

By the Committee on Elder Affairs & Long Term Care and
Representatives Fischer, Hafner, Dennis, Reddick, Kosmas,
Jacobs, Wiles and Boyd

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

1 license renewal; providing for certain prorated
2 fees; amending s. 400.4174, F.S.; clarifying
3 provisions relating to reports of abuse in
4 facilities; amending s. 400.4176, F.S.;
5 revising time requirement for notice of change
6 of administrator; amending ss. 400.418,
7 400.422, and 400.036, F.S.; correcting
8 references and cross references; amending s.
9 400.419, F.S.; revising procedures relating to
10 violations and penalties; increasing
11 administrative fines for specified classes of
12 violations; providing fines for unlicensed
13 operation of a facility and for failure to
14 apply for a change of ownership license;
15 authorizing a survey fee to cover the cost of
16 certain complaint investigations; providing for
17 corrective action plans to correct violations;
18 expanding dissemination of information
19 regarding facilities sanctioned or fined;
20 providing for rules; creating s. 400.4256,
21 F.S.; establishing procedures for assistance
22 with self-administration of medication;
23 amending s. 400.428, F.S.; providing for
24 surveys to determine compliance with facility
25 standards and residents' rights; amending s.
26 400.442, F.S.; revising provisions relating to
27 employment of professional consultants to
28 assist the agency in monitoring the
29 administration of medications at facilities;
30 amending s. 400.452, F.S.; revising provisions
31 relating to facility staff training and

1 education programs and requirements; providing
2 for rules; amending s. 400.474, F.S.; providing
3 for disciplinary action against a home health
4 agency or employee providing services in an
5 unlicensed assisted living facility or adult
6 family-care home; amending s. 400.618, F.S.;
7 revising the definition of "adult-family care
8 home"; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 400.402, Florida Statutes, is
13 amended to read:

14 400.402 Definitions.--When used in this part, ~~unless~~
15 ~~the context otherwise requires,~~ the term:

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

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

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

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

12 (3)~~(4)~~ "Agency" means the Agency for Health Care
13 Administration.

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

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

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31

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

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

12 ~~(6)~~~~(8)~~ "Chemical restraint" means a pharmacologic drug
13 that physically limits, restricts, or deprives an individual
14 of movement or mobility, and is used for discipline or
15 convenience and not required for the treatment of medical
16 symptoms.

17 (7)~~(9)~~ "Community living support plan" means a written
18 document prepared by a mental health resident and the mental
19 health case manager of that resident in consultation with the
20 administrator of the facility or the administrator's designee.
21 A copy must be provided to the administrator. The plan must
22 include information about the supports, services, and special
23 needs of the resident which enable the resident to live in the
24 assisted living facility.

25 ~~(8)~~~~(10)~~ "Cooperative agreement" means a written
26 statement of understanding between a mental health care
27 services provider and the administrator of the assisted living
28 facility with a limited mental health license in which a
29 mental health resident is living. The agreement specifies
30 directions for accessing emergency and after-hours care for
31 the mental health resident and a method by which the staff of

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

6 (9)~~(11)~~ "Department" means the Department of Elderly
7 Affairs.

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

12 (11)~~(13)~~ "Extended congregate care" means acts beyond
13 those authorized in subsection (16) that may be performed
14 pursuant to chapter 464 by persons licensed thereunder while
15 carrying out their professional duties, and other supportive
16 services which may be specified by rule. The purpose of such
17 services is to enable residents to age in place in a
18 residential environment despite mental or physical limitations
19 that might otherwise disqualify them from residency in a
20 facility licensed under this part.

21 (12)~~(14)~~ "Guardian" means a person to whom the law has
22 entrusted the custody and control of the person or property,
23 or both, of a person who has been legally adjudged
24 incapacitated.

25 (13)~~(15)~~ "Limited nursing services" means acts that
26 may be performed pursuant to chapter 464 by persons licensed
27 thereunder while carrying out their professional duties but
28 limited to those acts which the department specifies by rule.
29 Acts which may be specified by rule as allowable limited
30 nursing services shall be for persons who meet the admission
31 criteria established by the department for assisted living

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

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

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

21 (16)~~(18)~~ "Personal services" means direct physical
22 ~~include, but are not limited to, such services as:~~ individual
23 assistance with or supervision of the essential activities of
24 daily living and the self-administration of medication ~~as~~
25 ~~defined in subsection (1), and other similar services which~~
26 the department may define by rule. "Personal services" shall
27 not be construed to mean the provision of medical, nursing,
28 dental, or mental health services by the staff of a facility,
29 ~~except as provided in this part. In addition, an emergency~~
30 ~~response device installed in the apartment or living area of a~~
31 ~~resident shall not be classified as a personal service.~~

1 ~~(17)~~~~(19)~~ "Physical restraint" means a device which
2 physically limits, restricts, or deprives an individual of
3 movement or mobility, including, but not limited to, a
4 half-bed rail, a full-bed rail, a geriatric chair, and a posey
5 restraint. The term "physical restraint" shall also include
6 any device which was not specifically manufactured as a
7 restraint but which has been altered, arranged, or otherwise
8 used for this purpose. The term shall not include bandage
9 material used for the purpose of binding a wound or injury.

