

1                   A bill to be entitled  
2           An act relating to assisted living facilities  
3           and adult family-care homes; amending s.  
4           400.402, F.S.; revising definitions; amending  
5           s. 400.404, F.S.; providing additional  
6           exemptions from licensure as an assisted living  
7           facility; amending ss. 400.407 and 400.408,  
8           F.S.; reorganizing and revising provisions  
9           relating to unlawful facilities; providing  
10          penalties; requiring report of unlicensed  
11          facilities; providing for disciplinary actions;  
12          revising provisions relating to referral to  
13          unlicensed facilities; providing for certain  
14          notice to service providers; amending s.  
15          400.4075, F.S.; providing an additional  
16          requirement for a limited mental health  
17          license; amending s. 400.411, F.S.; revising  
18          requirements for an initial application for  
19          license; providing for a fee; amending s.  
20          400.414, F.S.; revising authority and grounds  
21          for denial, revocation, or suspension of  
22          licenses or imposition of administrative fines;  
23          specifying terms for review of proceedings  
24          challenging administrative actions; amending s.  
25          400.415, F.S.; requiring a facility to post  
26          notice of a moratorium on admissions; providing  
27          for rules establishing grounds for imposition  
28          of a moratorium; amending s. 400.417, F.S.;  
29          providing for coordinated expiration of a  
30          facility's licenses; providing for prorated  
31          fees; revising requirements for license

1 renewal; providing for rules; amending s.  
2 400.4174, F.S.; amending an outdated reference  
3 to child abuse or neglect; amending s.  
4 400.4176, F.S.; revising time requirement for  
5 notice of change of administrator; amending ss.  
6 400.418, 400.422, and 408.036, F.S., relating  
7 to the disposition of fees and fines,  
8 receivership proceedings, and the review of  
9 certain projects; conforming cross references  
10 to changes made by the act; amending s.  
11 400.419, F.S.; revising procedures relating to  
12 violations and penalties; increasing  
13 administrative fines for specified classes of  
14 violations; providing fines for unlicensed  
15 operation of a facility and for failure to  
16 apply for a change of ownership license;  
17 authorizing a survey fee to cover the cost of  
18 certain complaint investigations; providing for  
19 corrective action plans to correct violations;  
20 expanding dissemination of information  
21 regarding facilities sanctioned or fined;  
22 amending s. 400.4195, F.S., relating to a  
23 prohibition on rebates; providing a penalty;  
24 creating s. 400.4256, F.S.; establishing  
25 procedures for assistance with the  
26 self-administration of medication; amending s.  
27 400.428, F.S.; providing for surveys to  
28 determine compliance with facility standards  
29 and residents' rights; amending s. 400.442,  
30 F.S.; providing for professional assistance and  
31 corrective action plans for facilities with

1 deficiencies related to the administration of  
2 medications; amending s. 400.452, F.S.;  
3 revising provisions relating to facility staff  
4 training and education programs; providing for  
5 rules; amending s. 400.474, F.S.; providing for  
6 disciplinary action against a home health  
7 agency or employee who knowingly provides  
8 services in an unlicensed assisted living  
9 facility or adult family-care home; amending s.  
10 400.618, F.S.; revising the definition of the  
11 term "adult family-care home"; amending s.  
12 394.4574, F.S.; requiring district  
13 administrators of the Department of Children  
14 and Family Services to develop plans to ensure  
15 the provision of mental health and substance  
16 abuse treatment services to residents of  
17 assisted living facilities that hold a limited  
18 mental health license; providing effective  
19 dates.  
20

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

23 Section 1. Section 400.402, Florida Statutes, is  
24 amended to read:

25 400.402 Definitions.--When used in this part, ~~unless~~  
26 ~~the context otherwise requires,~~ the term:

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

30 (2) "Administrator" means an individual at least 21  
31 years of age who is responsible for the operation and

1 ~~maintenance who has general administrative charge~~ of an  
 2 assisted living facility.

