

By Representative Fischer

1 A bill to be entitled
2 An act relating to assisted living facilities;
3 amending s. 400.402, F.S.; revising
4 definitions; amending s. 400.404, F.S.;
5 providing additional exemptions from licensure
6 as an assisted living facility; amending ss.
7 400.407 and 400.408, F.S.; reorganizing and
8 revising provisions relating to unlawful
9 facilities; providing penalties; requiring
10 report of unlicensed facilities by health care
11 practitioners and facility owners or
12 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, and 400.036, F.S.; correcting
11 references and cross references; amending s.
12 400.419, F.S.; revising procedures relating to
13 violations and penalties; increasing
14 administrative fines for specified classes of
15 violations; authorizing doubled fines under
16 certain circumstances; providing fines for
17 unlicensed operation of a facility and for
18 failure to apply for a change of ownership
19 license; authorizing a survey fee to cover the
20 cost of certain complaint investigations;
21 providing for corrective action plans to
22 correct violations; expanding dissemination of
23 information regarding facilities sanctioned or
24 fined; amending s. 400.428, F.S.; providing for
25 surveys to determine compliance with facility
26 standards and residents' rights; amending s.
27 400.474, F.S.; providing for disciplinary
28 action against a home health agency or employee
29 providing services in an unlicensed assisted
30 living facility or adult family-care home;
31 amending s. 400.618, F.S.; revising the

1 definition of "adult-family care home";
2 providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 400.402, Florida Statutes, is
7 amended to read:

8 400.402 Definitions.--When used in this part, ~~unless~~
9 ~~the context otherwise requires,~~the term:

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

13 (2) "Administrator" means an individual at least 21
14 years of age who is responsible for the operation and
15 maintenance ~~who has general administrative charge~~ of an
16 assisted living facility.

17 ~~(3) "Assisted living facility," hereinafter referred~~
18 ~~to as "facility," means any building or buildings, section of~~
19 ~~a building, or distinct part of a building, residence, private~~
20 ~~home, boarding home, home for the aged, or other place,~~
21 ~~whether operated for profit or not, which undertakes through~~
22 ~~its ownership or management to provide, for a period exceeding~~
23 ~~24 hours, housing, food service, and one or more personal~~
24 ~~services for four or more adults, not related to the owner or~~
25 ~~administrator by blood or marriage, who require such services;~~
26 ~~or to provide extended congregate care, limited nursing~~
27 ~~services, or limited mental health services, when specifically~~
28 ~~licensed to do so pursuant to s. 400.407, unless the facility~~
29 ~~is licensed as an adult family care home. A facility offering~~
30 ~~personal services, extended congregate care, limited nursing~~
31 ~~services, or limited mental health services for fewer than~~

1 ~~four adults is within the meaning of this definition if it~~
2 ~~formally or informally advertises to or solicits the public~~
3 ~~for residents or referrals and holds itself out to the public~~
4 ~~to be an establishment which regularly provides such services,~~
5 ~~unless the facility is licensed as an adult family care home.~~

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

8 (4)~~(5)~~ "Aging in place" or "age in place" means the
9 process of providing increased or adjusted services to a
10 person to compensate for by which a person chooses to remain
11 in a residential environment despite the physical or mental
12 decline that may occur with the aging process, in order to
13 maximize. ~~For aging in place to occur, needed services are~~
14 ~~added, increased, or adjusted to compensate for the physical~~
15 ~~or mental decline of the individual, while maximizing the~~
16 person's dignity and independence and permit them to remain in
17 a familiar, noninstitutional, residential environment for as
18 long as possible. Such services may be provided by facility
19 staff, volunteers, family, or friends, or through contractual
20 arrangements with a third party.

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

24 (5)~~(7)~~ "Assistance with activities of daily living"
25 means direct physical assistance with activities of daily
26 living as defined in subsection (1).

27 (6) "Assisted living facility" means any building or
28 buildings, section or distinct part of a building, private
29 home, boarding home, home for the aged, or other residential
30 facility, whether operated for profit or not, which undertakes
31 through its ownership or management to provide housing, meals,

1 and one or more personal services on a 24-hour basis to one or
2 more adults who are not relatives of the owner or
3 administrator, and which may in addition provide extended
4 congregate care or limited nursing services, or house mental
5 health residents, when specifically licensed to do so under
6 this part.

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

12 (8)~~(9)~~ "Community living support plan" means a written
13 document prepared by a mental health resident and the mental
14 health case manager of that resident in consultation with the
15 administrator of the facility or the administrator's designee.
16 A copy must be provided to the administrator. The plan must
17 include information about the supports, services, and special
18 needs of the resident which enable the resident to live in the
19 assisted living facility.

20 (9)~~(10)~~ "Cooperative agreement" means a written
21 statement of understanding between a mental health care
22 services provider and the administrator of the assisted living
23 facility with a limited mental health license in which a
24 mental health resident is living. The agreement specifies
25 directions for accessing emergency and after-hours care for
26 the mental health resident and a method by which the staff of
27 the facility can recognize and respond to the signs and
28 symptoms particular to that mental health resident that
29 indicate the need for professional services. The cooperative
30 agreement may be a component of the community living support
31 plan.