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

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

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

31

1 (21)~~(22)~~ "Service plan" means a written plan,
2 developed and agreed upon by the resident and, if applicable,
3 the resident's representative or designee or the resident's
4 surrogate, guardian, or attorney in fact, if any, and the
5 administrator or designee representing the facility, which
6 addresses the unique physical and psychosocial needs,
7 abilities, and personal preferences of each resident receiving
8 extended congregate care services. The plan shall include a
9 brief written description, in easily understood language, of
10 what services shall be provided, who shall provide the
11 services, when the services shall be rendered, and the
12 purposes and benefits of the services.

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

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

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

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

10 (24)~~(26)~~ "Supplemental security income," Title XVI of
11 the Social Security Act, means a program through which the
12 Federal Government guarantees a minimum monthly income to
13 every person who is age 65 or older, or disabled, or blind and
14 meets the income and asset requirements.

15 (25)~~(27)~~ "Supportive services" means services designed
16 to encourage and assist aged persons or adults with
17 disabilities to remain in the least restrictive living
18 environment and to maintain their independence as long as
19 possible.

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

1 Section 2. Section 400.404, Florida Statutes, is
2 amended to read:

3 400.404 ~~Facilities to be licensed~~Exemptions.--

4 ~~(1) For the administration of this part, facilities to~~
5 ~~be licensed by the agency shall include all assisted living~~
6 ~~facilities as defined in this part.~~

7 ~~(2)~~ The following are exempt from licensure under this
8 part:

9 (1)(a) Any facility, institution, or other place
10 operated by the Federal Government or any agency of the
11 Federal Government.

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

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

16 (4) Any person who provides housing, meals, and one or
17 more personal services on a 24-hour basis in the person's own
18 home to not more than two adults who do not receive optional
19 state supplementation. The person who provides the housing,
20 meals, and personal services must own or rent the home and
21 reside in the home.

22 (5)(c) Any home or facility approved by the United
23 States Department of Veterans Affairs as a residential care
24 home wherein care is provided exclusively to three or fewer
25 veterans.

26 (6)(d) Any facility that has been incorporated in this
27 state for 50 years or more on or before July 1, 1983, and is
28 governed by a the board of directors that of which is
29 nominated or elected by the residents, until such time as the
30 facility is sold or its ownership is transferred.~~† or~~

31

1 (7) Any facility, with improvements or additions
2 thereto, which has existed and operated continuously in this
3 state for 60 years or more on or before July 1, 1989, is
4 directly or indirectly owned and operated by a nationally
5 recognized fraternal organization, is not open to the public,
6 and accepts only its own members and their spouses as
7 residents.

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

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

16 ~~(a) It is unlawful to operate or maintain a facility~~
17 ~~without first obtaining from the agency a license authorizing~~
18 ~~such 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. Section 400.408, Florida Statutes, is
25 amended to read:

26 400.408 Unlicensed facilities; referral of person for
27 residency to unlicensed facility; penalties penalty;
28 verification of licensure status.--

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

1 (a)1. Except as provided under subparagraph 2., any
2 person who owns, operates, or maintains an unlicensed assisted
3 living facility commits a felony of the third degree,
4 punishable as provided in s. 775.082, s. 775.083, or s.
5 775.084. Application for licensure within 10 working days
6 after notification shall be an affirmative defense to felony
7 violation. There is no affirmative defense to a second or
8 subsequent violation. Any person who commits a second or
9 subsequent violation under this paragraph commits a second
10 degree felony punishable as provided under s. 775.082, s.
11 775.083, or s. 775.084.

12 2. Any person who owns, operates, or maintains an
13 unlicensed assisted living facility due to a change in this
14 part or a modification in department rule within 6 months
15 after such change and who, within 10 working days after
16 receiving notification from the agency, fails to cease
17 operation or apply for a license under this part commits a
18 felony of the third degree, punishable as provided in s.
19 775.082, s. 775.083, or s. 775.084.

20 (b) Any facility which fails to become licensed or
21 cease operation after agency notification may be fined for
22 each day of noncompliance pursuant to s. 400.419.

23 (c) When an owner has an interest in more than one
24 assisted living facility, and fails to license any one of
25 these facilities, the agency may revoke the license or impose
26 a moratorium on any or all of the licensed facilities until
27 such time as the unlicensed facility is licensed or ceases
28 operation.

