

1
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;
11 providing for disciplinary actions; revising
12 provisions relating to referral to unlicensed
13 facilities; providing for certain notice to
14 service providers; amending s. 400.4075, F.S.;
15 providing requirements for obtaining a limited
16 mental health license; amending s. 400.411,
17 F.S.; revising requirements for an initial
18 application for license; providing for a fee;
19 amending s. 400.414, F.S.; revising authority
20 and grounds for denial, revocation, or
21 suspension of licenses or imposition of
22 administrative fines; specifying terms for
23 review of proceedings challenging
24 administrative actions; amending s. 400.415,
25 F.S.; requiring a facility to post notice of a
26 moratorium on admissions; providing for rules
27 establishing grounds for imposition of a
28 moratorium; amending s. 400.417, F.S.;
29 providing for coordinated expiration of a
30 facility's license; revising requirements for
31 license renewal; providing for rules; amending

1 s. 400.4174, F.S.; amending an outdated
2 reference to child abuse or neglect; amending
3 s. 400.4176, F.S.; revising time requirement
4 for notice of change of administrator; amending
5 ss. 400.418, 400.422, 400.452, 408.036, F.S.,
6 relating to the disposition of fees and fines,
7 receivership proceedings, staff training and
8 education, and the review of certain projects;
9 conforming cross-references to changes made by
10 the act; amending s. 400.419, F.S.; revising
11 procedures relating to violations and
12 penalties; increasing administrative fines for
13 specified classes of violations; providing
14 fines for unlicensed operation of a facility
15 and for failure to apply for a change of
16 ownership license; authorizing a survey fee to
17 cover the cost of certain complaint
18 investigations; providing for corrective action
19 plans to correct violations; expanding
20 dissemination of information regarding
21 facilities sanctioned or fined; amending s.
22 400.4195, F.S., relating to prohibitions and
23 rebates; creating s. 400.4256, F.S., relating
24 to assistance with the self-administration of
25 medication; amending s. 400.428, F.S.;
26 providing for surveys to determine compliance
27 with facility standards and residents' rights;
28 amending s. 400.474, F.S.; providing for
29 disciplinary action against a home health
30 agency or employee who knowingly provides
31 services in an unlicensed assisted living

1 facility or adult family-care home; amending s.
2 400.618, F.S.; revising the definition of the
3 term "adult-family care home"; amending s.
4 394.4574, F.S.; requiring district
5 administrators of the Department of Children
6 and Family Services to develop plans to ensure
7 the provision of mental health and substance
8 abuse treatment services to residents of
9 assisted living facilities that hold a limited
10 mental health license; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 400.402, Florida Statutes, is
16 amended to read:

17 400.402 Definitions.--When used in this part, ~~unless~~
18 ~~the context otherwise requires,~~ the term:

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

22 (2) "Administrator" means an individual at least 21
23 years of age who is responsible for the operation and
24 maintenance ~~who has general administrative charge~~ of an
25 assisted living facility.

26 ~~(3) "Assisted living facility," hereinafter referred~~
27 ~~to as "facility," means any building or buildings, section of~~
28 ~~a building, or distinct part of a building, residence, private~~
29 ~~home, boarding home, home for the aged, or other place,~~
30 ~~whether operated for profit or not, which undertakes through~~
31 ~~its ownership or management to provide, for a period exceeding~~

1 ~~24 hours, housing, food service, and one or more personal~~
2 ~~services for four or more adults, not related to the owner or~~
3 ~~administrator by blood or marriage, who require such services,~~
4 ~~or to provide extended congregate care, limited nursing~~
5 ~~services, or limited mental health services, when specifically~~
6 ~~licensed to do so pursuant to s. 400.407, unless the facility~~
7 ~~is licensed as an adult family-care home. A facility offering~~
8 ~~personal services, extended congregate care, limited nursing~~
9 ~~services, or limited mental health services for fewer than~~
10 ~~four adults is within the meaning of this definition if it~~
11 ~~formally or informally advertises to or solicits the public~~
12 ~~for residents or referrals and holds itself out to the public~~
13 ~~to be an establishment which regularly provides such services,~~
14 ~~unless the facility is licensed as an adult family-care home.~~

15 (3)(4) "Agency" means the Agency for Health Care
16 Administration.

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

30 (5)(6) "Applicant" means an individual owner,
31 corporation, partnership, firm, association, or governmental

1 entity that applies any facility owner, or if a business
2 ~~entity, a person appointed by such entity to make application~~
3 for a license.

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

7 (6) "Assisted living facility" means any building or
8 buildings, section or distinct part of a building, private
9 home, boarding home, home for the aged, or other residential
10 facility, whether operated for profit or not, which undertakes
11 through its ownership or management to provide housing, meals,
12 and one or more personal services for a period exceeding 24
13 hours to one or more adults who are not relatives of the owner
14 or administrator.

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

20 ~~(8)(9)~~ "Community living support plan" means a written
21 document prepared by a mental health resident and the
22 resident's mental health case manager of that resident in
23 consultation with the administrator of an assisted living the
24 facility with a limited mental health license or the
25 administrator's designee. A copy must be provided to the
26 administrator. The plan must include information about the
27 supports, services, and special needs of the resident which
28 enable the resident to live in the assisted living facility
29 and a method by which facility staff can recognize and respond
30 to the signs and symptoms particular to that resident which
31 indicate the need for professional services.

1 ~~(9)(10)~~ "Cooperative agreement" means a written
2 statement of understanding between a mental health care
3 ~~services~~ provider and the administrator of the assisted living
4 facility with a limited mental health license in which a
5 mental health resident is living. The agreement must specify
6 ~~specifies~~ directions for accessing emergency and after-hours
7 care for the mental health resident ~~and a method by which the~~
8 ~~staff of the facility can recognize and respond to the signs~~
9 ~~and symptoms particular to that mental health resident that~~
10 ~~indicate the need for professional services. The cooperative~~
11 ~~agreement may be a component of the community living support~~
12 plan. A single cooperative agreement may service all mental
13 health residents who are clients of the same mental health
14 care provider.

15 ~~(10)(11)~~ "Department" means the Department of Elderly
16 Affairs.

17 ~~(11)(12)~~ "Emergency" means a situation, physical
18 condition, or method of operation which presents imminent
19 danger of death or serious physical or mental harm to facility
20 residents.

21 ~~(12)(13)~~ "Extended congregate care" means acts beyond
22 those authorized in subsection ~~(17)(16)~~ that may be performed
23 pursuant to chapter 464 by persons licensed thereunder while
24 carrying out their professional duties, and other supportive
25 services which may be specified by rule. The purpose of such
26 services is to enable residents to age in place in a
27 residential environment despite mental or physical limitations
28 that might otherwise disqualify them from residency in a
29 facility licensed under this part.

30 ~~(13)(14)~~ "Guardian" means a person to whom the law has
31 entrusted the custody and control of the person or property,

1 or both, of a person who has been legally adjudged
2 incapacitated.

3 (14)~~(15)~~ "Limited nursing services" means acts that
4 may be performed pursuant to chapter 464 by persons licensed
5 thereunder while carrying out their professional duties but
6 limited to those acts which the department specifies by rule.
7 Acts which may be specified by rule as allowable limited
8 nursing services shall be for persons who meet the admission
9 criteria established by the department for assisted living
10 facilities and shall not be complex enough to require 24-hour
11 nursing supervision and may include such services as the
12 application and care of routine dressings, and care of casts,
13 braces, and splints.

14 (15)~~(16)~~ "Managed risk" means the process by which the
15 facility staff discuss the service plan and the needs of the
16 resident with the resident and, if applicable, the resident's
17 representative or designee or the resident's surrogate,
18 guardian, or attorney in fact, in such a way that the
19 consequences of a decision, including any inherent risk, are
20 explained to all parties and reviewed periodically in
21 conjunction with the service plan, taking into account changes
22 in the resident's status and the ability of the facility to
23 respond accordingly.

