~
10 ~~renewed upon the filing of an application on forms furnished~~
11 ~~by the agency if the applicant has first met the requirements~~
12 ~~established under this part and all rules promulgated under~~
13 ~~this part.~~The failure to file a timely renewal application
14 shall result in a late fee charged to the facility in an
15 amount equal to 50 percent of the current ~~fee in effect on the~~
16 ~~last preceding regular renewal date.~~ Late fees shall be
17 ~~deposited into the Health Care Trust Fund as provided in s.~~
18 ~~400.418.~~ The facility shall file with the application
19 ~~satisfactory proof of ability to operate and conduct the~~
20 ~~facility in accordance with the requirements of this part.~~
21 (2) A license shall be renewed within 90 days upon the
22 timely filing of an application on forms furnished by the
23 agency and the provision of satisfactory proof of ability to
24 operate and conduct the facility in accordance with the
25 requirements of this part and adopted rules, including An
26 ~~applicant for renewal of a license must furnish~~ proof that the
27 facility has received a satisfactory firesafety inspection,
28 conducted by the local ~~fire marshal or other~~ authority having
29 jurisdiction or the State Fire Marshal, within the preceding
30 12 months, and compliance with all the background screening
31 requirements specified in s. 400.4174.

1 (3) An applicant for renewal of a license who has
2 ~~complied on the initial license application~~ with the
3 provisions of s. 400.411 with respect to proof of financial
4 ability to operate shall not be required to provide further
5 ~~proof of financial ability on renewal applications~~ unless the
6 facility or any other facility owned or operated in whole or
7 in part by the same person ~~or business entity~~ has demonstrated
8 financial instability as provided under s. 400.447(2)
9 ~~evidenced by bad checks, delinquent accounts, or nonpayment of~~
10 ~~withholding taxes, utility expenses, or other essential~~
11 ~~services~~ or unless the agency suspects that the facility is
12 not financially stable as a result of the annual survey or
13 complaints from the public or a report from the State
14 Long-Term Care Ombudsman Council. Each facility must ~~shall~~
15 report to the agency any adverse court action concerning the
16 facility's financial viability, within 7 days after its
17 occurrence. The agency shall have access to books, records,
18 and any other financial documents maintained by the facility
19 to the extent necessary to determine the facility's financial
20 stability ~~carry out the purpose of this section~~. A license
21 for the operation of a facility shall not be renewed if the
22 licensee has any outstanding fines assessed pursuant to this
23 part which are in final order status.

24 (4)~~(2)~~ A licensee against whom a revocation or
25 suspension proceeding is pending at the time of license
26 renewal may be issued a conditional license effective until
27 final disposition by the agency ~~of such proceeding~~. If
28 judicial relief is sought from the final disposition, the
29 court having jurisdiction may issue a conditional license for
30 the duration of the judicial proceeding.

31

1 ~~(5)(3)~~ A conditional license may be issued to an
2 applicant for license renewal if ~~when~~ the applicant fails to
3 meet all standards and requirements for licensure. A
4 conditional license issued under this subsection shall be
5 limited in duration to a specific period of time not to exceed
6 6 months, as determined by the agency, and shall be
7 accompanied by an agency-approved ~~approved~~ plan of correction.

8 (6) The department may by rule establish renewal
9 procedures, identify forms, and specify documentation
10 necessary to administer this section.

11 Section 9. Section 400.4174, Florida Statutes, is
12 amended to read:

13 400.4174 Background screening; exemptions; reports of
14 abuse in facilities.--

15 (1) LEVEL 2 BACKGROUND SCREENING.--

16 (a) Level 2 background screening must be conducted on
17 each of the following persons who shall be considered
18 employees for the purposes of conducting screening under
19 chapter 435:

20 1. The facility owner if an individual, the
21 administrator or administrator's designee if different from
22 the owner, and the financial officer if different from the
23 owner or administrator.