29 (d) If the agency determines that an owner is
30 operating or maintaining an assisted living facility without
31 obtaining a license and determines that a condition exists in

1 the facility that poses a threat to the health, safety, or
2 welfare of a resident of the facility, the owner is subject to
3 the same actions and fines imposed against a licensed facility
4 as specified in ss. 400.414 and 400.419.

5 (e) Any person aware of the operation of an unlicensed
6 assisted living facility must report that facility to the
7 agency. The agency shall provide to the department and to
8 elder information and referral providers a list, by county, of
9 licensed assisted living facilities, to assist persons who are
10 considering an assisted living facility placement in locating
11 a licensed facility.

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

21 (a) Any employee of the agency or department, or the
22 Department of Children and Family ~~Health and Rehabilitative~~
23 Services, who knowingly refers a person for residency to an
24 unlicensed facility; to a facility the license of which is
25 under denial or has been suspended or revoked; or to a
26 facility that has a moratorium on admissions is subject to
27 disciplinary action by the agency or department, or the
28 Department of Children and Family ~~Health and Rehabilitative~~
29 Services.

30 (b) The employer of any person who is under contract
31 with the agency or department, or the Department of Children

1 and Family Health and Rehabilitative Services, and who
2 knowingly refers a person for residency to an unlicensed
3 facility; to a facility the license of which is under denial
4 or has been suspended or revoked; or to a facility that has a
5 moratorium on admissions shall be fined and required to
6 prepare a corrective action plan designed to prevent such
7 referrals.

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

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

1 include the name, telephone number, and mailing address of the
2 appropriate office to contact.

3 Section 5. Section 400.411, Florida Statutes, is
4 amended to read:

5 400.411 Initial application for license; provisional
6 license.--

7 (1) Application for license shall be made to the
8 agency on forms furnished by it and shall be accompanied by
9 the appropriate license fee. ~~The application shall contain~~
10 ~~sufficient information, as required by rules of the~~
11 ~~department, to establish that the applicant can provide~~
12 ~~adequate care.~~

13 (2) The applicant may be an individual owner,
14 corporation, partnership, firm, association, or governmental
15 entity.

16 ~~(3)~~(2) The application shall be signed by the
17 applicant under oath and shall contain the following:

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

21 ~~1.~~ If the applicant is a firm, partnership, or
22 association, the application shall contain the name, address,
23 date of birth, and social security number of every member
24 thereof.

25 ~~2.~~ If the applicant is a corporation, the application
26 shall contain the corporation's ~~its~~ name and address, the
27 name, address, date of birth, and social security number of
28 each of its directors and officers, and the name and address
29 of each person having at least a 5-percent ownership
30 ~~10-percent~~ interest in the corporation.

31

1 (b) The name and address of any professional service,
2 firm, association, partnership, or corporation that is to
3 provide goods, leases, or services to the facility ~~for which~~
4 ~~the application is made~~, if a 5-percent ~~10-percent~~ or greater
5 interest in the service, firm, association, partnership, or
6 corporation is owned by a person whose name must be listed on
7 the application under paragraph (a).

8 (c) Sufficient information ~~that provides a source~~ to
9 establish the suitable character, financial stability, and
10 competency of the applicant and of each person specified in
11 paragraph (a) ~~the application under subparagraph (a)1. or~~
12 ~~subparagraph (a)2. who has at least a 10 percent interest in~~
13 ~~the firm, partnership, association, or corporation and, if~~
14 different from the applicant, applicable, of the administrator
15 and financial officer., including

16 (d) The name and address of any long-term care
17 facility with which the applicant, or administrator, or
18 financial officer has been affiliated through ownership or
19 employment within 5 years of the date of this license ~~the~~
20 ~~application for a license~~; and a signed affidavit disclosing
21 any financial or ownership interest that the applicant, or any
22 person listed in paragraph (a) principal, partner, or
23 ~~shareholder thereof,~~ holds or has held within the last 5 years
24 in any ~~other~~ facility licensed under this part, or in any
25 other entity licensed by this ~~the~~ state or another state to
26 provide health or residential care, which facility or entity
27 closed or ceased to operate as a result of financial problems,
28 or has had a receiver appointed or a license denied,
29 suspended, or revoked, or was subject to a moratorium on
30 admissions, or has had an injunctive proceeding initiated
31 against it.

1 (e)~~(d)~~ The names and addresses of ~~other~~ persons of
2 whom the agency may inquire as to the character, and
3 reputation, and financial responsibility of the owner and, if
4 different from the applicant, the administrator and financial
5 officer applicant and, if applicable, of the administrator.