24 (16)~~(17)~~ "Mental health resident" means an individual
25 who receives social security disability income due to a mental
26 disorder as determined by the Social Security Administration
27 or receives supplemental security income due to a mental
28 disorder as determined by the Social Security Administration
29 and receives optional state supplementation.

30 (17)~~(18)~~ "Personal services" means direct physical
31 ~~include, but are not limited to, such services as: individual~~

1 assistance with or supervision of the essential activities of
2 daily living and the self-administration of medication ~~as~~
3 ~~defined in subsection (1),~~ and other similar services which
4 the department may define by rule. "Personal services" shall
5 not be construed to mean the provision of medical, nursing,
6 dental, or mental health services ~~by the staff of a facility,~~
7 ~~except as provided in this part. In addition, an emergency~~
8 ~~response device installed in the apartment or living area of a~~
9 ~~resident shall not be classified as a personal service.~~

10 (18)~~(19)~~ "Physical restraint" means a device which
11 physically limits, restricts, or deprives an individual of
12 movement or mobility, including, but not limited to, a
13 half-bed rail, a full-bed rail, a geriatric chair, and a posey
14 restraint. The term "physical restraint" shall also include
15 any device which was not specifically manufactured as a
16 restraint but which has been altered, arranged, or otherwise
17 used for this purpose. The term shall not include bandage
18 material used for the purpose of binding a wound or injury.

19 (19) "Relative" means an individual who is the father,
20 mother, stepfather, stepmother, son, daughter, brother,
21 sister, grandmother, grandfather, great-grandmother,
22 great-grandfather, grandson, granddaughter, uncle, aunt, first
23 cousin, nephew, niece, husband, wife, father-in-law,
24 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
25 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
26 half-brother, or half-sister of an owner or administrator.

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

29 (21) "Resident's representative or designee" means a
30 person other than the owner, or an agent or employee of the
31 facility, designated in writing by the resident, if legally

1 competent, to receive notice of changes in the contract
2 executed pursuant to s. 400.424; to receive notice of and to
3 participate in meetings between the resident and the facility
4 owner, administrator, or staff concerning the rights of the
5 resident; to assist the resident in contacting the ombudsman
6 council if the resident has a complaint against the facility;
7 or to bring legal action on behalf of the resident pursuant to
8 s. 400.429.

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

21 (23) "Shared responsibility" means exploring the
22 options available to a resident within a facility and the
23 risks involved with each option when making decisions
24 pertaining to the resident's abilities, preferences, and
25 service needs, thereby enabling the resident and, if
26 applicable, the resident's representative or designee, or the
27 resident's surrogate, guardian, or attorney in fact, and the
28 facility to develop a service plan which best meets the
29 resident's needs and seeks to improve the resident's quality
30 of life.

31

1 (24) "~~Supervision of activities of daily living~~" means
2 reminding residents to engage in activities of daily living
3 and the self-administration of medication, and, when
4 necessary, observing or providing verbal cuing to residents
5 while they perform these activities.

6 ~~(25) "Supervision of self-administered medication"~~
7 ~~means reminding residents to take medication, opening bottle~~
8 ~~caps for residents, opening prepackaged medication for~~
9 ~~residents, reading the medication label to residents,~~
10 ~~observing residents while they take medication, checking the~~
11 ~~self-administered dosage against the label of the container,~~
12 ~~reassuring residents that they have obtained and are taking~~
13 ~~the dosage as prescribed, keeping daily records of when~~
14 ~~residents receive supervision pursuant to this subsection, and~~
15 ~~immediately reporting noticeable changes in the condition of a~~
16 ~~resident to the resident's physician and the resident's case~~
17 ~~manager, if one exists. Residents who are capable of~~
18 ~~administering their own medication shall be allowed to do so.~~

19 (25)~~(26)~~ "Supplemental security income," Title XVI of
20 the Social Security Act, means a program through which the
21 Federal Government guarantees a minimum monthly income to
22 every person who is age 65 or older, or disabled, or blind and
23 meets the income and asset requirements.

24 (26)~~(27)~~ "Supportive services" means services designed
25 to encourage and assist aged persons or adults with
26 disabilities to remain in the least restrictive living
27 environment and to maintain their independence as long as
28 possible.

29 (27)~~(28)~~ "Twenty-four-hour nursing supervision" means
30 services that are ordered by a physician for a resident whose
31 condition requires the supervision of a physician and

1 continued monitoring of vital signs and physical status. Such
2 services shall be: medically complex enough to require
3 constant supervision, assessment, planning, or intervention by
4 a nurse; required to be performed by or under the direct
5 supervision of licensed nursing personnel or other
6 professional personnel for safe and effective performance;
7 required on a daily basis; and consistent with the nature and
8 severity of the resident's condition or the disease state or
9 stage.

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

12 400.404 Facilities to be licensed; exemptions.--

13 (2) The following are exempt from licensure under this
14 part:

15 (a) Any facility, institution, or other place operated
16 by the Federal Government or any agency of the Federal
17 Government.

18 (b) Any facility or part of a facility licensed under
19 chapter 393 or chapter 394.

20 (c) Any facility licensed as an adult family-care home
21 under part VII.

22 (d) Any person who provides housing, meals, and one or
23 more personal services on a 24-hour basis in the person's own
24 home to not more than two adults who do not receive optional
25 state supplementation. The person who provides the housing,
26 meals, and personal services must own or rent the home and
27 reside therein.

28 (e)~~(c)~~ Any home or facility approved by the United
29 States Department of Veterans Affairs as a residential care
30 home wherein care is provided exclusively to three or fewer
31 veterans.

1 (f)~~(d)~~ Any facility that has been incorporated in this
2 state for 50 years or more on or before July 1, 1983, and the
3 board of directors of which is nominated or elected by the
4 residents, until the facility is sold or its ownership is
5 transferred; or any facility, with improvements or additions
6 thereto, which has existed and operated continuously in this
7 state for 60 years or more on or before July 1, 1989, is
8 directly or indirectly owned and operated by a nationally
9 recognized fraternal organization, is not open to the public,
10 and accepts only its own members and their spouses as
11 residents.

12 (g)~~(e)~~ Any facility certified under chapter 651, or a
13 retirement community, may provide services authorized under
14 this part or part IV of this chapter to its residents who live
15 in single-family homes, duplexes, quadruplexes, or apartments
16 located on the campus without obtaining a license to operate
17 an assisted living facility if residential units within such
18 buildings are used by residents who do not require staff
19 supervision for that portion of the day when personal services
20 are not being delivered and the owner obtains a home health
21 license to provide such services. However, any building or
22 distinct part of a building on the campus that is designated
23 for persons who receive personal services and require
24 supervision beyond that which is available while such services
25 are being rendered must be licensed in accordance with this
26 part. If a facility provides personal services to residents
27 who do not otherwise require supervision and the owner is not
28 licensed as a home health agency, the buildings or distinct
29 parts of buildings where such services are rendered must be
30 licensed under this part. A resident of a facility that
31 obtains a home health license may contract with a home health

1 agency of his or her choice, provided that the home health
2 agency provides liability insurance and workers' compensation
3 coverage for its employees. Facilities covered by this
4 exemption may establish policies that give residents the
5 option of contracting for services and care beyond that which
6 is provided by the facility to enable them to age in place.
7 For purposes of this section, a retirement community consists
8 of a facility licensed under this part or under part II, and
9 apartments designed for independent living located on the same
10 campus.