1 (10)~~(11)~~ "Department" means the Department of Elderly
2 Affairs.
3 (11)~~(12)~~ "Emergency" means a situation, physical
4 condition, or method of operation which presents imminent
5 danger of death or serious physical or mental harm to facility
6 residents.
7 (12)~~(13)~~ "Extended congregate care" means acts beyond
8 those authorized in subsection(17)~~(16)~~that may be performed
9 pursuant to chapter 464 by persons licensed thereunder while
10 carrying out their professional duties, and other supportive
11 services which may be specified by rule. The purpose of such
12 services is to enable residents to age in place in a
13 residential environment despite mental or physical limitations
14 that might otherwise disqualify them from residency in a
15 facility licensed under this part.
16 (13)~~(14)~~ "Guardian" means a person to whom the law has
17 entrusted the custody and control of the person or property,
18 or both, of a person who has been legally adjudged
19 incapacitated.
20 (14)~~(15)~~ "Limited nursing services" means acts that
21 may be performed pursuant to chapter 464 by persons licensed
22 thereunder while carrying out their professional duties but
23 limited to those acts which the department specifies by rule.
24 Acts which may be specified by rule as allowable limited
25 nursing services shall be for persons who meet the admission
26 criteria established by the department for assisted living
27 facilities and shall not be complex enough to require 24-hour
28 nursing supervision and may include such services as the
29 application and care of routine dressings, and care of casts,
30 braces, and splints.
31

1 (15)~~(16)~~ "Managed risk" means the process by which the
2 facility staff discuss the service plan and the needs of the
3 resident with the resident and, if applicable, the resident's
4 representative or designee or the resident's surrogate,
5 guardian, or attorney in fact, in such a way that the
6 consequences of a decision, including any inherent risk, are
7 explained to all parties and reviewed periodically in
8 conjunction with the service plan, taking into account changes
9 in the resident's status and the ability of the facility to
10 respond accordingly.

11 (16)~~(17)~~ "Mental health resident" means an individual
12 who receives social security disability income due to a mental
13 disorder as determined by the Social Security Administration
14 or receives supplemental security income due to a mental
15 disorder as determined by the Social Security Administration
16 and receives optional state supplementation.

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

27 (18)~~(19)~~ "Physical restraint" means a device which
28 physically limits, restricts, or deprives an individual of
29 movement or mobility, including, but not limited to, a
30 half-bed rail, a full-bed rail, a geriatric chair, and a posey
31 restraint. The term "physical restraint" shall also include

1 any device which was not specifically manufactured as a
2 restraint but which has been altered, arranged, or otherwise
3 used for this purpose. The term shall not include bandage
4 material used for the purpose of binding a wound or injury.

5 (19) "Relative" means an individual who is the father,
6 mother, son, daughter, brother, sister, grandmother,
7 grandfather, great-grandmother, great-grandfather, grandson,
8 granddaughter, uncle, aunt, first cousin, nephew, niece,
9 husband, wife, father-in-law, mother-in-law, son-in-law,
10 daughter-in-law, brother-in-law, sister-in-law, stepson,
11 stepdaughter, stepbrother, stepsister, half-brother, or
12 half-sister of an owner or administrator.

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

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

26 (22) "Service plan" means a written plan, developed
27 and agreed upon by the resident and, if applicable, the
28 resident's representative or designee or the resident's
29 surrogate, guardian, or attorney in fact, if any, and the
30 administrator or designee representing the facility, which
31 addresses the unique physical and psychosocial needs,

1 abilities, and personal preferences of each resident receiving
2 extended congregate care services. The plan shall include a
3 brief written description, in easily understood language, of
4 what services shall be provided, who shall provide the
5 services, when the services shall be rendered, and the
6 purposes and benefits of the services.

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

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

21 (25) "Supervision of self-administered medication"
22 means reminding residents to take medication, opening bottle
23 caps for residents, opening prepackaged medication for
24 residents, reading the medication label to residents,
25 observing residents while they take medication, checking the
26 self-administered dosage against the label of the container,
27 reassuring residents that they have obtained and are taking
28 the dosage as prescribed, keeping daily records of when
29 residents receive supervision pursuant to this subsection, and
30 immediately reporting noticeable changes in the condition of a
31 resident to the resident's physician and the resident's case

1 manager, if one exists. Residents who are capable of
2 administering their own medication shall be allowed to do so.

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

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

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

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

26 400.404 Facilities to be licensed; exemptions.--

27 (2) The following are exempt from licensure under this
28 part:

29 (a) Any facility, institution, or other place operated
30 by the Federal Government or any agency of the Federal
31 Government.

1 (b) Any facility or part of a facility licensed under
2 chapter 393 or chapter 394.

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

5 (d) Any person who provides housing, meals, and one or
6 more personal services on a 24-hour basis in the person's own
7 home and is not required to be licensed as an adult
8 family-care home under part VII.

9 (e)~~(c)~~ Any home or facility approved by the United
10 States Department of Veterans Affairs as a residential care
11 home wherein care is provided exclusively to three or fewer
12 veterans.

13 (f)~~(d)~~ Any facility that has been incorporated in this
14 state for 50 years or more on or before July 1, 1983, and the
15 board of directors of which is nominated or elected by the
16 residents, until the facility is sold or its ownership is
17 transferred; or any facility, with improvements or additions
18 thereto, which has existed and operated continuously in this
19 state for 60 years or more on or before July 1, 1989, is
20 directly or indirectly owned and operated by a nationally
21 recognized fraternal organization, is not open to the public,
22 and accepts only its own members and their spouses as
23 residents.

24 (g)~~(e)~~ Any facility certified under chapter 651, or a
25 retirement community, may provide services authorized under
26 this part or part IV of this chapter to its residents who live
27 in single-family homes, duplexes, quadplexes, or apartments
28 located on the campus without obtaining a license to operate
29 an assisted living facility if residential units within such
30 buildings are used by residents who do not require staff
31 supervision for that portion of the day when personal services

1 are not being delivered and the owner obtains a home health
2 license to provide such services. However, any building or
3 distinct part of a building on the campus that is designated
4 for persons who receive personal services and require
5 supervision beyond that which is available while such services
6 are being rendered must be licensed in accordance with this
7 part. If a facility provides personal services to residents
8 who do not otherwise require supervision and the owner is not
9 licensed as a home health agency, the buildings or distinct
10 parts of buildings where such services are rendered must be
11 licensed under this part. A resident of a facility that
12 obtains a home health license may contract with a home health
13 agency of his or her choice, provided that the home health
14 agency provides liability insurance and workers' compensation
15 coverage for its employees. Facilities covered by this
16 exemption may establish policies that give residents the
17 option of contracting for services and care beyond that which
18 is provided by the facility to enable them to age in place.
19 For purposes of this section, a retirement community consists
20 of a facility licensed under this part or under part II, and
21 apartments designed for independent living located on the same
22 campus.