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

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

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

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

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

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

28 (4)~~(3)~~ The applicant shall furnish satisfactory proof
29 of financial ability to operate and conduct the facility in
30 accordance with the requirements of this part. ~~An applicant~~
31 ~~applying for an initial license shall submit a balance sheet~~

1 ~~setting forth the assets and liabilities of the owner and a~~
2 ~~statement projecting revenues, expenses, taxes, extraordinary~~
3 ~~items, and other credits or charges for the first 12 months of~~
4 ~~operation of the facility.~~

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

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

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

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

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

1 (10) The applicant must provide documentation of a
2 satisfactory sanitary inspection of the facility by the county
3 health department.

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

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

17 Section 6. Section 400.414, Florida Statutes, is
18 amended to read:

19 400.414 Denial, revocation, or suspension of license;
20 imposition of administrative fine; grounds.--

21 (1) The agency may deny, revoke, or suspend any a
22 license issued under this part or impose an administrative
23 fine in the manner provided in chapter 120 for any of the
24 following actions by an assisted living facility or its owner
25 or employee: ~~At the chapter 120 hearing, the agency shall~~
26 ~~prove by a preponderance of the evidence that its actions are~~
27 ~~warranted.~~

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

31

- 1 (a) An intentional or negligent act seriously
2 affecting the health, safety, or welfare of a resident of the
3 facility.
- 4 (b) The determination by the agency that the facility
5 owner, ~~or administrator, or financial officer~~ is not of
6 suitable character or competency, or that the owner lacks the
7 financial ability to provide continuing adequate care to
8 residents, ~~pursuant to the information obtained through s.~~
9 ~~400.411, s. 400.417, or s. 400.434.~~
- 10 (c) Misappropriation or conversion of the property of
11 a resident of the facility.
- 12 (d) Failure to follow the criteria and procedures
13 provided under part I of chapter 394 relating to the
14 transportation, voluntary admission, and involuntary
15 examination of a facility resident.
- 16 (e) One or more class I, three or more class II, or
17 five or more repeated or recurring identical or similar class
18 III violations of this part which were identified by the
19 agency within the last 2 years during the last biennial
20 inspection, monitoring visit, or complaint investigation and
21 which, in the aggregate, affect the health, safety, or welfare
22 of the facility residents.
- 23 (f) A confirmed report of adult abuse, neglect, or
24 exploitation, as defined in s. 415.102, which has been upheld
25 following a chapter 120 hearing or a waiver of such
26 proceedings where the perpetrator is an employee, volunteer,
27 administrator, or owner, or otherwise has access to the
28 residents of a facility, and the owner or administrator has
29 not taken action to remove the perpetrator. Exemptions ~~from~~
30 ~~disqualification~~ may be granted as set forth in s. 435.07. No
31

1 administrative action may be taken against the facility if the
2 perpetrator is granted an exemption.

3 (g) Violation of a moratorium.

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

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

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

21 (k) Knowingly operating any unlicensed facility or
22 providing any unlicensed service which must be licensed in
23 this state.

24
25 Administrative proceedings challenging agency action under
26 this subsection shall be reviewed on the basis of the facts
27 and conditions that resulted in the agency action.

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

30 (2)~~(4)~~ Upon notification by the local State Fire
31 Marshal, local fire marshal, or other authority having

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

7 ~~(3)(5)~~ The agency may deny a license to an applicant
8 who owns or owned 25 percent or more of, or operates or
9 operated, ~~an assisted living~~, a facility which, during the 5
10 years prior to the application for a license, has had a
11 license denied, suspended, or revoked ~~pursuant to subsection~~
12 ~~(2)~~, or, during the 2 years prior to the application for a
13 license, has had a moratorium imposed on admissions, has had
14 an injunctive proceeding initiated against it, has had a
15 receiver appointed, was closed due to financial inability to
16 operate, or has an outstanding fine assessed under this part.

17 (4) The agency may deny a license to any applicant if
18 the applicant, or officer or board member if the applicant is
19 a firm, corporation, partnership, or association, or any
20 person owning 5 percent or more of the facility, is or has any
21 financial or ownership interest in any other facility licensed
22 under this part, or in any entity licensed by this state or
23 another state to provide health or residential care, which
24 facility or entity closed or ceased to operate as a result of
25 financial problems; or had a receiver appointed; or a license
26 denied, suspended, or revoked; or was subject to a moratorium
27 on admissions; or had an injunctive proceeding initiated
28 against it.

29 (5) The agency shall deny or revoke the license of an
30 assisted living facility that has two or more class I
31 violations which are similar or identical to violations

1 identified by the agency during a survey, inspection,
2 monitoring visit, or complaint investigation occurring within
3 the previous 2 years.