3 ~~(3) "Assisted living facility," hereinafter referred~~  
 4 ~~to as "facility," means any building or buildings, section of~~  
 5 ~~a building, or distinct part of a building, residence, private~~  
 6 ~~home, boarding home, home for the aged, or other place,~~  
 7 ~~whether operated for profit or not, which undertakes through~~  
 8 ~~its ownership or management to provide, for a period exceeding~~  
 9 ~~24 hours, housing, food service, and one or more personal~~  
 10 ~~services for four or more adults, not related to the owner or~~  
 11 ~~administrator by blood or marriage, who require such services;~~  
 12 ~~or to provide extended congregate care, limited nursing~~  
 13 ~~services, or limited mental health services, when specifically~~  
 14 ~~licensed to do so pursuant to s. 400.407, unless the facility~~  
 15 ~~is licensed as an adult family-care home. A facility offering~~  
 16 ~~personal services, extended congregate care, limited nursing~~  
 17 ~~services, or limited mental health services for fewer than~~  
 18 ~~four adults is within the meaning of this definition if it~~  
 19 ~~formally or informally advertises to or solicits the public~~  
 20 ~~for residents or referrals and holds itself out to the public~~  
 21 ~~to be an establishment which regularly provides such services,~~  
 22 ~~unless the facility is licensed as an adult family-care home.~~

23 ~~(3)(4)~~ "Agency" means the Agency for Health Care  
 24 Administration.

25 ~~(4)(5)~~ "Aging in place" or "age in place" means the  
 26 process of providing increased or adjusted services to a  
 27 person to compensate for ~~by which a person chooses to remain~~  
 28 ~~in a residential environment despite the physical or mental~~  
 29 ~~decline that may occur with the aging process, in order to~~  
 30 maximize. ~~For aging in place to occur, needed services are~~  
 31 ~~added, increased, or adjusted to compensate for the physical~~

1 ~~or mental decline of the individual, while maximizing the~~  
2 person's dignity and independence and permit the person to  
3 remain in a familiar, noninstitutional, residential  
4 environment for as long as possible. Such services may be  
5 provided by facility staff, volunteers, family, or friends, or  
6 through contractual arrangements with a third party.

7 ~~(5)(6)~~ "Applicant" means an individual owner,  
8 corporation, partnership, firm, association, or governmental  
9 entity that applies ~~any facility owner, or if a business~~  
10 ~~entity, a person appointed by such entity to make application~~  
11 ~~for a license.~~

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

15 ~~(6)~~ "Assisted living facility" means any building or  
16 buildings, section or distinct part of a building, private  
17 home, boarding home, home for the aged, or other residential  
18 facility, whether operated for profit or not, which undertakes  
19 through its ownership or management to provide housing, meals,  
20 and one or more personal services for a period exceeding 24  
21 hours to one or more adults who are not relatives of the owner  
22 or administrator.

23 ~~(7)(8)~~ "Chemical restraint" means a pharmacologic drug  
24 that physically limits, restricts, or deprives an individual  
25 of movement or mobility, and is used for discipline or  
26 convenience and not required for the treatment of medical  
27 symptoms.

28 ~~(8)(9)~~ "Community living support plan" means a written  
29 document prepared by a mental health resident and the  
30 resident's mental health case manager ~~of that resident~~ in  
31 consultation with the administrator of an assisted living ~~the~~

1 facility with a limited mental health license or the  
 2 administrator's designee. A copy must be provided to the  
 3 administrator. The plan must include information about the  
 4 supports, services, and special needs of the resident which  
 5 enable the resident to live in the assisted living facility  
 6 and a method by which facility staff can recognize and respond  
 7 to the signs and symptoms particular to that resident which  
 8 indicate the need for professional services.

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

23 (10)~~(11)~~ "Department" means the Department of Elderly  
 24 Affairs.

25 (11)~~(12)~~ "Emergency" means a situation, physical  
 26 condition, or method of operation which presents imminent  
 27 danger of death or serious physical or mental harm to facility  
 28 residents.

29 (12)~~(13)~~ "Extended congregate care" means acts beyond  
 30 those authorized in subsection(17)~~(16)~~that may be performed  
 31 pursuant to chapter 464 by persons licensed thereunder while

1 carrying out their professional duties, and other supportive  
2 services which may be specified by rule. The purpose of such  
3 services is to enable residents to age in place in a  
4 residential environment despite mental or physical limitations  
5 that might otherwise disqualify them from residency in a  
6 facility licensed under this part.

7 (13)~~(14)~~ "Guardian" means a person to whom the law has  
8 entrusted the custody and control of the person or property,  
9 or both, of a person who has been legally adjudged  
10 incapacitated.

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

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

1           ~~(16)(17)~~ "Mental health resident" means an individual  
 2 who receives social security disability income due to a mental  
 3 disorder as determined by the Social Security Administration  
 4 or receives supplemental security income due to a mental  
 5 disorder as determined by the Social Security Administration  
 6 and receives optional state supplementation.