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

25 400.407 License required; fee, display.--

26 (1) A license issued by the agency is required for an
27 assisted living facility operating in this state.

28 ~~(a) It is unlawful to operate or maintain a facility~~
29 ~~without first obtaining from the agency a license authorizing~~
30 ~~such operation.~~

31

580-111-98

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

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

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

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

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

28 ~~6. If the agency determines that an owner is operating~~
29 ~~or maintaining a facility without obtaining a license~~
30 ~~authorizing such operation and determines that a condition~~
31 ~~exists in the facility that poses a threat to the health,~~

1 ~~safety, or welfare of a resident of the facility, the owner~~
2 ~~commits neglect as defined in s. 415.102 and is subject to the~~
3 ~~same actions and penalties specified in ss. 400.414 and~~
4 ~~400.419 for a negligent act seriously affecting the health,~~
5 ~~safety, or welfare of a resident of the facility.~~

6 Section 4. Section 400.408, Florida Statutes, is
7 amended to read:

8 400.408 Unlicensed facilities; referral of person for
9 residency to unlicensed facility; penalties penalty;
10 verification of licensure status.--

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

14 (a)1. Except as provided under subparagraph 2., any
15 person who owns, operates, or maintains an unlicensed assisted
16 living facility commits a felony of the third degree,
17 punishable as provided in s. 775.082, s. 775.083, or s.
18 775.084. Any person who commits a second or subsequent
19 violation under this paragraph commits a second degree felony
20 punishable as provided under s. 775.082, s. 775.083, or s.
21 775.084. Application for licensure within 10 working days
22 after notification shall be an affirmative defense to this
23 felony violation.

24 2. Any person who owns, operates, or maintains an
25 unlicensed assisted living facility due to a change in this
26 part or a modification in department policy or rule within 6
27 months after the effective date of this act and who, within 10
28 working days after receiving notification from the agency,
29 fails to cease operation or apply for a license under this
30 part commits a felony of the third degree, punishable as
31 provided in s. 775.082, s. 775.083, or s. 775.084.

1 (b) Any facility which fails to become licensed or
2 ceases operation after agency notification may be fined for
3 each day of noncompliance pursuant to s. 400.419.

4 (c) When an owner has an interest in more than one
5 assisted living facility, and fails to license any one of
6 these facilities, the agency may revoke the license or impose
7 a moratorium on any or all of the licensed facilities until
8 such time as the unlicensed facility is licensed or ceases
9 operation.

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

17 (e) Any health care practitioner licensed by the
18 Department of Health, or any owner or administrator of a
19 facility licensed by the agency, who has knowledge of an
20 unlicensed assisted living facility and fails to report that
21 facility to the agency or law enforcement entity shall cause
22 the licensed health care practitioner or licensed facility to
23 be subject to disciplinary action by the appropriate licensing
24 department, agency, or board.

25 (2)(1) It is unlawful to knowingly refer a person for
26 residency to an unlicensed ~~facility that provides services~~
27 ~~that may only be provided by an~~ assisted living facility; to
28 an assisted living facility the license of which is under
29 denial or has been suspended or revoked; or to an assisted
30 living ~~a~~ facility that has a moratorium on admissions. Any
31 person who violates this subsection commits ~~is guilty of a~~

1 noncriminal violation, punishable by a fine not exceeding \$500
2 as provided in s. 775.083.

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

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

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

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

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

16 Section 5. Section 400.411, Florida Statutes, is
17 amended to read:

18 400.411 Initial application for license; provisional
19 license.--

20 (1) Application for license shall be made to the
21 agency on forms furnished by it and shall be accompanied by
22 the appropriate license fee. The agency may charge a
23 reasonable fee to cover the cost of duplication and postage
24 for all application forms and printed information provided.
25 ~~The application shall contain sufficient information, as~~
26 ~~required by rules of the department, to establish that the~~
27 ~~applicant can provide 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 that provides a source to establish~~
24 ~~the suitable character, financial stability, and competency of~~
25 ~~the applicant and of each person specified in the application~~
26 ~~under subparagraph (a)1. or subparagraph (a)2. who has at~~
27 ~~least a 10-percent interest in the firm, partnership,~~
28 ~~association, or corporation and, if applicable, of the~~
29 ~~administrator, including~~ The name and address of any long-term
30 care facility with which the applicant, or administrator, or
31 financial officer has been affiliated through ownership or

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

13 (d) A description and explanation of any exclusions,
14 permanent suspensions, or terminations of the applicant from
15 the Medicare or Medicaid programs. Proof of compliance with
16 requirements for disclosure of ownership and controlling
17 interest under the Medicaid or Medicare programs shall be
18 accepted in lieu of this submission.

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

24 ~~(e) The names and addresses of other persons of whom~~
25 ~~the agency may inquire as to the financial responsibility of~~
26 ~~the applicant.~~

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

1 ~~(g)~~ ~~Such other reasonable information as may be~~
2 ~~required by the agency to evaluate the ability of the~~
3 ~~applicant to meet the responsibilities entailed under this~~
4 ~~part.~~

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

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

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

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

17 ~~(4)(3)~~ The applicant shall furnish satisfactory proof
18 of financial ability to operate and conduct the facility in
19 accordance with the requirements of this part. ~~An applicant~~
20 ~~applying for an initial license shall submit a balance sheet~~
21 ~~setting forth the assets and liabilities of the owner and a~~
22 ~~statement projecting revenues, expenses, taxes, extraordinary~~
23 ~~items, and other credits or charges for the first 12 months of~~
24 ~~operation of the facility.~~

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

31

1 (6)~~(5)~~ The applicant shall provide proof of liability
2 insurance as defined in s. 624.605.