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

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

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

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

29 400.415 Moratorium on admissions; notice.--The agency
30 may impose an immediate moratorium on admissions to any
31 assisted living facility ~~if~~ ~~when~~ the agency determines that

1 any condition in the facility presents a threat to the health,
2 safety, or welfare of the residents in the facility.

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

8 (2) When a moratorium is placed on a facility, notice
9 of the moratorium shall be posted and visible to the public at
10 the facility.

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

15 Section 8. Section 400.417, Florida Statutes, is
16 amended to read:

17 400.417 Expiration of license; renewal; conditional
18 license.--

19 ~~(1) Biennial licenses issued for the operation of a~~
20 ~~facility, unless sooner suspended or revoked, shall expire~~
21 ~~automatically 2 years from the date of issuance. Limited~~
22 nursing, extended congregate care, and limited mental health
23 licenses shall expire at the same time as the facility's
24 standard license, regardless of when issued.The agency shall
25 notify the facility by certified mail at least 120 days prior
26 to ~~the expiration of the license~~ that a renewal license
27 ~~relicensure~~ is necessary to continue operation. Ninety days
28 prior to the expiration date, an application for renewal shall
29 be submitted to the agency. ~~A license shall be renewed upon~~
30 ~~the filing of an application on forms furnished by the agency~~
31 ~~if the applicant has first met the requirements established~~

1 ~~under this part and all rules promulgated under this part. The~~
2 failure to file a timely renewal application shall result in a
3 late fee charged to the facility in an amount equal to 50
4 percent of the current fee in effect on the last preceding
5 ~~regular renewal date. Late fees shall be deposited into the~~
6 ~~Health Care Trust Fund as provided in s. 400.418. The~~
7 ~~facility shall file with the application satisfactory proof of~~
8 ~~ability to operate and conduct the facility in accordance with~~
9 ~~the requirements of this part.~~

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

20 (3) An applicant for renewal of a license who has
21 ~~complied on the initial license application with the~~
22 provisions of s. 400.411 with respect to proof of financial
23 ability to operate shall not be required to provide further
24 ~~proof of financial ability on renewal applications~~ unless the
25 facility or any other facility owned or operated in whole or
26 in part by the same person ~~or business entity~~ has demonstrated
27 financial instability as provided under s. 400.447(2)
28 ~~evidenced by bad checks, delinquent accounts, or nonpayment of~~
29 ~~withholding taxes, utility expenses, or other essential~~
30 ~~services~~ or unless the agency suspects that the facility is
31 not financially stable as a result of the annual survey or

1 complaints from the public or a report from the State
2 Long-Term Care Ombudsman Council established under s.
3 400.0067. Each facility must ~~shall~~ report to the agency any
4 adverse court action concerning the facility's financial
5 viability, within 7 days after its occurrence. The agency
6 shall have access to books, records, and any other financial
7 documents maintained by the facility to the extent necessary
8 to determine the facility's financial stability ~~carry out the~~
9 ~~purpose of this section~~. A license for the operation of a
10 facility shall not be renewed if the licensee has any
11 outstanding fines assessed pursuant to this part which are in
12 final order status.

13 ~~(4)(2)~~ A licensee against whom a revocation or
14 suspension proceeding is pending at the time of license
15 renewal may be issued a conditional license effective until
16 final disposition by the agency ~~of such proceeding~~. If
17 judicial relief is sought from the final disposition, the
18 court having jurisdiction may issue a conditional license for
19 the duration of the judicial proceeding.

20 ~~(5)(3)~~ A conditional license may be issued to an
21 applicant for license renewal if ~~when~~ the applicant fails to
22 meet all standards and requirements for licensure. A
23 conditional license issued under this subsection shall be
24 limited in duration to a specific period of time not to exceed
25 6 months, as determined by the agency, and shall be
26 accompanied by an agency-approved ~~approved~~ plan of correction.

27 (6) When an extended care or limited nursing license
28 is requested during a facility's biennial license period, the
29 fee shall be prorated in order to permit the additional
30 license to expire at the end of the biennial license period.
31

1 The fee shall be calculated as of the date the additional
2 license application is received by the agency.

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

5 400.4174 Reports of abuse in facilities.--When an
6 employee, volunteer, administrator, or owner of a facility is
7 the subject of ~~has~~ a confirmed report of adult abuse, neglect,
8 or exploitation, as defined in s. 415.102, ~~or child abuse or~~
9 ~~neglect, as defined in s. 415.503,~~and the protective
10 investigator knows that the individual is an employee,
11 volunteer, administrator, or owner of a facility, the agency
12 shall be notified of the confirmed report.