7           ~~(17)(18)~~ "Personal services" means direct physical  
 8 ~~include, but are not limited to, such services as: individual~~  
 9 ~~assistance with or supervision of the essential activities of~~  
 10 ~~daily living and the self-administration of medication as~~  
 11 ~~defined in subsection (1), and other similar services which~~  
 12 the department may define by rule. "Personal services" shall  
 13 not be construed to mean the provision of medical, nursing,  
 14 dental, or mental health services ~~by the staff of a facility,~~  
 15 ~~except as provided in this part. In addition, an emergency~~  
 16 ~~response device installed in the apartment or living area of a~~  
 17 ~~resident shall not be classified as a personal service.~~

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

27           (19) "Relative" means an individual who is the father,  
 28 mother, stepfather, stepmother, son, daughter, brother,  
 29 sister, grandmother, grandfather, great-grandmother,  
 30 great-grandfather, grandson, granddaughter, uncle, aunt, first  
 31 cousin, nephew, niece, husband, wife, father-in-law,



1 mother-in-law, son-in-law, daughter-in-law, brother-in-law,  
2 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,  
3 half-brother, or half-sister of an owner or administrator.

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

6 (21) "Resident's representative or designee" means a  
7 person other than the owner, or an agent or employee of the  
8 facility, designated in writing by the resident, if legally  
9 competent, to receive notice of changes in the contract  
10 executed pursuant to s. 400.424; to receive notice of and to  
11 participate in meetings between the resident and the facility  
12 owner, administrator, or staff concerning the rights of the  
13 resident; to assist the resident in contacting the ombudsman  
14 council if the resident has a complaint against the facility;  
15 or to bring legal action on behalf of the resident pursuant to  
16 s. 400.429.

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

29 (23) "Shared responsibility" means exploring the  
30 options available to a resident within a facility and the  
31 risks involved with each option when making decisions

1 pertaining to the resident's abilities, preferences, and  
2 service needs, thereby enabling the resident and, if  
3 applicable, the resident's representative or designee, or the  
4 resident's surrogate, guardian, or attorney in fact, and the  
5 facility to develop a service plan which best meets the  
6 resident's needs and seeks to improve the resident's quality  
7 of life.

8 (24) "~~Supervision of activities of daily living~~" means  
9 reminding residents to engage in activities of daily living  
10 and the self-administration of medication, and, when  
11 necessary, observing or providing verbal cuing to residents  
12 while they perform these activities.

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

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

31

1        ~~(26)(27)~~ "Supportive services" means services designed  
2 to encourage and assist aged persons or adults with  
3 disabilities to remain in the least restrictive living  
4 environment and to maintain their independence as long as  
5 possible.

6        ~~(27)(28)~~ "Twenty-four-hour nursing supervision" means  
7 services that are ordered by a physician for a resident whose  
8 condition requires the supervision of a physician and  
9 continued monitoring of vital signs and physical status. Such  
10 services shall be: medically complex enough to require  
11 constant supervision, assessment, planning, or intervention by  
12 a nurse; required to be performed by or under the direct  
13 supervision of licensed nursing personnel or other  
14 professional personnel for safe and effective performance;  
15 required on a daily basis; and consistent with the nature and  
16 severity of the resident's condition or the disease state or  
17 stage.

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

20        400.404 Facilities to be licensed; exemptions.--

21        (2) The following are exempt from licensure under this  
22 part:

23        (a) Any facility, institution, or other place operated  
24 by the Federal Government or any agency of the Federal  
25 Government.

26        (b) Any facility or part of a facility licensed under  
27 chapter 393 or chapter 394.

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

30        (d) Any person who provides housing, meals, and one or  
31 more personal services on a 24-hour basis in the person's own

1 home to not more than two adults who do not receive optional  
2 state supplementation. The person who provides the housing,  
3 meals, and personal services must own or rent, and live in,  
4 the home.

5 (e)~~(c)~~ Any home or facility approved by the United  
6 States Department of Veterans Affairs as a residential care  
7 home wherein care is provided exclusively to three or fewer  
8 veterans.

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

20 (g)~~(e)~~ Any facility certified under chapter 651, or a  
21 retirement community, may provide services authorized under  
22 this part or part IV of this chapter to its residents who live  
23 in single-family homes, duplexes, quadruplexes, or apartments  
24 located on the campus without obtaining a license to operate  
25 an assisted living facility if residential units within such  
26 buildings are used by residents who do not require staff  
27 supervision for that portion of the day when personal services  
28 are not being delivered and the owner obtains a home health  
29 license to provide such services. However, any building or  
30 distinct part of a building on the campus that is designated  
31 for persons who receive personal services and require

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

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

21 400.407 License required; fee, display.--

22 (1)~~(a)~~ A license issued by the agency is required for  
23 an assisted living facility operating in this state.~~It is~~  
24 ~~unlawful to operate or maintain a facility without first~~  
25 ~~obtaining from the agency a license authorizing such~~  
26 ~~operation.~~