3 (7)~~(6)~~ If the applicant is a community residential
4 home, the applicant must provide proof that it has met the
5 requirements specified in chapter 419 ~~shall apply to community~~
6 ~~residential homes zoned single-family or multifamily.~~

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

12 (9)~~(8)~~ The applicant must furnish proof that the
13 facility has received a satisfactory firesafety inspection.
14 The local ~~fire marshal or other~~ authority having jurisdiction
15 or the State Fire Marshal must conduct the inspection within
16 30 days after ~~the~~ written request by the applicant. ~~If an~~
17 ~~authority having jurisdiction does not have a certified~~
18 ~~firesafety inspector, the State Fire Marshal shall conduct the~~
19 ~~inspection.~~

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

22 (11)~~(9)~~ A provisional license may be issued to an
23 applicant making initial application for licensure or making
24 application for a change of ownership. A provisional license
25 shall be limited in duration to a specific period of time not
26 to exceed 6 months, as determined by the agency.

27 (12)~~(10)~~ No county or municipality shall issue an
28 occupational license which is being obtained for the purpose
29 of operating a facility regulated under this part without
30 first ascertaining that the applicant has been licensed to
31 operate such facility at the specified location or locations

1 by the agency. The agency shall furnish to local agencies
2 responsible for issuing occupational licenses sufficient
3 instruction for making such ~~the above required~~ determinations.

4 (13) The department may by rule establish application
5 procedures, identify forms, and specify documentation
6 necessary to implement this section.

7 Section 6. Section 400.414, Florida Statutes, is
8 amended to read:

9 400.414 Denial, revocation, or suspension of license;
10 imposition of administrative fine; grounds.--

11 (1) The agency may deny, revoke, or suspend any a
12 license issued under this part or impose an administrative
13 fine for any of the following actions by an assisted living
14 facility, any person subject to level 2 background screening
15 under s. 400.4174, or any facility employee:in the manner
16 ~~provided in chapter 120. At the chapter 120 hearing, the~~
17 ~~agency shall prove by a preponderance of the evidence that its~~
18 ~~actions are warranted.~~

19 ~~(2) Any of the following actions by a facility or its~~
20 ~~employee shall be grounds for action by the agency against a~~
21 ~~licensee:~~

22 (a) An intentional or negligent act seriously
23 affecting the health, safety, or welfare of a resident of the
24 facility.

25 (b) The determination by the agency that ~~the facility~~
26 ~~owner or administrator is not of suitable character or~~
27 ~~competency, or that the owner lacks the financial ability, to~~
28 ~~provide continuing adequate care to residents, pursuant to the~~
29 ~~information obtained through s. 400.411, s. 400.417, or s.~~
30 ~~400.434.~~

31

1 (c) Misappropriation or conversion of the property of
2 a resident of the facility.

3 (d) Failure to follow the criteria and procedures
4 provided under part I of chapter 394 relating to the
5 transportation, voluntary admission, and involuntary
6 examination of a facility resident.

7 (e) One or more class I, three or more class II, or
8 five or more repeated or recurring identical or similar class
9 III violations which are similar or identical to violations of
10 this part which were identified by the agency during the
11 previous survey last biennial inspection, monitoring visit, or
12 complaint investigation and which, in the aggregate, affect
13 the health, safety, or welfare of the facility residents.

14 (f) A determination that persons subject to level 2
15 background screening under s. 400.4174(1) do not meet the
16 screening standards of s. 435.04, or that the facility is
17 retaining an employee subject to level 1 background screening
18 standards under s. 400.4174(2) who does not meet the screening
19 standards of s. 435.03 and for whom exemptions from
20 disqualification have not been provided by the agency.

21 (g)(f) A confirmed report of adult abuse, neglect, or
22 exploitation, as defined in s. 415.102, which has been upheld
23 following a chapter 120 hearing or a waiver of such
24 proceedings where the perpetrator is an employee, volunteer,
25 administrator, or owner, or otherwise has access to the
26 residents of a facility, and the owner or administrator has
27 not taken action to remove the perpetrator. Exemptions ~~from~~
28 ~~disqualification~~ may be granted as set forth in s. 435.07. ~~No~~
29 ~~administrative action may be taken against the facility if the~~
30 ~~perpetrator is granted an exemption.~~

31 (h)(g) Violation of a moratorium.

1 ~~(i)(h)~~ Failure of the license applicant, the licensee
2 during relicensure, or ~~failure of~~ a licensee that holds a
3 provisional ~~an initial or change of ownership~~ license, to meet
4 minimum license ~~standards or the~~ requirements of ~~rules adopted~~
5 under this part, or related rules, at the time of license
6 application or renewal.

7 ~~(j)(i)~~ A fraudulent statement or omission of any
8 material fact on an application for a license or any other
9 document required by the agency, including the submission of a
10 license application that conceals the ownership interest of
11 any owner, officer, board member, partner, or shareholder who
12 may not meet the background screening requirements of s.
13 400.4174 that is signed and notarized.

14 ~~(k)(j)~~ An intentional or negligent life-threatening
15 act in violation of the uniform firesafety standards for
16 assisted living facilities or other firesafety standards
17 ~~established by the State Fire Marshal,~~ that threatens the
18 health, safety, or welfare of a resident of a facility, as
19 communicated to the agency by the local ~~State Fire Marshal, a~~
20 ~~local fire marshal, or other~~ authority having jurisdiction or
21 the State Fire Marshal.

22 ~~(l)~~ Exclusion, permanent suspension, or termination
23 from the Medicare or Medicaid programs.

24 ~~(m)~~ Operating any unlicensed facility or providing
25 without a license any service which must be licensed in this
26 state.

27
28 Administrative proceedings challenging agency action under
29 this subsection shall be reviewed on the basis of the facts
30 and conditions that resulted in the agency action.