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

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

24 ~~400.411(2)(c) and 400.456.~~

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

27 400.418 Disposition of fees and administrative
28 fines.--

29 (1) Income from license fees, inspection fees, late
30 fees, and administrative fines generated pursuant to ss.
31 400.408 ~~400.407~~, 400.417, 400.419, and 400.431 shall be

1 deposited in the Health Care Trust Fund administered by the
2 agency. Such funds shall be directed to and used by the
3 agency for the following purposes:

4 Section 12. Section 400.419, Florida Statutes, is
5 amended to read:

6 400.419 Violations; administrative fines penalties.--

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

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

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

30 ~~(d) Any action taken to correct a violation shall be~~
31 ~~documented in writing by the administrator of the facility and~~

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

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

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

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

21 ~~(b) Actions taken by the owner or administrator to~~
22 ~~correct violations.~~

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

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

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

27 (1)(3) Each violation of this part and adopted rules
28 shall be classified according to the nature of the violation
29 and the gravity of its probable effect on facility residents.
30 The agency shall indicate the classification of each violation
31 on the written face of the notice of the violation as follows:

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

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

28 (c) Class "III" violations are those conditions or
29 occurrences related to the operation and maintenance of a
30 facility or to the personal care of residents which the agency
31 determines indirectly or potentially threaten the physical or

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

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

24 (2) ~~(4)~~ The agency may set and levy a fine not to
25 exceed \$1,000 ~~\$500~~ for each violation which cannot be
26 classified according to subsection (1) ~~(3)~~. In no event may
27 such finer ~~fine~~ in the aggregate exceed \$10,000 per survey
28 ~~\$5,000~~.

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

- 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 (4) 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 (5) 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 owner or administrator fraudulently
22 misrepresents action taken to correct a violation.
23 (6) 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 (7) Except as provided in subsection (8), any facility
29 which continues to operate without a license 10 working days
30 after agency notification shall be subject to a \$1,000 fine.
31 Each day beyond 20 days after agency notification shall

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

3 (8) 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 up to \$5,000 upon agency notification.
8 Each day of continued operation after agency notification
9 shall constitute a separate violation subject to a fine of
10 \$500 per day.

11 (9) 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 (10) 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 that result in the finding of a violation that
20 was the subject of the complaint or for related violations, or
21 for followup surveys to verify the correction of cited
22 violations, or for monitoring visits required under s.
23 400.428(3)(c).

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

1 action from the facility which demonstrates a good faith
2 effort to remedy each violation by a specific date, subject to
3 the approval of the agency.

4 (12)(5) Administrative fines ~~Civil penalties~~ paid by
5 any facility under the provisions of this section ~~subsection~~
6 ~~(3)~~ shall be deposited into the Health Care Trust Fund and
7 expended as provided in s. 400.418.

8 (13)(6) The agency shall develop and disseminate an
9 annual list of all facilities sanctioned or fined \$5,000 or
10 more ~~in excess of \$500~~ for violations of state standards, the
11 number and class of violations involved, the penalties
12 imposed, and the current status of cases. The list shall be
13 disseminated, at no charge, to the Department of Elderly
14 Affairs, the Department of Health ~~and Rehabilitative Services,~~
15 the Department of Children and Family Services, the area
16 agencies on aging, the Statewide Human Rights Advocacy
17 Committee, and the state and district nursing home ~~and~~
18 ~~long-term care facility~~ ombudsman councils. The Department of
19 Children and Family Services shall disseminate the list to
20 service providers under contract to the department responsible
21 for referring persons for residency to a facility. The agency
22 may charge a fee commensurate with the cost of printing and
23 postage to other interested parties requesting a copy of this
24 list.

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

28 Section 13. Paragraph (a) of subsection (1) of section
29 400.422, Florida Statutes, is amended to read:

30 400.422 Receivership proceedings.--

31

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

6 (a) The facility is operating without a license and
7 refuses to make application for a license as required by s.
8 400.408 ~~400.407~~.

9 Section 14. Section 400.4256, Florida Statutes, is
10 created to read:

11 400.4256 Assistance with self-administration of
12 medication.--

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

14 (a) "Informed consent" means advising the resident, or
15 the resident's surrogate, guardian, or attorney in fact, that
16 an assisted living facility is not required to have a licensed
17 nurse on staff, that the resident may be receiving assistance
18 with self-administration of medication from an unlicensed
19 person, and that such assistance, if provided by an unlicensed
20 person, will or will not be overseen by a licensed nurse.

21 (b) "Unlicensed person" means an individual not
22 currently licensed to practice nursing or medicine who is
23 employed by or under contract to an assisted living facility,
24 and who has received training with respect to assisting with
25 the self-administration of medication in an assisted living
26 facility as provided under s. 400.452 prior to providing such
27 assistance as described in this section.