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

13 400.407 License required; fee, display.--

14 (1)~~(a)~~ A license issued by the agency is required for
15 an assisted living facility operating in this state.~~It is~~
16 ~~unlawful to operate or maintain a facility without first~~
17 ~~obtaining from the agency a license authorizing such~~
18 ~~operation.~~

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

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

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

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

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

15 ~~6. If the agency determines that an owner is operating~~
16 ~~or maintaining a facility without obtaining a license~~
17 ~~authorizing such operation and determines that a condition~~
18 ~~exists in the facility that poses a threat to the health,~~
19 ~~safety, or welfare of a resident of the facility, the owner~~
20 ~~commits neglect as defined in s. 415.102 and is subject to the~~
21 ~~same actions and penalties specified in ss. 400.414 and~~
22 ~~400.419 for a negligent act seriously affecting the health,~~
23 ~~safety, or welfare of a resident of the facility.~~

24 Section 4. Effective January 1, 1999, subsection (1)
25 of section 400.4075, Florida Statutes, is amended to read:

26 400.4075 Limited mental health license.--An assisted
27 living facility that serves three or more mental health
28 residents must obtain a limited mental health license.

29 (1) To obtain a limited mental health license, a
30 facility must hold a standard license as an assisted living
31 facility, must not have any current uncorrected deficiencies

1 or violations, and must ensure that, within 6 months after
2 receiving a limited mental health license, the facility
3 administrator and the staff of the facility who are in direct
4 contact with mental health residents must complete training of
5 no less than 6 hours related to their duties. This training
6 will be provided by or approved by the Department of Children
7 and Family Services.

8 Section 5. Section 400.408, Florida Statutes, is
9 amended to read:

10 400.408 Unlicensed facilities; referral of person for
11 residency to unlicensed facility; ~~penalties~~ ~~penalty~~;
12 verification of licensure status.--

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

16 (b) Except as provided under paragraph (d), any person
17 who owns, operates, or maintains an unlicensed assisted living
18 facility commits a felony of the third degree, punishable as
19 provided in s. 775.082, s. 775.083, or s. 775.084. Application
20 for licensure within 10 working days after notification shall
21 be an affirmative defense to this felony violation.

22 (c) Any person found guilty of violating paragraph (a)
23 a second or subsequent time, commits a felony of the second
24 degree, punishable as provided under s. 775.082, s. 775.083,
25 or s. 775.084.

26 (d) Any person who owns, operates, or maintains an
27 unlicensed assisted living facility due to a change in this
28 part or a modification in department rule within 6 months
29 after the effective date of such change and who, within 10
30 working days after receiving notification from the agency,
31 fails to cease operation or apply for a license under this

1 part commits a felony of the third degree, punishable as
2 provided in s. 775.082, s. 775.083, or s. 775.084.

3 (e) Pursuant to this subsection, any facility that
4 fails to apply for a license or cease operation after agency
5 notification may be fined for each day of noncompliance
6 pursuant to s. 400.419.

7 (f) When a licensee has an interest in more than one
8 assisted living facility, and fails to license any one of
9 these facilities, the agency may revoke the license or impose
10 a moratorium on any or all of the licensed facilities until
11 such time as the unlicensed facility applies for licensure or
12 ceases operation.

13 (g) If the agency determines that an owner is
14 operating or maintaining an assisted living facility without
15 obtaining a license and determines that a condition exists in
16 the facility that poses a threat to the health, safety, or
17 welfare of a resident of the facility, the owner is subject to
18 the same actions and fines imposed against a licensed facility
19 as specified in ss. 400.414 and 400.419.

20 (h) Any person aware of the operation of an unlicensed
21 assisted living facility must report that facility to the
22 agency. The agency shall provide to the department and to
23 elder information and referral providers a list, by county, of
24 licensed assisted living facilities, to assist persons who are
25 considering an assisted living facility placement in locating
26 a licensed facility.

27 (2)(1) It is unlawful to knowingly refer a person for
28 residency to an unlicensed ~~facility that provides services~~
29 ~~that may only be provided by an~~ assisted living facility; to
30 an assisted living facility the license of which is under
31 denial or has been suspended or revoked; or to an assisted

1 living a facility that has a moratorium on admissions. Any
2 person who violates this subsection commits ~~is guilty of~~ a
3 noncriminal violation, punishable by a fine not exceeding \$500
4 as provided in s. 775.083.

5 (a) Any employee of the agency or department, or the
6 Department of Children and Family ~~Health and Rehabilitative~~
7 Services, who knowingly refers a person for residency to an
8 unlicensed facility; to a facility the license of which is
9 under denial or has been suspended or revoked; or to a
10 facility that has a moratorium on admissions is subject to
11 disciplinary action by the agency or department, or the
12 Department of Children and Family ~~Health and Rehabilitative~~
13 Services.

14 (b) The employer of any person who is under contract
15 with the agency or department, or the Department of Children
16 and Family ~~Health and Rehabilitative~~ Services, and who
17 knowingly refers a person for residency to an unlicensed
18 facility; to a facility the license of which is under denial
19 or has been suspended or revoked; or to a facility that has a
20 moratorium on admissions shall be fined and required to
21 prepare a corrective action plan designed to prevent such
22 referrals.

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

27 ~~(d)(3)~~ At least annually, the agency shall notify, in
28 appropriate trade publications ~~as defined by rule~~, physicians
29 licensed under chapter 458 or chapter 459 ~~pursuant to chapter~~
30 ~~458, osteopathic physicians licensed pursuant to chapter 459,~~
31 hospitals licensed under ~~pursuant to part I of~~ chapter 395,

1 ~~and~~ nursing home facilities licensed under ~~pursuant to~~ part II
2 of this chapter, and employees of the agency or the
3 department, or the Department of Children and Family Health
4 ~~and Rehabilitative Services~~, who are responsible ~~having a~~
5 ~~responsibility~~ for referring persons for residency, that it is
6 unlawful to knowingly refer a person for residency to an
7 unlicensed assisted living facility and shall notify them of
8 the penalty for violating such prohibition. The department and
9 the Department of Children and Family Services shall, in turn,
10 notify service providers under contract to the respective
11 departments who have responsibility for resident referrals to
12 facilities. Further, the notice must direct each noticed
13 facility and individual to contact the appropriate agency
14 office in order to verify the licensure status of any facility
15 prior to referring any person for residency. Each notice must
16 include the name, telephone number, and mailing address of the
17 appropriate office to contact.

18 Section 6. Section 400.411, Florida Statutes, is
19 amended to read:

20 400.411 Initial application for license; provisional
21 license.--

22 (1) Application for license shall be made to the
23 agency on forms furnished by it and shall be accompanied by
24 the appropriate license fee. ~~The application shall contain~~
25 ~~sufficient information, as required by rules of the~~
26 ~~department, to establish that the applicant can provide~~
27 ~~adequate care.~~

28 (2) The applicant may be an individual owner,
29 corporation, partnership, firm, association, or governmental
30 entity.

31

1 ~~(3)(2)~~ The application shall be signed by the
2 applicant under oath and shall contain the following:

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

6 ~~1.~~ If the applicant is a firm, partnership, or
7 association, the application shall contain the name, address,
8 date of birth, and social security number of every member
9 thereof.

10 ~~2.~~ If the applicant is a corporation, the application
11 shall contain the corporation's ~~its~~ name and address, the
12 name, address, date of birth, and social security number of
13 each of its directors and officers, and the name and address
14 of each person having at least a 5-percent ownership
15 ~~10-percent~~ interest in the corporation.

16 (b) The name and address of any professional service,
17 firm, association, partnership, or corporation that is to
18 provide goods, leases, or services to the facility ~~for which~~
19 ~~the application is made~~, if a 5-percent ~~10-percent~~ or greater
20 interest in the service, firm, association, partnership, or
21 corporation is owned by a person whose name must be listed on
22 the application under paragraph (a).