31

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

3 (2)(4) Upon notification by the local State Fire
4 ~~Marshal, local fire marshal, or other~~ authority having
5 jurisdiction or the State Fire Marshal, the agency may deny or
6 revoke the license of an assisted living a facility that fails
7 to correct cited fire code violations ~~issued by the State Fire~~
8 ~~Marshal, a local fire marshal, or other authority having~~
9 ~~jurisdiction,~~that affect or threaten the health, safety, or
10 welfare of a resident of a facility.

11 (3)(5) The agency may deny a license to an applicant
12 who owns or owned 25 percent or more of, or operates or
13 operated, an assisted living, a facility which, during the 5
14 years prior to the application for a license, has had a
15 license denied, suspended, or revoked ~~pursuant to subsection~~
16 ~~(2)~~, or, during the 2 years prior to the application for a
17 license, has had a moratorium imposed on admissions, has had
18 an injunctive proceeding initiated against it, has had a
19 receiver appointed, was closed due to financial inability to
20 operate, or has an outstanding fine assessed under this part.

21 (4) The agency may deny a license to any applicant who
22 has had any state administrative action taken against the
23 applicant during the 2 years prior to the application for a
24 license, or has been previously found by any state licensing
25 or certifying board or agency to have violated professional
26 standards relating to licensure or certification.

27 (5) The agency may deny a license to any applicant
28 that has had a license issued by any state licensing or
29 certifying board or state agency denied, suspended, or
30 revoked, during the 5 years prior to the application for
31 licensure under this part.

1 (6) The agency shall deny or revoke the license of an
2 assisted living facility that has two or more class I
3 violations which 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 ~~(6) An action taken by the agency to suspend, deny, or~~
8 ~~revoke a facility's license under this part, in which the~~
9 ~~agency claims that the facility owner or an employee of the~~
10 ~~facility has threatened the health, safety, or welfare of a~~
11 ~~resident of the facility, shall, upon receipt of the~~
12 ~~facility's request for a hearing, be heard by the Division of~~
13 ~~Administrative Hearings of the Department of Management~~
14 ~~Services within 120 days after the request for a hearing,~~
15 ~~unless that time period is waived by both parties. The~~
16 ~~administrative law judge must render a decision within 30 days~~
17 ~~after the hearing.~~

18 (7) The agency shall provide to the Division of Hotels
19 and Restaurants of the Department of Business and Professional
20 Regulation, on a monthly basis, a list of those assisted
21 living facilities which have had their licenses denied,
22 suspended, or revoked or which are involved in an appellate
23 proceeding pursuant to s. 120.60 related to the denial,
24 suspension, or revocation of a license.

25 (8) When a notification of a license suspension,
26 revocation, or denial of a license renewal has been received,
27 that notice shall be posted and visible to the public at the
28 facility.

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

31

1 400.415 Moratorium on admissions; notice.--The agency
2 may impose an immediate moratorium on admissions to any
3 assisted living facility if ~~when~~ the agency determines that
4 any condition in the facility presents a threat to the health,
5 safety, or welfare of the residents in the facility.

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

11 (2) When a moratorium is placed on a facility, notice
12 of the moratorium shall be posted and visible to the public at
13 the facility.

14 (3) The department may by rule establish conditions
15 which constitute grounds for imposing a moratorium on a
16 facility and procedures for imposing and lifting a moratorium,
17 as necessary to implement this section.

18 Section 8. Section 400.417, Florida Statutes, is
19 amended to read:

20 400.417 Expiration of license; renewal; conditional
21 license.--

22 (1) Standard Biennial licenses issued for the
23 ~~operation of a facility~~, unless sooner suspended or revoked,
24 shall expire ~~automatically~~ 2 years from the date of issuance.
25 Limited nursing, extended congregate care, and limited mental
26 health licenses shall expire at the same time as the
27 facility's standard license, regardless of when issued.The
28 agency shall notify the facility by certified mail at least
29 120 days prior to the expiration of the license that a renewal
30 license relicensure is necessary to continue operation.
31 Ninety days prior to the expiration date, an application for

580-111-98

1 renewal shall be submitted to the agency. ~~A license shall be~~
2 ~~renewed upon the filing of an application on forms furnished~~
3 ~~by the agency if the applicant has first met the requirements~~
4 ~~established under this part and all rules promulgated under~~
5 ~~this part.~~The failure to file a timely renewal application
6 shall result in a late fee charged to the facility in an
7 amount equal to 50 percent of the current fee ~~in effect on the~~
8 ~~last preceding regular renewal date.~~ Late fees shall be
9 deposited into the Health Care Trust Fund as provided in s.
10 400.418. ~~The facility shall file with the application~~
11 ~~satisfactory proof of ability to operate and conduct the~~
12 ~~facility in accordance with the requirements of this part.~~

13 (2) A license shall be renewed within 90 days upon the
14 timely filing of an application on forms furnished by the
15 agency and the provision of satisfactory proof of ability to
16 operate and conduct the facility in accordance with the
17 requirements of this part and adopted rules, including An
18 ~~applicant for renewal of a license must furnish~~ proof that the
19 facility has received a satisfactory firesafety inspection,
20 conducted by the local ~~fire marshal or other~~ authority having
21 jurisdiction or the State Fire Marshal, within the preceding
22 12 months, and compliance with all the background screening
23 requirements specified in s. 400.4174.