24 2. An officer or board member if the facility owner is
25 a firm, corporation, partnership, or association, or any
26 person owning 5 percent or more of the facility, if the agency
27 reasonably suspects that such person has been convicted of any
28 offense prohibited by s. 435.04. For each officer, board
29 member, or person owning 5 percent or more who has been
30 convicted of any such offense, the facility shall submit to
31 the agency a description and explanation of the conviction.

1 This subparagraph does not apply to a board member of a
2 not-for-profit corporation or organization if the board member
3 serves solely in a voluntary capacity, receives no
4 remuneration for his or her services, and has no financial
5 interest and has no family members with a financial interest
6 in the corporation or organization, and provided that the
7 board member and facility submit a statement affirming that
8 the board member's relationship to the facility satisfies the
9 requirements of this subparagraph.

10 (b) Proof of compliance with level 2 screening
11 standards which has been submitted within the previous 4 years
12 to meet any facility or professional licensure requirements of
13 the agency, the Department of Health, or the Department of
14 Children and Family Services shall meet the requirements of
15 this subsection, provided that such proof is accompanied,
16 under penalty of perjury, by an affidavit of compliance with
17 the provisions of chapter 435. Proof of compliance with the
18 background screening requirements of the Department of
19 Insurance for applicants for a certificate of authority to
20 operate a continuing care retirement community under chapter
21 651, submitted within the last 4 years, shall meet the
22 Department of Law Enforcement and Federal Bureau of
23 Investigation portions of a level 2 background check.

24 (c) The agency may grant a provisional license to a
25 facility applying for an initial license when each individual
26 required by this subsection to undergo screening has completed
27 the abuse registry and Department of Law Enforcement
28 background checks, but has not yet received results from the
29 Federal Bureau of Investigation; or a request for an exemption
30 from disqualification has been submitted to the agency
31 pursuant to s. 435.07, but a response has not been issued.

1 (2) The owner or administrator of an assisted living
2 facility must conduct or ensure that level 1 background
3 screening as set forth in chapter 435 has been conducted on
4 all persons employed by or under contract to the facility who
5 provide direct care or nursing services to residents on or
6 after October 1, 1998. Such persons shall be considered as
7 having met this requirement if:

8 (a) Proof of compliance with level 1 screening
9 requirements obtained to meet any professional license
10 requirements in this state is provided and accompanied, under
11 penalty of perjury, by a copy of the person's current
12 professional license and an affidavit of current compliance
13 with the background screening requirements.

14 (b) The person required to be screened has been
15 continuously employed in the same type of occupation for which
16 the person is seeking employment without a breach in service
17 that exceeds 180 days and proof of compliance with the level 1
18 screening requirement which is no more than 2 years old is
19 provided. Proof of compliance shall be provided directly from
20 one employer or contractor to another, and not from the person
21 screened. Upon request, a copy of screening results shall be
22 provided by the employer retaining documentation of the
23 screening to the person screened.

24 (c) The person is employed by a corporation or
25 business entity or related corporation or business entity that
26 owns, operates, or manages more than one facility or agency
27 licensed under chapter 400, and for whom a level 1 screening
28 was conducted by the corporation or business entity as a
29 condition of initial continued employment.

30 (3) When an employee, volunteer, administrator, or
31 owner of a facility is the subject of ~~has~~ a confirmed report

1 of adult abuse, neglect, or exploitation, as defined in s.
2 415.102, ~~or child abuse or neglect, as defined in s. 415.503,~~
3 and the protective investigator knows that the individual is
4 an employee, volunteer, administrator, or owner of a facility,
5 the agency shall be notified of the confirmed report.

6 (4) The department may by rule establish procedures,
7 specify documentation, and clarify exemptions as necessary to
8 administer this section.