23 (c) Information sufficient ~~that provides a source~~ to
24 establish the suitable character, financial stability, and
25 competency of the applicant and of each person specified in
26 the application under subparagraph (a)~~1. or subparagraph (a)2.~~
27 ~~who has at least a 10-percent interest in the firm,~~
28 ~~partnership, association, or corporation and, if different~~
29 from the applicant, applicable, of the administrator, and
30 financial officer, including
31

1 (d) The name and address of any long-term care
2 facility with which the applicant,or administrator, or
3 financial officer has been affiliated through ownership or
4 employment within 5 years of the date of this license ~~the~~
5 application ~~for a license~~; and a signed affidavit disclosing
6 any financial or ownership interest that the applicant, or any
7 person listed in paragraph (a)~~principal, partner, or~~
8 ~~shareholder thereof~~, holds or has held within the last 5 years
9 in any ~~other~~ facility licensed under this part, or in any
10 other entity licensed by this ~~the~~ state or another state to
11 provide health or residential care, which facility or entity
12 closed or ceased to operate as a result of financial problems,
13 or has had a receiver appointed or a license denied, suspended
14 or revoked, or was subject to a moratorium on admissions, or
15 had an injunctive proceeding initiated against it.

16 (e)~~(d)~~ The names and addresses of ~~other~~ persons of
17 whom the agency may inquire as to the character,and
18 reputation, and financial responsibility of the owner and, if
19 different from the applicant, the administrator and financial
20 officer applicant and, if applicable, of the administrator.

21 ~~(e)~~ The names and addresses of other persons of whom
22 the agency may inquire as to the financial responsibility of
23 the applicant.

24 (f) Identification of all other homes or facilities,
25 including the addresses and the license or licenses under
26 which they operate, if applicable, which are currently
27 operated by the applicant or administrator and which provide
28 housing, meals, and personal services to residents ~~adults~~.

29 ~~(g)~~ Such other reasonable information as may be
30 required by the agency to evaluate the ability of the
31

1 ~~applicant to meet the responsibilities entailed under this~~
2 ~~part.~~

3 (g)(h) The location of the facility for which a
4 license is sought and documentation, signed by the appropriate
5 local government official, which states that the applicant has
6 met local zoning requirements.

7 (h)(i) The name, address, date of birth, social
8 security number, education, and experience of the
9 administrator if different from the applicant.

10 (4)(3) The applicant shall furnish satisfactory proof
11 of financial ability to operate and conduct the facility in
12 accordance with the requirements of this part. A certificate
13 of authority, pursuant to chapter 651, may be provided as
14 proof of financial ability.~~An applicant applying for an~~
15 ~~initial license shall submit a balance sheet setting forth the~~
16 ~~assets and liabilities of the owner and a statement projecting~~
17 ~~revenues, expenses, taxes, extraordinary items, and other~~
18 ~~credits or charges for the first 12 months of operation of the~~
19 ~~facility.~~

20 (5)(4) If the applicant is a continuing care facility
21 certified under chapter 651, a copy of the facility's
22 certificate of authority must be provided ~~offers continuing~~
23 ~~care agreements, as defined in chapter 651, proof shall be~~
24 ~~furnished that the applicant has obtained a certificate of~~
25 ~~authority as required for operation under that chapter.~~

26 (6)(5) The applicant shall provide proof of liability
27 insurance as defined in s. 624.605.

28 (7)(6) If the applicant is a community residential
29 home, the applicant must provide proof that it has met the
30 requirements specified in chapter 419 ~~shall apply to community~~
31 ~~residential homes zoned single-family or multifamily.~~

1 ~~(8)(7)~~ The applicant must provide the agency with
2 proof of legal right to occupy the property. ~~This proof may~~
3 ~~include, but is not limited to, copies of recorded warranty~~
4 ~~deeds, or copies of lease or rental agreements, contracts for~~
5 ~~deeds, quitclaim deeds, or other such documentation.~~

6 ~~(9)(8)~~ The applicant must furnish proof that the
7 facility has received a satisfactory firesafety inspection.
8 The local ~~fire marshal or other~~ authority having jurisdiction
9 or the State Fire Marshal must conduct the inspection within
10 30 days after ~~the~~ written request by the applicant. ~~If an~~
11 ~~authority having jurisdiction does not have a certified~~
12 ~~firesafety inspector, the State Fire Marshal shall conduct the~~
13 ~~inspection.~~

14 (10) The applicant must furnish documentation of a
15 satisfactory sanitation inspection of the facility by the
16 county health department.

17 ~~(11)(9)~~ A provisional license may be issued to an
18 applicant making initial application for licensure or making
19 application for a change of ownership. A provisional license
20 shall be limited in duration to a specific period of time not
21 to exceed 6 months, as determined by the agency.

22 ~~(12)(10)~~ No county or municipality shall issue an
23 occupational license which is being obtained for the purpose
24 of operating a facility regulated under this part without
25 first ascertaining that the applicant has been licensed to
26 operate such facility at the specified location or locations
27 by the agency. The agency shall furnish to local agencies
28 responsible for issuing occupational licenses sufficient
29 instruction for making such ~~the above-required~~ determinations.

30 Section 7. Section 400.414, Florida Statutes, is
31 amended to read:

1 400.414 Denial, revocation, or suspension of license;
2 imposition of administrative fine; grounds.--

3 (1) The agency may deny, revoke, or suspend any a
4 license issued under this part or impose an administrative
5 fine in the manner provided in chapter 120. At the chapter 120
6 hearing, the agency shall prove by a preponderance of the
7 evidence that its actions are warranted.

8 ~~(2)~~ Any of the following actions by an assisted living
9 facility or any facility employee ~~a facility or its employee~~
10 shall be grounds for action by the agency against a licensee:

11 (a) An intentional or negligent act seriously
12 affecting the health, safety, or welfare of a resident of the
13 facility.

14 (b) The determination by the agency that the facility
15 owner, or administrator, or financial officer is not of
16 suitable character or competency, or that the owner lacks the
17 financial ability ~~to provide continuing adequate care to~~
18 ~~residents, pursuant to the information obtained through s.~~
19 ~~400.411, s. 400.417, or s. 400.434.~~

20 (c) Misappropriation or conversion of the property of
21 a resident of the facility.

22 (d) Failure to follow the criteria and procedures
23 provided under part I of chapter 394 relating to the
24 transportation, voluntary admission, and involuntary
25 examination of a facility resident.

26 (e) One or more class I, three or more class II, or
27 five or more repeated or recurring identical or similar class
28 III violations of this part which were identified by the
29 agency within the last 2 years ~~during the last biennial~~
30 ~~inspection, monitoring visit, or complaint investigation and~~
31

1 ~~which, in the aggregate, affect the health, safety, or welfare~~
2 ~~of the facility residents.~~

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

13 (g) Violation of a moratorium.

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

20 (i) A fraudulent statement or omission of any material
21 fact on an application for a license or any other document
22 required by the agency ~~that is signed and notarized.~~

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

31

1 (k) Knowingly operating any unlicensed facility or
2 providing without a license any service that must be licensed
3 under this chapter.

4
5 Administrative proceedings challenging agency action under
6 this subsection shall be reviewed on the basis of the facts
7 and conditions that resulted in the agency action.

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

10 (2)(4) Upon notification by the local State Fire
11 Marshal, local fire marshal, or other authority having
12 jurisdiction or the State Fire Marshal, the agency may deny or
13 revoke the license of an assisted living a facility that fails
14 to correct cited fire code violations issued by the State Fire
15 Marshal, a local fire marshal, or other authority having
16 jurisdiction, that affect or threaten the health, safety, or
17 welfare of a resident of a facility.