24 (3) An applicant for renewal of a license who has
25 ~~complied on the initial license application with the~~
26 provisions of s. 400.411 with respect to proof of financial
27 ability to operate shall not be required to provide further
28 ~~proof of financial ability on renewal applications~~ unless the
29 facility or any other facility owned or operated in whole or
30 in part by the same person ~~or business entity~~ has demonstrated
31 financial instability as provided under s. 400.447(2)

1 ~~evidenced by bad checks, delinquent accounts, or nonpayment of~~
2 ~~withholding taxes, utility expenses, or other essential~~
3 ~~services~~ or unless the agency suspects that the facility is
4 not financially stable as a result of the annual survey or
5 complaints from the public or a report from the State
6 Long-Term Care Ombudsman Council established under s.
7 400.0067. Each facility must ~~shall~~ report to the agency any
8 adverse court action concerning the facility's financial
9 viability, within 7 days after its occurrence. The agency
10 shall have access to books, records, and any other financial
11 documents maintained by the facility to the extent necessary
12 to determine the facility's financial stability ~~carry out the~~
13 ~~purpose of this section~~. A license for the operation of a
14 facility shall not be renewed if the licensee has any
15 outstanding fines assessed pursuant to this part which are in
16 final order status.

17 (4)~~(2)~~ A licensee against whom a revocation or
18 suspension proceeding is pending at the time of license
19 renewal may be issued a conditional license effective until
20 final disposition by the agency ~~of such proceeding~~. If
21 judicial relief is sought from the final disposition, the
22 court having jurisdiction may issue a conditional license for
23 the duration of the judicial proceeding.

24 (5)~~(3)~~ A conditional license may be issued to an
25 applicant for license renewal if ~~when~~ the applicant fails to
26 meet all standards and requirements for licensure. A
27 conditional license issued under this subsection shall be
28 limited in duration to a specific period of time not to exceed
29 6 months, as determined by the agency, and shall be
30 accompanied by an agency-approved ~~approved~~ plan of correction.

31

1 (6) The department may by rule establish renewal
2 procedures, identify forms, and specify documentation
3 necessary to implement this section.

4 Section 9. Section 400.4174, Florida Statutes, is
5 amended to read:

6 400.4174 Background screening; exemptions; reports of
7 abuse in facilities.--

8 (1) LEVEL 2 BACKGROUND SCREENING.--

9 (a) Level 2 background screening must be conducted on
10 each of the following persons who shall be considered
11 employees for the purposes of conducting screening under
12 chapter 435:

13 1. The facility owner if an individual, the
14 administrator or administrator's designee if different from
15 the owner, and the financial officer if different from the
16 owner or administrator.

17 2. An officer or board member if the facility owner is
18 a firm, corporation, partnership, or association, or any
19 person owning 5 percent or more of the facility, if the agency
20 reasonably suspects that such person has been convicted of any
21 offense prohibited by s. 435.04. For each officer, board
22 member, or person owning 5 percent or more who has been
23 convicted of any such offense, the facility shall submit to
24 the agency a description and explanation of the conviction.
25 This subparagraph shall not apply to a board member of a
26 not-for-profit corporation or organization if the board member
27 serves solely in a voluntary capacity, receives no
28 remuneration for his or her services, and has no financial
29 interest and has no family members with a financial interest
30 in the corporation or organization, and provided that the
31 board member and facility submit a statement affirming that

1 the board member's relationship to the facility satisfies the
2 requirements of this subparagraph.

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

16 (c) The agency may grant a provisional license to a
17 facility applying for an initial license when each individual
18 required by this subsection to undergo screening has completed
19 the abuse registry and Department of Law Enforcement
20 background checks, but has not yet received results from the
21 Federal Bureau of Investigation; or a request for an exemption
22 from disqualification has been submitted to the agency
23 pursuant to s. 435.07, but a response has not been issued.

24 (2) The owner or administrator of an assisted living
25 facility must conduct or ensure that level 1 background
26 screening as set forth in chapter 435 has been conducted on
27 all persons employed by or under contract to the facility who
28 provide direct care or nursing services to residents on or
29 after October 1, 1998. Such persons shall be considered as
30 having met this requirement if:
31

1 (a) Proof of compliance with level 1 screening
2 requirements obtained to meet any professional license
3 requirements in this state is provided and accompanied, under
4 penalty of perjury, by a copy of the person's current
5 professional license and an affidavit of current compliance
6 with the background screening requirements.

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

17 (c) The person is employed by a corporation or
18 business entity or related corporation or business entity that
19 owns, operates, or manages more than one facility or agency
20 licensed under chapter 400, and for whom a level 1 screening
21 was conducted by the corporation or business entity as a
22 condition of initial continued employment.

23 (3) When an employee, volunteer, administrator, or
24 owner of a facility is the subject of ~~has~~ a confirmed report
25 of adult abuse, neglect, or exploitation, as defined in s.
26 415.102, or ~~has been reported by the Department of Children~~
27 and Family Services to the state attorney and appropriate law
28 enforcement agency for child abuse or neglect pursuant to s.
29 415.505, ~~as defined in s. 415.503,~~ and the protective
30 investigator knows that the individual is an employee,
31

1 volunteer, administrator, or owner of a facility, the agency
2 shall be notified of the confirmed report.

3 (4) The department may by rule establish procedures,
4 specify documentation, and clarify exemptions as necessary to
5 implement this section.

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

8 400.4176 Notice of change of administrator.--If,
9 during the period for which a license is issued, the owner
10 changes administrators, the owner must notify the agency of
11 the change within 10 ~~45~~ days ~~thereof~~ and ~~must~~ provide
12 documentation within 45 days that the new administrator has
13 completed the applicable core educational requirements under
14 s. 400.452. Background screening shall be completed on any
15 new administrator ~~to establish that the individual is of~~
16 ~~suitable character~~ as specified in s. 400.4174 ~~ss.~~
17 ~~400.411(2)(c) and 400.456.~~

18 Section 11. The introductory paragraph of subsection
19 (1) of section 400.418, Florida Statutes, is amended to read:

20 400.418 Disposition of fees and administrative
21 fines.--

22 (1) Income from license fees, inspection fees, late
23 fees, and administrative fines generated pursuant to ss.
24 400.408 ~~400.407~~, 400.417, 400.419, and 400.431 shall be
25 deposited in the Health Care Trust Fund administered by the
26 agency. Such funds shall be directed to and used by the
27 agency for the following purposes:

28 Section 12. Section 400.419, Florida Statutes, is
29 amended to read:

30 400.419 Violations; administrative fines ~~penalties~~.--

31

580-111-98

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

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

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

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

31

580-111-98

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

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

11 ~~(a) The gravity of the violation, including the~~
12 ~~probability that death or serious physical or emotional harm~~
13 ~~to a resident will result or has resulted, the severity of the~~
14 ~~action or potential harm, and the extent to which the~~
15 ~~provisions of the applicable statutes or rules were violated.~~

16 ~~(b) Actions taken by the owner or administrator to~~
17 ~~correct violations.~~

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

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

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

22 ~~(1)(3)~~ Each violation of this part and adopted rules
23 ~~shall be classified according to the nature of the violation~~
24 ~~and the gravity of its probable effect on facility residents.~~
25 ~~The agency shall indicate the classification of each violation~~
26 ~~on the written face of the notice of the violation as follows:~~

27 (a) Class "I" violations are those conditions or
28 occurrences related to the operation and maintenance of a
29 facility or to the personal care of residents which the agency
30 determines present an imminent danger to the residents or
31 guests of the facility or a substantial probability that death

1 or serious physical or emotional harm would result therefrom.
2 The condition or practice constituting a class I violation
3 shall be abated or eliminated within 24 hours, unless a fixed
4 period, as determined by the agency, is required for
5 correction. A class I violation is subject to an
6 administrative fine ~~a civil penalty~~ in an amount not less than
7 \$1,000 and not exceeding \$10,000 ~~\$5,000~~ for each violation. A
8 fine may be levied notwithstanding the correction of the
9 violation.

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

23 (c) Class "III" violations are those conditions or
24 occurrences related to the operation and maintenance of a
25 facility or to the personal care of residents which the agency
26 determines indirectly or potentially threaten the physical or
27 emotional health, safety, or security of facility residents,
28 other than class I or class II violations. A class III
29 violation is subject to an administrative fine ~~a civil penalty~~
30 of not less than \$100 and not exceeding \$1,000 ~~\$500~~ for each
31 violation. A citation for a class III violation shall specify

1 the time within which the violation is required to be
2 corrected. If a class III violation is corrected within the
3 time specified, no fine ~~civil penalty~~ may be imposed, unless
4 it is a repeated offense.

5 (d) Class "IV" violations are those conditions or
6 occurrences related to the operation and maintenance of a
7 building or to required reports, forms, or documents that do
8 not have the potential of negatively affecting residents.
9 These violations are of a type that the agency determines do
10 not threaten the health, safety, or security of residents of
11 the facility. A facility that does not correct a class IV
12 violation within the time ~~limit~~ specified ~~in the~~
13 ~~agency-approved corrective action plan~~ is subject to an
14 administrative fine ~~a civil penalty~~ of not less than ~~\$100~~\$50
15 nor more than ~~\$500~~\$200 for each violation. Any class IV
16 violation that is corrected during the time an agency survey
17 is being conducted will be identified as an agency finding and
18 not as a violation.

19 (2) The agency may double administrative fines for
20 violations which are identical to violations identified during
21 the previous biennial inspection, monitoring visit, or
22 complaint investigation.

23 ~~(3)(4)~~ The agency may set and levy a fine not to
24 exceed ~~\$1,000~~\$500 for each violation which cannot be
25 classified according to subsection ~~(1)(3)~~. In no event may
26 such finer ~~fine~~ in the aggregate exceed \$10,000 per survey
27 ~~\$5,000~~.

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

31

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

6 (b) Actions taken by the owner or administrator to
7 correct violations.

8 (c) Any previous violations.

9 (d) The financial benefit to the facility of
10 committing or continuing the violation.

11 (e) The licensed capacity of the facility.

12 (5) Each day of continuing violation after the date
13 fixed for termination of the violation, as ordered by the
14 agency, constitutes an additional, separate, and distinct
15 violation.

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

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

28 (8) Except as provided in subsection (9), any facility
29 which continues to operate without a license 10 days after
30 agency notification shall be subject to a \$1,000 fine. Each
31 day beyond 20 days after agency notification shall constitute

1 a separate violation and shall be subject to a fine of \$500
2 per day.

3 (9) Unlicensed facilities whose owner or administrator
4 concurrently operates a licensed facility, has previously
5 operated a licensed facility, or has been employed in a
6 licensed facility shall immediately be subject to an
7 administrative fine of \$5,000 upon agency notification. Each
8 day of continued operation after agency notification shall
9 constitute a separate violation subject to a fine of \$500 per
10 day.

11 (10) Any facility whose owner fails to apply for a
12 change of ownership license in accordance with s. 400.412 and
13 operates the facility under the new ownership shall be subject
14 to a fine not to exceed \$5,000.

15 (11) In addition to any administrative fines imposed,
16 the agency may assess a survey fee, equal to the lesser of one
17 half of the facility's biennial license and bed fee or \$500,
18 to cover the cost of conducting initial complaint
19 investigations which result in the finding of a violation of
20 this part or related rules, or for repeat followup surveys to
21 verify the correction of cited violations.

22 (12) The agency, as an alternative to or in
23 conjunction with an administrative action against a facility
24 for violations of this part and adopted rules, shall make a
25 reasonable attempt to discuss each violation and recommended
26 corrective action with the owner or administrator of the
27 facility, prior to written notification. The agency, instead
28 of fixing a period within which the facility shall enter into
29 compliance with standards, may request a plan of corrective
30 action from the facility which demonstrates a good faith
31

1 effort to remedy each violation by a specific date, subject to
2 the approval of the agency.