9 Section 10. Section 400.4176, Florida Statutes, is
10 amended to read:

11 400.4176 Notice of change of administrator.--If,
12 during the period for which a license is issued, the owner
13 changes administrators, the owner must notify the agency of
14 the change within 10 ~~45~~ days ~~thereof~~ and ~~must~~ provide
15 documentation within 90 days that the new administrator has
16 completed the applicable core educational requirements under
17 s. 400.452. Background screening shall be completed on any
18 new administrator ~~to establish that the individual is of~~
19 ~~suitable character~~ as specified in s. 400.4174 ss.
20 ~~400.411(2)(c) and 400.456.~~

21 Section 11. Subsection (1) of section 400.418, Florida
22 Statutes, is amended to read:

23 400.418 Disposition of fees and administrative
24 fines.--

25 (1) Income from license fees, inspection fees, late
26 fees, and administrative fines generated pursuant to ss.
27 400.407, 400.408, 400.417, 400.419, and 400.431 shall be
28 deposited in the Health Care Trust Fund administered by the
29 agency. Such funds shall be directed to and used by the
30 agency for the following purposes:

31

1 (a) Up to 50 percent of the trust funds accrued each
2 fiscal year under this part may be used to offset the expenses
3 of receivership, pursuant to s. 400.422, if the court
4 determines that the income and assets of the facility are
5 insufficient to provide for adequate management and operation.

6 (b) An amount of \$5,000 of the trust funds accrued
7 each year under this part shall be allocated to pay for
8 inspection-related physical and mental health examinations
9 requested by the agency pursuant to s. 400.426 for residents
10 who are either recipients of supplemental security income or
11 have monthly incomes not in excess of the maximum combined
12 federal and state cash subsidies available to supplemental
13 security income recipients, as provided for in s. 409.212.
14 Such funds shall only be used where the resident is ineligible
15 for Medicaid.

16 (c) Any trust funds accrued each year under this part
17 and not used for the purposes specified in paragraphs (a) and
18 (b) shall be used to offset the costs of the licensure
19 program, including the costs of conducting background
20 investigations, verifying information submitted, defraying the
21 costs of processing the names of applicants, and conducting
22 inspections and monitoring visits pursuant to this part.

23 Section 12. Section 400.419, Florida Statutes, is
24 amended to read:

25 400.419 Violations; administrative fines ~~penalties~~.--

26 ~~(1)(a) If the agency determines that a facility is not~~
27 ~~in compliance with standards promulgated pursuant to the~~
28 ~~provisions of this part, including the failure to report~~
29 ~~evidence of the facility's financial instability or the~~
30 ~~operation of a facility without a license, the agency, as an~~
31 ~~alternative to or in conjunction with an administrative action~~

1 ~~against a facility, shall make a reasonable attempt to discuss~~
2 ~~each violation and recommended corrective action with the~~
3 ~~owner or administrator of the facility, prior to written~~
4 ~~notification thereof. The agency, instead of fixing a period~~
5 ~~within which the facility shall enter into compliance with~~
6 ~~standards, may request a plan of corrective action from the~~
7 ~~facility which demonstrates a good faith effort to remedy each~~
8 ~~violation by a specific date, subject to the approval of the~~
9 ~~agency.~~

10 ~~(b) Any facility owner or administrator found in~~
11 ~~violation of this part, including any individual operating a~~
12 ~~facility without a license, shall be subject to a fine, set~~
13 ~~and levied by the agency.~~

14 ~~(c) Each day during which any person violates any such~~
15 ~~provision after the date fixed for termination of the~~
16 ~~violation, as ordered by the agency, constitutes an~~
17 ~~additional, separate, and distinct violation.~~

18 ~~(d) Any action taken to correct a violation shall be~~
19 ~~documented in writing by the administrator of the facility and~~
20 ~~verified through followup visits by licensing personnel of the~~
21 ~~agency. The agency may impose a fine and, in the case of an~~
22 ~~owner-operated facility, revoke a facility's license when a~~
23 ~~facility administrator fraudulently misrepresents action taken~~
24 ~~to correct a violation.~~

25 ~~(e) If a facility desires to appeal any agency action~~
26 ~~under this section, it shall send a written request for a~~
27 ~~hearing to the agency within 15 days of receipt by certified~~
28 ~~mail of notice of the action of the agency. If the fine is~~
29 ~~upheld, the violator shall pay the fine, plus interest at the~~
30 ~~legal rate as specified in s. 687.01, for each day beyond the~~
31 ~~date set by the agency for payment of the fine.~~