18 (3) The agency may deny a license to any applicant or
19 to any officer or board member of an applicant who is a firm,
20 corporation, partnership, or association or who owns 5 percent
21 or more of the facility, if the applicant, officer, or board
22 member has or had a 25 percent or greater financial or
23 ownership interest in any other facility licensed under this
24 part, or in any entity licensed by this state or another state
25 to provide health or residential care, which facility or
26 entity during the 5 years prior to the application for a
27 license closed due to financial inability to operate; had a
28 receiver appointed or a license denied, suspended, or revoked;
29 was subject to a moratorium on admissions; had an injunctive
30 proceeding initiated against it; or has an outstanding fine
31 assessed under this chapter.

1 (4) The agency shall deny or revoke the license of an
2 assisted living facility that has two or more class I
3 violations that are similar or identical to violations
4 identified by the agency during a survey, inspection,
5 monitoring visit, or complaint investigation occurring within
6 the previous 2 years.

7 ~~(5) The agency may deny a license to an applicant who~~
8 ~~owns 25 percent or more of, or operates, a facility which,~~
9 ~~during the 5 years prior to the application for a license, has~~
10 ~~had a license denied, suspended, or revoked pursuant to~~
11 ~~subsection (2), or, during the 2 years prior to the~~
12 ~~application for a license, has had a moratorium imposed on~~
13 ~~admissions, has had an injunctive proceeding initiated against~~
14 ~~it, has had a receiver appointed, was closed due to financial~~
15 ~~inability to operate, or has an outstanding fine assessed~~
16 ~~under this part.~~

17 (5)(6) An action taken by the agency to suspend, deny,
18 or revoke a facility's license under this part, in which the
19 agency claims that the facility owner or an employee of the
20 facility has threatened the health, safety, or welfare of a
21 resident of the facility, shall, upon receipt of the
22 facility's request for a hearing, be heard by the Division of
23 Administrative Hearings of the Department of Management
24 Services within 120 days after the request for a hearing,
25 unless that time period is waived by both parties. The
26 administrative law judge must render a decision within 30 days
27 after the hearing after receipt of a proposed recommended
28 order.

29 ~~(6)(7)~~ The agency shall provide to the Division of
30 Hotels and Restaurants of the Department of Business and
31 Professional Regulation, on a monthly basis, a list of those

1 assisted living facilities which have had their licenses
2 denied, suspended, or revoked or which are involved in an
3 appellate proceeding pursuant to s. 120.60 related to the
4 denial, suspension, or revocation of a license.

5 (7) Agency notification of license suspension,
6 revocation, or denial of a license renewal shall be posted and
7 visible to the public at the facility.

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

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

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

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

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

27 Section 9. Section 400.417, Florida Statutes, is
28 amended to read:

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

31

1 (1) Biennial licenses ~~issued for the operation of a~~
2 ~~facility~~, unless sooner suspended or revoked, shall expire
3 ~~automatically~~ 2 years from the date of issuance. Limited
4 nursing, extended congregate care, and limited mental health
5 licenses shall expire at the same time as the facility's
6 standard license, regardless of when issued.The agency shall
7 notify the facility by certified mail at least 120 days prior
8 to ~~the expiration of the license~~ that a renewal license
9 ~~relicensure~~ is necessary to continue operation. Ninety days
10 prior to the expiration date, an application for renewal shall
11 be submitted to the agency. Fees must be pro-rated.~~A license~~
12 ~~shall be renewed upon the filing of an application on forms~~
13 ~~furnished by the agency if the applicant has first met the~~
14 ~~requirements established under this part and all rules~~
15 ~~promulgated under this part.~~The failure to file a timely
16 renewal application shall result in a late fee charged to the
17 facility in an amount equal to 50 percent of the current fee
18 ~~in effect on the last preceding regular renewal date.~~ ~~Late~~
19 ~~fees shall be deposited into the Health Care Trust Fund as~~
20 ~~provided in s. 400.418.~~ ~~The facility shall file with the~~
21 ~~application satisfactory proof of ability to operate and~~
22 ~~conduct the facility in accordance with the requirements of~~
23 ~~this part.~~

24 (2) A license shall be renewed within 90 days upon the
25 timely filing of an application on forms furnished by the
26 agency and the provision of satisfactory proof of ability to
27 operate and conduct the facility in accordance with the
28 requirements of this part and adopted rules, including ~~An~~
29 ~~applicant for renewal of a license must furnish proof that the~~
30 ~~facility has received a satisfactory firesafety inspection,~~
31 ~~conducted by the local fire marshal or other authority having~~

1 jurisdiction or the State Fire Marshal, within the preceding
2 12 months.

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

26 ~~(4)(2)~~ A licensee against whom a revocation or
27 suspension proceeding is pending at the time of license
28 renewal may be issued a conditional license effective until
29 final disposition by the agency ~~of such proceeding~~. If
30 judicial relief is sought from the final disposition, the
31

1 court having jurisdiction may issue a conditional license for
2 the duration of the judicial proceeding.

3 ~~(5)(3)~~ A conditional license may be issued to an
4 applicant for license renewal if ~~when~~ the applicant fails to
5 meet all standards and requirements for licensure. A
6 conditional license issued under this subsection shall be
7 limited in duration to a specific period of time not to exceed
8 6 months, as determined by the agency, and shall be
9 accompanied by an agency-approved ~~approved~~ plan of correction.

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

13 Section 10. Section 400.4174, Florida Statutes, is
14 amended to read:

15 400.4174 Reports of abuse in facilities.--When an
16 employee, volunteer, administrator, or owner of a facility is
17 the subject of ~~has~~ a confirmed report of adult abuse, neglect,
18 or exploitation, as defined in s. 415.102, ~~or child abuse or~~
19 ~~neglect, as defined in s. 415.503,~~ and the protective
20 investigator knows that the individual is an employee,
21 volunteer, administrator, or owner of a facility, the agency
22 shall be notified of the confirmed report.

23 Section 11. Section 400.4176, Florida Statutes, is
24 amended to read:

25 400.4176 Notice of change of administrator.--If,
26 during the period for which a license is issued, the owner
27 changes administrators, the owner must notify the agency of
28 the change within 10 ~~45~~ days ~~thereof~~ and ~~must~~ provide
29 documentation within 90 days that the new administrator has
30 completed the applicable core educational requirements under
31 s. 400.452. Background screening shall be completed on any

1 new administrator ~~to establish that the individual is of~~
2 ~~suitable character~~ as specified in s. 400.411 ~~ss.~~
3 ~~400.411(2)(c) and 400.456.~~

4 Section 12. Subsection (1) of section 400.418, Florida
5 Statutes, is amended to read:

6 400.418 Disposition of fees and administrative
7 fines.--

8 (1) Income from license fees, inspection fees, late
9 fees, and administrative fines generated pursuant to ss.
10 400.407, 400.408, 400.417, 400.419, and 400.431 shall be
11 deposited in the Health Care Trust Fund administered by the
12 agency. Such funds shall be directed to and used by the
13 agency for the following purposes:

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

19 (b) An amount of \$5,000 of the trust funds accrued
20 each year under this part shall be allocated to pay for
21 inspection-related physical and mental health examinations
22 requested by the agency pursuant to s. 400.426 for residents
23 who are either recipients of supplemental security income or
24 have monthly incomes not in excess of the maximum combined
25 federal and state cash subsidies available to supplemental
26 security income recipients, as provided for in s. 409.212.
27 Such funds shall only be used where the resident is ineligible
28 for Medicaid.

29 (c) Any trust funds accrued each year under this part
30 and not used for the purposes specified in paragraphs (a) and
31 (b) shall be used to offset the costs of the licensure

1 program, including the costs of conducting background
2 investigations, verifying information submitted, defraying the
3 costs of processing the names of applicants, and conducting
4 inspections and monitoring visits pursuant to this part.