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

7 (14)~~(6)~~ The agency shall develop and disseminate an
8 annual list of all facilities sanctioned or fined in excess of
9 \$500 for violations of state standards, the number and class
10 of violations involved, the penalties imposed, and the current
11 status of cases. The list shall be disseminated, at no charge,
12 to the Department of Elderly Affairs, the Department of Health
13 ~~and Rehabilitative Services~~, the Department of Business and
14 Professional Regulation, the Department of Children and Family
15 Services, the area agencies on aging, the Statewide Human
16 Rights Advocacy Committee, and the state and district nursing
17 home ~~and long-term care facility~~ ombudsman councils. The
18 Department of Children and Family Services shall disseminate
19 the list to service providers under contract to the department
20 responsible for referring persons for residency to a facility.
21 The agency may charge a fee commensurate with the cost of
22 printing and postage to other interested parties requesting a
23 copy of this list.

24 (15) The department may by rule establish procedures,
25 classify violations, and assign penalties as necessary to
26 implement this section.

27 Section 13. Paragraph (a) of subsection (1) of section
28 400.422, Florida Statutes, is amended to read:

29 400.422 Receivership proceedings.--

30 (1) As an alternative to or in conjunction with an
31 injunctive proceeding, the agency may petition a court of

1 competent jurisdiction for the appointment of a receiver, if
2 suitable alternate placements are not available, when any of
3 the following conditions exist:

4 (a) The facility is operating without a license and
5 refuses to make application for a license as required by s.
6 400.408 ~~400.407~~.

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

9 400.428 Resident bill of rights.--

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

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

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

29 (d) The agency may conduct periodic followup
30 inspections as necessary to monitor the compliance of
31 facilities with a history of any class I, class II, or class

1 III violations that threaten the health, safety, or security
2 of residents.

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

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

9 400.474 Denial, suspension, revocation of license;
10 injunction; grounds.--

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

14 (c) Knowingly providing home health services in an
15 unlicensed assisted living facility or unlicensed adult
16 family-care home.

17 Section 16. Section 400.618, Florida Statutes, is
18 amended to read:

19 400.618 Definitions.--As used in this part ~~ss.~~
20 ~~400.616-400.629~~, the term:

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

24 (2) "Adult family-care home" means a full-time,
25 family-type living arrangement, in a private home, under which
26 a person who owns or rents the home provides ~~or persons~~
27 ~~provide~~, for profit or not for profit, room, board, and one or
28 more personal services, on a 24-hour basis ~~as appropriate for~~
29 ~~the level of functional impairment~~, for no more than five aged
30 persons or disabled adults who are not relatives. The
31 following family-type living arrangements ~~establishments~~ are

1 not required to be licensed as an adult family-care home
2 ~~homes~~:

3 (a) An arrangement whereby the person who owns or
4 rents the home provides room, board, and establishment that
5 ~~provides~~ personal services for three or fewer adults who do
6 not receive optional state supplementation under s. 409.212
7 ~~and, but that~~ does not hold himself or herself ~~itself~~ out to
8 the public as maintaining to be an establishment that
9 regularly provides such services.

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

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

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

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

23 (5) "Aging in place" means remaining in a
24 noninstitutional living environment despite the physical or
25 mental changes that may occur in a person who is aging. For
26 aging in place to occur, needed services are added, increased,
27 or adjusted to compensate for a person's physical or mental
28 changes.

29 (6) "Chemical restraint" means a pharmacologic drug
30 that physically limits, restricts, or deprives an individual
31 of movement or mobility, and is used for discipline or

1 convenience and not required for the treatment of medical
2 symptoms.

3 (7) "Department" means the Department of Elderly
4 Affairs.

5 (8) "Disabled adult" means any person between 18 and
6 59 years of age, inclusive, who is a resident of the state and
7 who has one or more permanent physical or mental limitations
8 that restrict the person's ability to perform the normal
9 activities of daily living.

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

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

16 (11) "Relative" means an individual who is the father,
17 mother, son, daughter, brother, sister, uncle, aunt, first
18 cousin, nephew, niece, husband, wife, father-in-law,
19 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
20 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
21 stepbrother, stepsister, half brother, or half sister of a
22 provider.

23 Section 17. Subsection (3) of section 400.452, Florida
24 Statutes, is amended to read:

25 400.452 Staff training and educational programs; core
26 educational requirement.--

27 (3) Such a program must be available at least
28 quarterly in each district of the Department of Children and
29 Family Health and Rehabilitative Services. The competency
30 test must be developed by the department in conjunction with
31 the agency and providers and must be available for use by

1 January 1, 1997. Beginning July 1, 1997, a new facility
2 administrator must complete the core educational requirement
3 including the competency test within 3 months after being
4 employed as an administrator. Failure to complete a core
5 educational requirement specified in this subsection is a
6 violation of this part and subjects the violator to an
7 administrative fine ~~a penalty~~ as prescribed in s. 400.419.
8 Administrators licensed in accordance with chapter 468, part
9 II, are exempt from this requirement. Other licensed
10 professionals may be exempted, as determined by the department
11 by rule.

12 Section 18. Paragraph (h) of subsection (3) of section
13 408.036, Florida Statutes, is amended to read:

14 408.036 Projects subject to review.--

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

18 (h) For the establishment of a Medicare-certified home
19 health agency by a facility certified under chapter 651; a
20 retirement community, as defined in s. 400.404(2)(g)~~(e)~~; or a
21 residential facility that serves only retired military
22 personnel, their dependents, and the surviving dependents of
23 deceased military personnel. Medicare-reimbursed home health
24 services provided through such agency shall be offered
25 exclusively to residents of the facility or retirement
26 community or to residents of facilities or retirement
27 communities owned, operated, or managed by the same corporate
28 entity. Each visit made to deliver Medicare-reimbursable home
29 health services to a home health patient who, at the time of
30 service, is not a resident of the facility or retirement
31

1 community shall be a deceptive and unfair trade practice and
2 constitutes a violation of ss. 501.201-501.213.

3 Section 19. This act shall take effect October 1 of
4 the year in which enacted.

5
6 *****

7 HOUSE SUMMARY

8 Revises and reorganizes various provisions of part III of
9 chapter 400, F.S., relating to assisted living
10 facilities.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31