1 ~~(2) In determining if a penalty is to be imposed and~~
2 ~~in fixing the amount of the penalty to be imposed, if any, for~~
3 ~~a violation, the agency shall consider the following factors:~~

4 ~~(a) The gravity of the violation, including the~~
5 ~~probability that death or serious physical or emotional harm~~
6 ~~to a resident will result or has resulted, the severity of the~~
7 ~~action or potential harm, and the extent to which the~~
8 ~~provisions of the applicable statutes or rules were violated.~~

9 ~~(b) Actions taken by the owner or administrator to~~
10 ~~correct violations.~~

11 ~~(c) Any previous violations.~~

12 ~~(d) The financial benefit to the facility of~~
13 ~~committing or continuing the violation.~~

14 ~~(e) The licensed capacity of the facility.~~

15 (1)(3) Each violation of this part and adopted rules
16 shall be classified according to the nature of the violation
17 and the gravity of its probable effect on facility residents.
18 The agency shall indicate the classification of each violation
19 on the written face of the notice of the violation as follows:

20 (a) Class "I" violations are those conditions or
21 occurrences related to the operation and maintenance of a
22 facility or to the personal care of residents which the agency
23 determines present an imminent danger to the residents or
24 guests of the facility or a substantial probability that death
25 or serious physical or emotional harm would result therefrom.
26 The condition or practice constituting a class I violation
27 shall be abated or eliminated within 24 hours, unless a fixed
28 period, as determined by the agency, is required for
29 correction. A class I violation is subject to an
30 administrative fine ~~a civil penalty~~ in an amount not less than
31 \$1,000 and not exceeding \$10,000 ~~\$5,000~~ for each violation. A

1 fine may be levied notwithstanding the correction of the
2 violation.

3 (b) Class "II" violations are those conditions or
4 occurrences related to the operation and maintenance of a
5 facility or to the personal care of residents which the agency
6 determines directly threaten the physical or emotional health,
7 safety, or security of the facility residents, other than
8 class I violations. A class II violation is subject to an
9 administrative fine ~~a civil penalty~~ in an amount not less than
10 \$500 and not exceeding \$5,000 ~~\$1,000~~ for each violation. A
11 citation for a class II violation shall specify the time
12 within which the violation is required to be corrected. If a
13 class II violation is corrected within the time specified, no
14 fine ~~civil penalty~~ may be imposed, unless it is a repeated
15 offense.

16 (c) Class "III" violations are those conditions or
17 occurrences related to the operation and maintenance of a
18 facility or to the personal care of residents which the agency
19 determines indirectly or potentially threaten the physical or
20 emotional health, safety, or security of facility residents,
21 other than class I or class II violations. A class III
22 violation is subject to an administrative fine ~~a civil penalty~~
23 of not less than \$100 and not exceeding \$1,000 ~~\$500~~ for each
24 violation. A citation for a class III violation shall specify
25 the time within which the violation is required to be
26 corrected. If a class III violation is corrected within the
27 time specified, no fine ~~civil penalty~~ may be imposed, unless
28 it is a repeated offense.

29 (d) Class "IV" violations are those conditions or
30 occurrences related to the operation and maintenance of a
31 building or to required reports, forms, or documents that do

1 not have the potential of negatively affecting residents.
2 These violations are of a type that the agency determines do
3 not threaten the health, safety, or security of residents of
4 the facility. A facility that does not correct a class IV
5 violation within the time ~~limit~~ specified in the
6 agency-approved corrective action plan is subject to an
7 administrative fine ~~a civil penalty~~ of not less than ~~\$100~~\$50
8 nor more than ~~\$500~~\$200 for each violation. Any class IV
9 violation that is corrected during the time an agency survey
10 is being conducted will be identified as an agency finding and
11 not as a violation.