5 Section 13. Section 400.419, Florida Statutes, is
6 amended to read:

7 400.419 Violations; administrative fines ~~penalties~~.--

8 ~~(1)(a) If the agency determines that a facility is not~~
9 ~~in compliance with standards promulgated pursuant to the~~
10 ~~provisions of this part, including the failure to report~~
11 ~~evidence of the facility's financial instability or the~~
12 ~~operation of a facility without a license, the agency, as an~~
13 ~~alternative to or in conjunction with an administrative action~~
14 ~~against a facility, shall make a reasonable attempt to discuss~~
15 ~~each violation and recommended corrective action with the~~
16 ~~owner or administrator of the facility, prior to written~~
17 ~~notification thereof. The agency, instead of fixing a period~~
18 ~~within which the facility shall enter into compliance with~~
19 ~~standards, may request a plan of corrective action from the~~
20 ~~facility which demonstrates a good faith effort to remedy each~~
21 ~~violation by a specific date, subject to the approval of the~~
22 ~~agency.~~

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

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

31

1 ~~(d) Any action taken to correct a violation shall be~~
2 ~~documented in writing by the administrator of the facility and~~
3 ~~verified through followup visits by licensing personnel of the~~
4 ~~agency. The agency may impose a fine and, in the case of an~~
5 ~~owner-operated facility, revoke a facility's license when a~~
6 ~~facility administrator fraudulently misrepresents action taken~~
7 ~~to correct a violation.~~

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

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

18 ~~(a) The gravity of the violation, including the~~
19 ~~probability that death or serious physical or emotional harm~~
20 ~~to a resident will result or has resulted, the severity of the~~
21 ~~action or potential harm, and the extent to which the~~
22 ~~provisions of the applicable statutes or rules were violated.~~

23 ~~(b) Actions taken by the owner or administrator to~~
24 ~~correct violations.~~

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

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

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

29 (1)(3) Each violation of this part and adopted rules
30 shall be classified according to the nature of the violation
31 and the gravity of its probable effect on facility residents.

1 The agency shall indicate the classification ~~of each violation~~
2 on the written face ~~of the~~ notice of the violation as follows:

3 (a) Class "I" 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 present an imminent danger to the residents or
7 guests of the facility or a substantial probability that death
8 or serious physical or emotional harm would result therefrom.
9 The condition or practice constituting a class I violation
10 shall be abated or eliminated within 24 hours, unless a fixed
11 period, as determined by the agency, is required for
12 correction. A class I violation is subject to an
13 administrative fine ~~a civil penalty~~ in an amount not less than
14 \$1,000 and not exceeding ~~\$10,000~~ \$5,000 for each violation. A
15 fine may be levied notwithstanding the correction of the
16 violation.

17 (b) Class "II" violations are those conditions or
18 occurrences related to the operation and maintenance of a
19 facility or to the personal care of residents which the agency
20 determines directly threaten the physical or emotional health,
21 safety, or security of the facility residents, other than
22 class I violations. A class II violation is subject to an
23 administrative fine ~~a civil penalty~~ in an amount not less than
24 \$500 and not exceeding ~~\$5,000~~ \$1,000 for each violation. A
25 citation for a class II violation shall specify the time
26 within which the violation is required to be corrected. If a
27 class II violation is corrected within the time specified, no
28 fine ~~civil penalty~~ may be imposed, unless it is a repeated
29 offense.

30 (c) Class "III" violations are those conditions or
31 occurrences related to the operation and maintenance of a

1 facility or to the personal care of residents which the agency
2 determines indirectly or potentially threaten the physical or
3 emotional health, safety, or security of facility residents,
4 other than class I or class II violations. A class III
5 violation is subject to an administrative fine ~~a civil penalty~~
6 of not less than \$100 and not exceeding ~~\$1,000~~\$500 for each
7 violation. A citation for a class III violation shall specify
8 the time within which the violation is required to be
9 corrected. If a class III violation is corrected within the
10 time specified, no fine ~~civil penalty~~ may be imposed, unless
11 it is a repeated offense.

12 (d) Class "IV" violations are those conditions or
13 occurrences related to the operation and maintenance of a
14 building or to required reports, forms, or documents that do
15 not have the potential of negatively affecting residents.
16 These violations are of a type that the agency determines do
17 not threaten the health, safety, or security of residents of
18 the facility. A facility that does not correct a class IV
19 violation within the time ~~limit~~ specified in the
20 agency-approved corrective action plan is subject to an
21 administrative fine ~~a civil penalty~~ of not less than \$50 nor
22 more than \$200 for each violation. Any class IV violation
23 that is corrected during the time an agency survey is being
24 conducted will be identified as an agency finding and not as a
25 violation.

26 ~~(2)(4)~~ The agency may set and levy a fine not to
27 exceed ~~\$1,000~~\$500 for each violation which cannot be
28 classified according to subsection ~~(1)(3)~~. ~~In no event may~~
29 Such finer ~~fine~~ in the aggregate may not exceed\$10,000 per
30 survey~~\$5,000~~.

31

1 (3) In determining if a penalty is to be imposed and
2 in fixing the amount of the fine, the agency shall consider
3 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 laws 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 (4) Each day of continuing violation after the date
16 fixed for termination of the violation, as ordered by the
17 agency, constitutes an additional, separate, and distinct
18 violation.

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

26 (6) For fines that are upheld following administrative
27 or judicial review, the violator shall pay the fine, plus
28 interest at the rate as specified in s. 55.03, for each day
29 beyond the date set by the agency for payment of the fine.

30 (7) Except as provided in subsection (8), any facility
31 that continues to operate without having applied for a license

1 10 days after agency notification is subject to a \$1,000 fine.
2 Each day beyond 20 days after agency notification constitutes
3 a separate violation and the facility is subject to a fine of
4 \$500 per day.

5 (8) Unlicensed facilities whose owner or administrator
6 concurrently operates a licensed facility, has previously
7 operated a licensed facility, or has been employed in a
8 licensed facility shall immediately be subject to an
9 administrative fine of \$5,000 upon agency notification. Each
10 day that a facility continues to operate without having
11 applied for a license within 10 working days after agency
12 notification constitutes a separate violation, and such
13 facility shall be subject to a fine of \$500 per day
14 retroactive to the date of agency notification.

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

19 (10) In addition to any administrative fines imposed,
20 the agency may assess a survey fee, equal to the lesser of one
21 half of the facility's biennial license and bed fee or \$500,
22 to cover the cost of conducting initial complaint
23 investigations that result in the finding of a violation that
24 was the subject of the complaint or monitoring visits
25 conducted under s. 400.428(3)(c) to verify the correction of
26 the violations.

27 (11) The agency, as an alternative to or in
28 conjunction with an administrative action against a facility
29 for violations of this part and adopted rules, shall make a
30 reasonable attempt to discuss each violation and recommended
31 corrective action with the owner or administrator of the

1 facility, prior to written notification. The agency, instead
2 of fixing a period within which the facility shall enter into
3 compliance with standards, may request a plan of corrective
4 action from the facility which demonstrates a good-faith
5 effort to remedy each violation by a specific date, subject to
6 the approval of the agency.

7 (12)(5) Administrative fines ~~Civil penalties~~ paid by
8 any facility under this section ~~the provisions of subsection~~
9 ~~(3)~~ shall be deposited into the Health Care Trust Fund and
10 expended as provided in s. 400.418.

11 (13)(6) The agency shall develop and disseminate an
12 annual list of all facilities sanctioned or fined \$5,000 or
13 more ~~in excess of \$500~~ for violations of state standards, the
14 number and class of violations involved, the penalties
15 imposed, and the current status of cases. The list shall be
16 disseminated, at no charge, to the Department of Elderly
17 Affairs, the Department of Health ~~and Rehabilitative Services,~~
18 the Department of Children and Family Services, the area
19 agencies on aging, the Statewide Human Rights Advocacy
20 Committee, and the state and district nursing home ~~and~~
21 ~~long-term care facility~~ ombudsman councils. The Department of
22 Children and Family Services shall disseminate the list to
23 service providers under contract to the department who are
24 responsible for referring persons to a facility for residency.
25 The agency may charge a fee commensurate with the cost of
26 printing and postage to other interested parties requesting a
27 copy of this list.