28 (2) Residents who are capable of self-administering
29 their own medications without assistance shall be encouraged
30 and allowed to do so. However, an unlicensed person may,
31 consistent with a dispensed prescription's label or the

1 package directions of an over-the-counter medication, assist a
2 resident whose condition is medically stable with the
3 self-administration of routine, regularly scheduled
4 medications that are intended to be self-administered.
5 Assistance with self-administration of medication by an
6 unlicensed person may occur only upon a documented request by,
7 and the written informed consent of, a resident or the
8 resident's surrogate, guardian, or attorney in fact. For the
9 purposes of this section, self-administered medications
10 include both legend and over-the-counter oral dosage forms,
11 topical dosage forms, and topical ophthalmic, otic, and nasal
12 dosage forms including solutions, suspensions, sprays, and
13 inhalers.

14 (3) Assistance with self-administration of medication
15 includes:

16 (a) Taking the medication, in its previously dispensed
17 properly labeled container, from the area where it is stored
18 and bringing it to the resident.

19 (b) In the presence of the resident, reading the
20 label, opening the container, removing a prescribed amount of
21 medication from the container, and closing the container.

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

25 (d) Applying topical medications.

26 (e) Returning the medication container to proper
27 storage.

28 (f) Keeping a record of when a resident receives
29 assistance with self-administration of medication under this
30 section.

31

- 1 (4) Assistance with self-administration of medication
2 does not include:
- 3 (a) Mixing, compounding, converting, or calculating
4 medication doses, except for measuring a prescribed amount of
5 liquid medication or breaking a scored tablet or crushing a
6 tablet as prescribed.
- 7 (b) The preparation of syringes for administration of
8 medications by any injectable route.
- 9 (c) Administration of medications through intermittent
10 positive pressure breathing machines or a nebulizer.
- 11 (d) Administration of medications by way of a tube
12 inserted in a cavity of the body.
- 13 (e) Administration of parenteral preparations.
- 14 (f) Irrigations or debriding agents used in the
15 treatment of a skin condition.
- 16 (g) Rectal, urethral, or vaginal preparations.
- 17 (h) Medications ordered by the physician or health
18 care professional with prescriptive authority to be given "as
19 needed," and at the request of a competent resident, unless
20 the order is written with specific parameters which preclude
21 independent judgment on the part of the unlicensed person.
- 22 (i) Medications for which the time of administration,
23 the amount, the strength of dosage, the method of
24 administration or the reason for administration requires
25 judgment or discretion on the part of the unlicensed person.
- 26 (5) Assistance with the self-administration of
27 medication by an unlicensed person as described in this
28 section shall not be considered administration as defined in
29 s. 465.003.
- 30
31

1 (6) The department may by rule establish facility
2 procedures, including procedures for the identification of
3 residents who receive assistance with medication.

4 Section 15. Subsection (3) of section 400.428, Florida
5 Statutes, is amended to read:

6 400.428 Resident bill of rights.--

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

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

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

26 (d) The agency may conduct periodic followup
27 inspections as necessary to monitor the compliance of
28 facilities with a history of any class I, class II, or class
29 III violations that threaten the health, safety, or security
30 of residents.

31

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

5 Section 16. Section 400.442, Florida Statutes, is
6 amended to read:

7 400.442 Pharmacy and dietary services.--

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

24 (2) A corrective action plan for deficiencies related
25 to assistance with the self-administration of medication or
26 the administration of medication must be developed and
27 implemented by the facility within 48 hours after notification
28 of such deficiency, or sooner if the deficiency is determined
29 by the agency to be life threatening.

30 (3)~~(2)~~ The agency shall employ at least two
31 pharmacists licensed pursuant to chapter 465 among its

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

11 Section 17. Section 400.452, Florida Statutes, is
12 amended to read:

13 400.452 Staff training and educational programs; core
14 educational requirement.--

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

22 (2) The department shall also establish a core
23 educational requirement to be used in these programs.
24 Successful completion of the core educational requirement must
25 include successful completion of a competency test. Programs
26 must be provided by the department or by a provider approved
27 by the department at least quarterly. The core educational
28 requirement must cover at least the following topics:

29 (a) State law and rules relating to ~~on~~ assisted living
30 ~~facilities, including lifesafety requirements and procedures.~~
31