12 (2) The agency may double administrative fines for
13 violations that are identical to violations identified during
14 the previous biennial inspection, monitoring visit, or
15 complaint investigation.

16 (3)~~(4)~~ The agency may set and levy a fine not to
17 exceed ~~\$1,000~~\$500 for each violation which cannot be
18 classified according to subsection (1)~~(3)~~. ~~In no event may~~
19 Such fines ~~fine~~ in the aggregate may not exceed \$10,000 per
20 survey~~\$5,000~~.

21 (4) In determining if a penalty is to be imposed and
22 in fixing the amount of the fine, the agency shall consider
23 the following factors:

24 (a) The gravity of the violation, including the
25 probability that death or serious physical or emotional harm
26 to a resident will result or has resulted, the severity of the
27 action or potential harm, and the extent to which the
28 provisions of the applicable laws or rules were violated.

29 (b) Actions taken by the owner or administrator to
30 correct violations.

31 (c) Any previous violations.

1 (d) The financial benefit to the facility of
2 committing or continuing the violation.

3 (e) The licensed capacity of the facility.

4 (5) Each day of continuing violation after the date
5 fixed for termination of the violation, as ordered by the
6 agency, constitutes an additional, separate, and distinct
7 violation.

8 (6) Any action taken to correct a violation shall be
9 documented in writing by the owner or administrator of the
10 facility and verified through followup visits by agency
11 personnel. The agency may impose a fine and, in the case of an
12 owner-operated facility, revoke or deny a facility's license
13 when a facility administrator fraudulently misrepresents
14 action taken to correct a violation.

15 (7) For fines that are upheld following administrative
16 or judicial review, the violator shall pay the fine, plus
17 interest at the rate as specified in s. 55.03, for each day
18 beyond the date set by the agency for payment of the fine.

19 (8) Except as provided in subsection (9), any facility
20 that continues to operate without having applied for a license
21 10 days after agency notification is subject to a \$1,000 fine.
22 Each day beyond 20 days after agency notification constitutes
23 a separate violation and the facility is subject to a fine of
24 \$500 per day.

25 (9) Unlicensed facilities whose owner or administrator
26 concurrently operates a licensed facility, has previously
27 operated a licensed facility, or has been employed in a
28 licensed facility shall immediately be subject to an
29 administrative fine of \$5,000 upon agency notification. Each
30 day of continued operation after agency notification
31

1 constitutes a separate violation subject to a fine of \$500 per
2 day.

3 (10) Any facility whose owner fails to apply for a
4 change-of-ownership license in accordance with s. 400.412 and
5 operates the facility under the new ownership is subject to a
6 fine not to exceed \$5,000.

7 (11) In addition to any administrative fines imposed,
8 the agency may assess a survey fee, equal to the lesser of one
9 half of the facility's biennial license and bed fee or \$500,
10 to cover the cost of conducting initial complaint
11 investigations that result in the finding of a violation that
12 was the subject of the complaint or for related, repeat
13 followup surveys to verify the correction of the violations.

14 (12) The agency, as an alternative to or in
15 conjunction with an administrative action against a facility
16 for violations of this part and adopted rules, shall make a
17 reasonable attempt to discuss each violation and recommended
18 corrective action with the owner or administrator of the
19 facility, prior to written notification. The agency, instead
20 of fixing a period within which the facility shall enter into
21 compliance with standards, may request a plan of corrective
22 action from the facility which demonstrates a good-faith
23 effort to remedy each violation by a specific date, subject to
24 the approval of the agency.

25 (13)(5) Administrative fines ~~Civil penalties~~ paid by
26 any facility under this section ~~the provisions of subsection~~
27 ~~(3)~~ shall be deposited into the Health Care Trust Fund and
28 expended as provided in s. 400.418.