28 Section 14. Subsection (2) of section 400.4195,
29 Florida Statutes, is amended to read:

30 400.4195 Rebates prohibited; penalties.--

31

1 (2) A violation of this section shall be considered
2 patient brokering and is punishable as provided in s. 817.505
3 ~~The department, in consultation with the agency, shall adopt~~
4 ~~rules which assess administrative penalties for acts~~
5 ~~prohibited by subsection (1).~~

6 Section 15. Paragraph (a) of subsection (1) of section
7 400.422, Florida Statutes, is amended to read:

8 400.422 Receivership proceedings.--

9 (1) As an alternative to or in conjunction with an
10 injunctive proceeding, the agency may petition a court of
11 competent jurisdiction for the appointment of a receiver, if
12 suitable alternate placements are not available, when any of
13 the following conditions exist:

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

17 Section 16. Section 400.4256, Florida Statutes, is
18 created to read:

19 400.4256 Assistance with self-administration of
20 medication.--

21 (1) For the purposes of this section, the term:

22 (a) "Informed consent" means advising the resident, or
23 the resident's surrogate, guardian, or attorney in fact, that
24 an assisted living facility is not required to have a licensed
25 nurse on staff, that the resident may be receiving assistance
26 with self-administration of medication from an unlicensed
27 person, and that such assistance, if provided by an unlicensed
28 person, will or will not be overseen by a licensed nurse.

29 (b) "Unlicensed person" means an individual not
30 currently licensed to practice nursing or medicine who is
31 employed by or under contract to an assisted living facility

1 and who has received training with respect to assisting with
2 the self-administration of medication in an assisted living
3 facility as provided under s. 400.452 prior to providing such
4 assistance as described in this section.

5 (2) Residents who are capable of self-administering
6 their own medications without assistance shall be encouraged
7 and allowed to do so. However, an unlicensed person may,
8 consistent with a dispensed prescription's label or the
9 package directions of an over-the-counter medication, assist a
10 resident whose condition is medically stable with the
11 self-administration of routine, regularly scheduled
12 medications that are intended to be self-administered.
13 Assistance with self-medication by an unlicensed person may
14 occur only upon a documented request by, and the written
15 informed consent of, a resident or the resident's surrogate,
16 guardian, or attorney in fact. For the purposes of this
17 section, self-administered medications include both legend and
18 over-the-counter oral dosage forms, topical dosage forms and
19 topical ophthalmic, otic, and nasal dosage forms including
20 solutions, suspensions, sprays, and inhalers.

21 (3) Assistance with self-administration of medication
22 includes:

23 (a) Taking the medication, in its previously
24 dispensed, properly labeled container, from where it is
25 stored, and bringing it to the resident.

26 (b) In the presence of the resident, reading the
27 label, opening the container, removing a prescribed amount of
28 medication from the container, and closing the container.

29 (c) Placing an oral dosage in the resident's hand or
30 placing the dosage in another container and helping the
31 resident by lifting the container to his or her mouth.

- 1 (d) Applying topical medications.
- 2 (e) Returning the medication container to proper
3 storage.
- 4 (f) Keeping a record of when a resident receives
5 assistance with self-administration under this section.
- 6 (4) Assistance with self-administration does not
7 include:
- 8 (a) Mixing, compounding, converting, or calculating
9 medication doses, except for measuring a prescribed amount of
10 liquid medication or breaking a scored tableted or crushing a
11 tablet as prescribed.
- 12 (b) The preparation of syringes for injection or the
13 administration of medications by any injectable route.
- 14 (c) Administration of medications through intermittent
15 positive pressure breathing machines or a nebulizer.
- 16 (d) Administration of medications by way of a tube
17 inserted in a cavity of the body.
- 18 (e) Administration of parenteral preparations.
- 19 (f) Irrigations or debriding agents used in the
20 treatment of a skin condition.
- 21 (g) Rectal, urethral, or vaginal preparations.
- 22 (h) Medications ordered by the physician or health
23 care professional with prescriptive authority to be given "as
24 needed," unless the order is written with specific parameters
25 that preclude independent judgment on the part of the
26 unlicensed person, and at the request of a competent resident.
- 27 (i) Medications for which the time of administration,
28 the amount, the strength of dosage, the method of
29 administration, or the reason for administration requires
30 judgment or discretion on the part of the unlicensed person.
- 31

1 (5) Assistance with the self-administration of
2 medication by an unlicensed person as described in this
3 section shall not be considered administration as defined in
4 s. 465.003.

5 (6) The department may by rule establish facility
6 procedures and interpret terms as necessary to implement this
7 section.

8 Section 17. Subsection (3) of section 400.428, Florida
9 Statutes, is amended to read:

10 400.428 Resident bill of rights.--

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

15 (b) In order to determine whether the facility is
16 adequately protecting residents' rights, the biennial survey
17 ~~inspection of the facility~~ shall include private informal
18 conversations with a sample of residents and consultation with
19 the ombudsman council in the planning and service area, ~~as~~
20 ~~defined in part II,~~ in which the facility is located to
21 discuss residents' experiences within the facility ~~with~~
22 ~~respect to rights specified in this section and general~~
23 ~~compliance with standards.~~

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

30 (d) The agency may conduct periodic followup
31 inspections as necessary to monitor the compliance of

1 facilities with a history of any class I, class II, or class
2 III violations that threaten the health, safety, or security
3 of residents.

4 ~~(e)(d)~~ The agency may conduct complaint investigations
5 as warranted to investigate any allegations of noncompliance
6 with requirements required under this part or rules adopted
7 ~~promulgated~~ under this part.

8 Section 18. Section 400.442, Florida Statutes, is
9 amended to read:

10 400.442 Pharmacy and dietary services.--

11 (1) ~~Notwithstanding s. 400.419,~~Any assisted living
12 facility in which the agency has documented a class I or class
13 II deficiency or uncorrected class III deficiencies regarding
14 medicinal drugs or over-the-counter preparations, including
15 their storage, use, delivery, or administration,or dietary
16 services, or both, during a biennial survey or a monitoring
17 visit or an investigation in response to a complaint, shall,
18 in addition to or as an alternative to any penalties imposed
19 under s. 400.419,be required to employ the consultant
20 services of a licensed pharmacist, a licensed registered
21 nurse,or a registered or licensed dietitian, ~~or both,~~as
22 applicable. The consultant shall ~~provide onsite consultation~~
23 ~~and shall continue with,~~ at a minimum, provide onsite
24 quarterly consultation until the inspection team from the
25 agency determines that such consultation services are no
26 longer required.

27 (2) A corrective-action plan for deficiencies related
28 to assistance with the self-administration of medication or
29 the administration of medication must be developed and
30 implemented by the facility within 48 hours after notification
31

1 of such deficiency, or sooner if the deficiency is determined
2 by the agency to be life-threatening.

3 ~~(3)(2)~~ The agency shall employ at least two
4 pharmacists licensed pursuant to chapter 465 among its
5 personnel who biennially inspect assisted living facilities
6 licensed under this part, to participate in biennial
7 inspections or consult with the agency regarding deficiencies
8 relating to medicinal drugs or over-the-counter preparations,
9 ~~including, but not limited to, their storage, use, delivery,~~
10 ~~or administration. A corrective action plan for deficiencies~~
11 ~~related to the administration or supervision of medication~~
12 ~~must be developed and implemented within 48 hours after~~
13 ~~notification of the deficiency, or sooner if the deficiency is~~
14 ~~determined by the agency to be life threatening.~~

15 Section 19. Section 400.452, Florida Statutes, is
16 amended to read:

17 400.452 Staff training and educational programs; core
18 educational requirement.--

19 (1) The department shall provide, or cause to be
20 provided, training and educational programs for the
21 administrators and ~~such~~ other assisted living facility staff
22 ~~as are defined by the department~~ to better enable them to
23 appropriately respond to the needs of residents, to maintain
24 resident care and facility standards, and to meet licensure
25 requirements.