- 1 (b) Resident rights and identifying and reporting
2 abuse, neglect, and exploitation.
- 3 (c) Special needs of elderly persons, persons with
4 mental illness, and persons with developmental disabilities
5 and how to meet those needs.
- 6 (d) Nutrition and food service, including acceptable
7 sanitation practices for preparing, storing, and serving food.
- 8 (e) Medication management and recordkeeping, and
9 proper techniques for assisting residents with
10 self-administered medication, ~~including recordkeeping.~~
- 11 (f) Firesafety requirements, including fire evacuation
12 drill procedures and other emergency procedures ~~drills.~~
- 13 (g) Care of persons with Alzheimer's disease and ~~other~~
14 related disorders.
- 15 (3) Such a program must be available at least
16 quarterly in each planning and service area ~~district~~ of the
17 department ~~of Health and Rehabilitative Services.~~ The
18 competency test must be developed by the department in
19 conjunction with the agency and providers and must be
20 available for use by January 1, 1997. Beginning July 1, 1997,
21 a new facility administrator must complete the core
22 educational requirement, including the competency test, within
23 3 months after being employed as an administrator. Failure to
24 complete a core educational requirement specified in this
25 subsection is a violation of this part and subjects the
26 violator to an administrative fine ~~a penalty~~ as prescribed in
27 s. 400.419. Administrators licensed in accordance with chapter
28 468, part II, are exempt from this requirement. Other licensed
29 professionals may be exempted, as determined by the department
30 by rule.
31

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

4 (5) Staff involved with the management of medications
5 and assisting with the self-administration of medications
6 under s. 400.4256 must complete a minimum of 4 hours of
7 training provided by a registered nurse, licensed pharmacist,
8 or department staff, in a curriculum developed by the
9 department.

10 ~~(5) Administrators and staff of facilities more than~~
11 ~~10 percent of whose residents are mental health residents~~
12 ~~shall participate in training in the care and supervision of~~
13 ~~such residents as specified by rule of the department.~~

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

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

1 training and continuing education programs required under this
2 section.

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

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

14 Section 18. 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 its
24 employee reports the unlicensed facility to the agency within
25 72 hours after providing the services.

26 Section 19. Section 400.618, Florida Statutes, is
27 amended to read:

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

30
31

- 1 (1) "Activities of daily living" means functions and
2 tasks for self-care, including eating, bathing, grooming,
3 dressing, ambulating, and other similar tasks.
- 4 (2) "Adult family-care home" means a full-time,
5 family-type living arrangement, in a private home, under which
6 a person who owns or rents, and lives in, the home provides ~~or~~
7 ~~persons provide~~, for profit or not for profit, room, board,
8 and one or more personal services, on a 24-hour basis ~~as~~
9 ~~appropriate for the level of functional impairment~~, for no
10 more than five aged persons or disabled adults who are not
11 relatives. The following family-type living arrangements
12 ~~establishments~~ are not required to be licensed as an adult
13 family-care home ~~homes~~:
- 14 (a) An arrangement whereby the person who owns or
15 rents the home provides room, board, and ~~establishment that~~
16 ~~provides~~ personal services for not more than two ~~three or~~
17 ~~fewer~~ adults who do not receive optional state supplementation
18 under s. 409.212, ~~but that does not hold itself out to the~~
19 ~~public to be an establishment that regularly provides such~~
20 ~~services~~.
- 21 (b) An arrangement whereby the person who owns or
22 rents the home provides room, board, and ~~establishment in~~
23 ~~which a person or persons provide~~ personal services only to
24 their relatives.
- 25 (c) An establishment that is licensed as an assisted
26 living facility under part III.
- 27 (3) "Aged person" means any person age 60 or over who
28 is currently a resident of the state and who, because of a
29 functional impairment, requires one or more personal services
30 but does not require 24-hour skilled nursing home or
31 institutional care.

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

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

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

14 (7) "Department" means the Department of Elderly
15 Affairs.

16 (8) "Disabled adult" means any person between 18 and
17 59 years of age, inclusive, who is a resident of the state and
18 who has one or more permanent physical or mental limitations
19 that restrict the person's ability to perform the normal
20 activities of daily living.

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

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

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

1 stepbrother, stepsister, half brother, or half sister of a
2 provider.

3 Section 20. Paragraph (h) of subsection (3) of section
4 408.036, Florida Statutes, is amended to read:

5 408.036 Projects subject to review.--

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

9 (h) For the establishment of a Medicare-certified home
10 health agency by a facility certified under chapter 651; a
11 retirement community consisting of a facility licensed under
12 part II or part III of chapter 400 and apartments designed for
13 independent living located on the same campus, as defined in
14 s. 400.404(2)(e); or a residential facility that serves only
15 retired military personnel, their dependents, and the
16 surviving dependents of deceased military personnel.
17 Medicare-reimbursed home health services provided through such
18 agency shall be offered exclusively to residents of the
19 facility or retirement community or to residents of facilities
20 or retirement communities owned, operated, or managed by the
21 same corporate entity. Each visit made to deliver
22 Medicare-reimbursable home health services to a home health
23 patient who, at the time of service, is not a resident of the
24 facility or retirement community shall be a deceptive and
25 unfair trade practice and constitutes a violation of ss.
26 501.201-501.213.

27 Section 21. This act shall take effect October 1 of
28 the year in which enacted.

29
30
31