29 (14)(6) The agency shall develop and disseminate an
30 annual list of all facilities sanctioned or fined in excess of
31 \$500 for violations of state standards, the number and class

1 of violations involved, the penalties imposed, and the current
2 status of cases. The list shall be disseminated, at no charge,
3 to the Department of Elderly Affairs, the Department of Health
4 ~~and Rehabilitative Services~~, the Department of Business and
5 Professional Regulation, the Department of Children and Family
6 Services, the area agencies on aging, the Statewide Human
7 Rights Advocacy Committee, and the state and district nursing
8 home ~~and long-term care facility~~ ombudsman councils. The
9 Department of Children and Family Services shall disseminate
10 the list to service providers under contract to the department
11 responsible for referring persons for residency to a facility.
12 The agency may charge a fee commensurate with the cost of
13 printing and postage to other interested parties requesting a
14 copy of this list.

15 (15) The department may by rule establish procedures,
16 classify violations, and assign penalties specifically to
17 administer this section.

18 Section 13. Paragraph (a) of subsection (1) of section
19 400.422, Florida Statutes, is amended to read:

20 400.422 Receivership proceedings.--

21 (1) As an alternative to or in conjunction with an
22 injunctive proceeding, the agency may petition a court of
23 competent jurisdiction for the appointment of a receiver, if
24 suitable alternate placements are not available, when any of
25 the following conditions exist:

26 (a) The facility is operating without a license and
27 refuses to make application for a license as required by ss.
28 ~~s.~~400.407 and 400.408.

29 Section 14. Subsection (3) of section 400.428, Florida
30 Statutes, is amended to read:

31 400.428 Resident bill of rights.--

1 (3)(a) The agency shall conduct a survey ~~an inspection~~
2 to determine general compliance with facility standards and
3 compliance with residents' rights as a prerequisite to initial
4 ~~or renewal~~ licensure or licensure renewal.

5 (b) In order to determine whether the facility is
6 adequately protecting residents' rights, the biennial survey
7 ~~inspection of the facility~~ shall include private informal
8 conversations with a sample of residents and consultation with
9 the ombudsman council in the planning and service area, ~~as~~
10 ~~defined in part II,~~ in which the facility is located to
11 discuss residents' experiences within the facility ~~with~~
12 ~~respect to rights specified in this section and general~~
13 ~~compliance with standards~~.

14 (c) During any calendar year in which no survey
15 ~~inspection~~ is conducted, the agency shall conduct at least one
16 monitoring visit of each facility cited in the previous year
17 for a class I or class II violation, or more than three
18 uncorrected class III violations, that led to a conditional
19 license or a moratorium on admissions.

20 (d) The agency may conduct periodic followup
21 inspections as necessary to monitor the compliance of
22 facilities with a history of any class I, class II, or class
23 III violations that threaten the health, safety, or security
24 of residents.

25 (e)~~(d)~~ The agency may conduct complaint investigations
26 as warranted to investigate any allegations of noncompliance
27 with requirements required under this part or rules adopted
28 ~~promulgated~~ under this part.

29 Section 15. Subsection (3) of section 400.452, Florida
30 Statutes, is amended to read:

31

1 400.452 Staff training and educational programs; core
2 educational requirement.--

3 (3) Such a program must be available at least
4 quarterly in each district of the Department of Children and
5 Family Health and Rehabilitative Services. The competency
6 test must be developed by the department in conjunction with
7 the agency and providers ~~and must be available for use by~~
8 ~~January 1, 1997. Beginning July 1, 1997,~~A new facility
9 administrator must complete the core educational requirement
10 including the competency test within 3 months after being
11 employed as an administrator. Failure to complete a core
12 educational requirement specified in this subsection is a
13 violation of this part and subjects the violator to an
14 administrative fine ~~a penalty~~ as prescribed in s. 400.419.
15 Administrators licensed in accordance with chapter 468, part
16 II, are exempt from this requirement. Other licensed
17 professionals may be exempted, as determined by the department
18 by rule.

19 Section 16. Paragraph (c) is added to subsection (2)
20 of section 400.474, Florida Statutes, to read:

21 400.474 Denial, suspension, revocation of license;
22 injunction; grounds.--

23 (2) Any of the following actions by a home health
24 agency or its employee is grounds for disciplinary action by
25 the Agency for Health Care Administration:

26 (c) Knowingly providing home health services in an
27 unlicensed assisted living facility or unlicensed adult
28 family-care home.