26 (2) The department shall also establish a core
27 educational requirement to be used in these programs.
28 Successful completion of the core educational requirement must
29 include successful completion of a competency test. Programs
30 must be provided by the department or by a provider approved

31

1 by the department at least quarterly. The core educational
2 requirement must cover at least the following topics:

3 (a) State law and rules relating to ~~on~~ assisted living
4 facilities, ~~including lifesafety requirements and procedures.~~

5 (b) Resident rights and identifying and reporting
6 abuse, neglect, and exploitation.

7 (c) Special needs of elderly persons, persons with
8 mental illness, and persons with developmental disabilities
9 and how to meet those needs.

10 (d) Nutrition and food service, including acceptable
11 sanitation practices for preparing, storing, and serving food.

12 (e) Medication management, recordkeeping, and proper
13 techniques for assisting residents with self-administered
14 medication, ~~including recordkeeping.~~

15 (f) Firesafety requirements, including fire evacuation
16 drill procedures and other emergency procedures ~~drills.~~

17 (g) Care of persons with Alzheimer's disease and ~~other~~
18 related disorders.

19 (3) Such a program must be available at least
20 quarterly in each planning and service area ~~district~~ of the
21 department ~~of Health and Rehabilitative Services.~~ The
22 competency test must be developed by the department in
23 conjunction with the agency and providers ~~and must be~~
24 ~~available for use by January 1, 1997. Beginning July 1, 1997,~~
25 A new facility administrator must complete the core
26 educational requirement including the competency test within 3
27 months after being employed as an administrator. Failure to
28 complete a core educational requirement specified in this
29 subsection is a violation of this part and subjects the
30 violator to an administrative fine ~~a penalty~~ as prescribed in
31 s. 400.419. Administrators licensed in accordance with chapter

1 468, part II, are exempt from this requirement. Other licensed
2 professionals may be exempted, as determined by the department
3 by rule.

4 (4) Administrators are required to participate in
5 continuing education for a minimum of 12 contact hours every 2
6 years ~~as specified by rule of the department.~~

7 (5) Staff involved with the management of medications
8 and assisting with the self-administration of medications
9 under s. 400.4256 must complete a minimum of 4 hours of
10 training pursuant to a curriculum developed by the department
11 and provided by a registered nurse, licensed pharmacist, or
12 department staff. ~~Administrators and staff of facilities more~~
13 ~~than 10 percent of whose residents are mental health residents~~
14 ~~shall participate in training in the care and supervision of~~
15 ~~such residents as specified by rule of the department.~~

16 (6) Other facility staff shall participate in training
17 relevant to their job duties as specified by rule of the
18 department.

19 (7) ~~Any facility more than 90 percent of whose~~
20 ~~residents receive monthly optional supplementation payments is~~
21 ~~not required to pay for the training and education programs~~
22 ~~provided under this section. A facility that has one or more~~
23 ~~such residents shall pay a reduced fee that is proportional to~~
24 ~~the percentage of such residents in the facility.~~ A facility
25 that does not have any residents who receive monthly optional
26 supplementation payments must pay a reasonable fee, ~~as~~
27 ~~established by the department,~~ for such training and education
28 programs. A facility that has one or more such residents shall
29 pay a reduced fee that is proportional to the percentage of
30 such residents in the facility. Any facility more than 90
31 percent of whose residents receive monthly optional state

1 supplementation payments is not required to pay for the
2 training and continuing education programs required under this
3 section.

4 (8) If the department or the agency determines that
5 there are problems in a facility that could be reduced through
6 specific staff training or education beyond that already
7 required under this section, the department or the agency may
8 require, and provide, or cause to be provided, the training or
9 education of any personal care staff in the facility.

10 (9) The department shall adopt rules to establish
11 training programs, standards and curriculum for training,
12 staff training requirements, procedures for approving training
13 programs, and training fees.

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

16 400.474 Denial, suspension, revocation of license;
17 injunction; grounds.--

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

21 (c) Knowingly providing home health services in an
22 unlicensed assisted living facility or unlicensed adult
23 family-care home, unless the home health agency or employee
24 reports the unlicensed facility or home to the agency within
25 72 hours after providing the services.

26 Section 21. Subsection (2) of section 400.618, Florida
27 Statutes, is amended to read:

28 400.618 Definitions.--As used in this part ~~ss.~~
29 ~~400.616-400.629~~, the term:

30 (2) "Adult family-care home" means a full-time,
31 family-type living arrangement, in a private home, under which

1 a person who owns or rents the home provides ~~or persons~~
2 ~~provide~~, for profit or not for profit, room, board, and one or
3 more personal services, on a 24-hour basis ~~as appropriate for~~
4 ~~the level of functional impairment~~, for no more than five aged
5 persons or disabled adults who are not relatives. The
6 following family-type living arrangements ~~establishments~~ are
7 not required to be licensed as an adult family-care home
8 ~~homes~~:

9 (a) An arrangement whereby the person who owns or
10 rents the home provides room, board, and ~~establishment that~~
11 ~~provides~~ personal services for not more than two ~~three or~~
12 ~~fewer~~ adults who do not receive optional state supplementation
13 under s. 409.212, ~~but that does not hold itself out to the~~
14 ~~public to be an establishment that regularly provides such~~
15 services. The person who provides the housing, meals, and
16 personal services must own or rent the home and reside
17 therein.

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

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

24 Section 22. Paragraph (h) of subsection (3) of section
25 408.036, Florida Statutes, is amended to read:

26 408.036 Projects subject to review.--

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

30 (h) For the establishment of a Medicare-certified home
31 health agency by a facility certified under chapter 651; a

1 retirement community, as defined in s. 400.404(2)(g)~~s.~~
2 ~~400.404(2)(e)~~; or a residential facility that serves only
3 retired military personnel, their dependents, and the
4 surviving dependents of deceased military personnel.
5 Medicare-reimbursed home health services provided through such
6 agency shall be offered exclusively to residents of the
7 facility or retirement community or to residents of facilities
8 or retirement communities owned, operated, or managed by the
9 same corporate entity. Each visit made to deliver
10 Medicare-reimbursable home health services to a home health
11 patient who, at the time of service, is not a resident of the
12 facility or retirement community shall be a deceptive and
13 unfair trade practice and constitutes a violation of ss.
14 501.201-501.213.

15
16 A request for exemption under this subsection may be made at
17 any time and is not subject to the batching requirements of
18 this section.

19 Section 23. Subsection (3) is added to section
20 394.4574, Florida Statutes, to read:

21 394.4574 Department responsibilities for a mental
22 health resident who resides in an assisted living facility
23 that holds a limited mental health license.--

24 (3) The Secretary of Children and Family Services, in
25 consultation with the Agency for Health Care Administration,
26 shall annually require each district administrator to develop,
27 with community input, detailed plans that demonstrate how the
28 district will ensure the provision of state-funded mental
29 health and substance-abuse-treatment services to residents of
30 assisted living facilities that hold a limited mental health
31 license. These plans must be consistent with the alcohol, drug

1 abuse, and mental health district plan developed pursuant to
2 s. 394.75 and must address case-management services; access to
3 consumer-operated drop-in centers; access to services during
4 evenings, weekends, and holidays; supervision of the clinical
5 needs of the residents; and access to emergency psychiatric
6 care.

7 Section 24. This act shall take effect October 1,
8 1998.

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