29 Section 17. Section 400.618, Florida Statutes, is
30 amended to read:

31

1 400.618 Definitions.--As used in this part ~~ss.~~
2 ~~400.616-400.629~~, the term:

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

6 (2) "Adult family-care home" means a full-time,
7 family-type living arrangement, in a private home, under which
8 a person who owns or rents the home provides ~~or persons~~
9 ~~provide~~, for profit or not for profit, room, board, and one or
10 more personal services, on a 24-hour basis ~~as appropriate for~~
11 ~~the level of functional impairment~~, for no more than five aged
12 persons or disabled adults who are not relatives. The
13 following family-type living arrangements ~~establishments~~ are
14 not required to be licensed as an adult family-care home
15 ~~homes~~:

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

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

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

29 (3) "Aged person" means any person age 60 or over who
30 is currently a resident of the state and who, because of a
31 functional impairment, requires one or more personal services

1 but does not require 24-hour skilled nursing home or
2 institutional care.

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

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

11 (6) "Chemical restraint" means a pharmacologic drug
12 that physically limits, restricts, or deprives an individual
13 of movement or mobility, and is used for discipline or
14 convenience and not required for the treatment of medical
15 symptoms.

16 (7) "Department" means the Department of Elderly
17 Affairs.

18 (8) "Disabled adult" means any person between 18 and
19 59 years of age, inclusive, who is a resident of the state and
20 who has one or more permanent physical or mental limitations
21 that restrict the person's ability to perform the normal
22 activities of daily living.

23 (9) "Personal services" include, but are not limited
24 to, individual assistance with or supervision of activities of
25 daily living; supervision of self-administered medication; and
26 other similar services that the department defines by rule.

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

29 (11) "Relative" means an individual who is the father,
30 mother, son, daughter, brother, sister, uncle, aunt, first
31 cousin, nephew, niece, husband, wife, father-in-law,

1 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
2 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
3 stepbrother, stepsister, half brother, or half sister of a
4 provider.

5 Section 18. Paragraph (h) of subsection (3) of section
6 408.036, Florida Statutes, is amended to read:

7 408.036 Projects subject to review.--

8 (3) EXEMPTIONS.--Upon request, supported by such
9 documentation as the agency requires, the agency shall grant
10 an exemption from the provisions of subsection (1):

11 (h) For the establishment of a Medicare-certified home
12 health agency by a facility certified under chapter 651; a
13 retirement community, as defined in s. 400.404(2)(g)~~s.~~

14 ~~400.404(2)(e)~~; or a residential facility that serves only
15 retired military personnel, their dependents, and the
16 surviving dependents of deceased military personnel.

17 Medicare-reimbursed home health services provided through such
18 agency shall be offered exclusively to residents of the
19 facility or retirement community or to residents of facilities
20 or retirement communities owned, operated, or managed by the
21 same corporate entity. Each visit made to deliver
22 Medicare-reimbursable home health services to a home health
23 patient who, at the time of service, is not a resident of the
24 facility or retirement community shall be a deceptive and
25 unfair trade practice and constitutes a violation of ss.
26 501.201-501.213.

27

28 A request for exemption under this subsection may be made at
29 any time and is not subject to the batching requirements of
30 this section.

31

1 Section 19. This act shall take effect October 1,
2 1998.

3
4 *****

5 SENATE SUMMARY

6 Revises and reorganizes various provisions of part III of
7 ch. 400, F.S., relating to assisted living facilities.
8 Exempts certain additional facilities from licensure by
9 the Department of Elderly Affairs. Revises requirements
10 for applying for licensure of an assisted living
11 facility. Revises requirements for conducting background
12 screening of an owner or operator of an assisted living
13 facility. Provides additional rulemaking authority for
14 the Department of Elderly Affairs. Revises the amount of
15 the administrative fines imposed for various violations.
16 (See bill for details.)
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