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

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

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

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

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

23           ~~6. If the agency determines that an owner is operating~~  
24 ~~or maintaining a facility without obtaining a license~~  
25 ~~authorizing such operation and determines that a condition~~  
26 ~~exists in the facility that poses a threat to the health,~~  
27 ~~safety, or welfare of a resident of the facility, the owner~~  
28 ~~commits neglect as defined in s. 415.102 and is subject to the~~  
29 ~~same actions and penalties specified in ss. 400.414 and~~  
30 ~~400.419 for a negligent act seriously affecting the health,~~  
31 ~~safety, or welfare of a resident of the facility.~~

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

3 400.4075 Limited mental health license.--An assisted  
4 living facility that serves three or more mental health  
5 residents must obtain a limited mental health license.

6 (1) To obtain a limited mental health license, a  
7 facility must hold a standard license as an assisted living  
8 facility, must not have any current uncorrected deficiencies  
9 or violations, and must ensure that, within 6 months after  
10 receiving a limited mental health license, the facility  
11 administrator and the staff of the facility who are in direct  
12 contact with mental health residents must complete training of  
13 no less than 6 hours related to their duties. This training  
14 will be provided by or approved by the Department of Children  
15 and Family Services.

16 Section 5. Section 400.408, Florida Statutes, is  
17 amended to read:

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

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

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

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

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

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

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

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

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

28 (h) Any person aware of the operation of an unlicensed  
29 assisted living facility must report that facility to the  
30 agency. The agency shall provide to the department and to  
31 elder information and referral providers a list, by county, of



1 licensed assisted living facilities, to assist persons who are  
2 considering an assisted living facility placement in locating  
3 a licensed facility.

4 ~~(2)(1)~~ It is unlawful to knowingly refer a person for  
5 residency to an unlicensed ~~facility that provides services~~  
6 ~~that may only be provided by an~~ assisted living facility; to  
7 an assisted living facility the license of which is under  
8 denial or has been suspended or revoked; or to an assisted  
9 living ~~a~~ facility that has a moratorium on admissions. Any  
10 person who violates this subsection commits ~~is guilty of~~ a  
11 noncriminal violation, punishable by a fine not exceeding \$500  
12 as provided in s. 775.083.

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

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

31

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

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

27           Section 6. Section 400.411, Florida Statutes, is  
28 amended to read:

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

31

1           (1) Application for license shall be made to the  
2 agency on forms furnished by it and shall be accompanied by  
3 the appropriate license fee. ~~The application shall contain~~  
4 ~~sufficient information, as required by rules of the~~  
5 ~~department, to establish that the applicant can provide~~  
6 ~~adequate care.~~

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

10           ~~(3)~~(2) The application shall be signed by the  
11 applicant under oath and shall contain the following:

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

15           ~~1-~~ If the applicant is a firm, partnership, or  
16 association, the application shall contain the name, address,  
17 date of birth, and social security number of every member  
18 thereof.

19           ~~2-~~ If the applicant is a corporation, the application  
20 shall contain the corporation's ~~its~~ name and address, the  
21 name, address, date of birth, and social security number of  
22 each of its directors and officers, and the name and address  
23 of each person having at least a 5-percent ownership  
24 ~~10-percent~~ interest in the corporation.

25           (b) The name and address of any professional service,  
26 firm, association, partnership, or corporation that is to  
27 provide goods, leases, or services to the facility ~~for which~~  
28 ~~the application is made~~, if a 5-percent ~~10-percent~~ or greater  
29 interest in the service, firm, association, partnership, or  
30 corporation is owned by a person whose name must be listed on  
31 the application under paragraph (a).

1 (c) Information sufficient ~~that provides a source~~ to  
 2 establish the suitable character, financial stability, and  
 3 competency of the applicant and of each person specified in  
 4 the application under paragraph (a) ~~subparagraph (a)1. or~~  
 5 ~~subparagraph (a)2. who has at least a 10-percent interest in~~  
 6 ~~the firm, partnership, association, or corporation and, if~~  
 7 different from the applicant, applicable, of the administrator  
 8 and financial officer. ~~, including~~

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

24 (e) ~~(d)~~ The names and addresses of ~~other~~ persons of  
 25 whom the agency may inquire as to the character, and  
 26 reputation, and financial responsibility of the owner and, if  
 27 different from the applicant, the administrator and financial  
 28 officer ~~applicant and, if applicable, of the administrator.~~

29 ~~(e) The names and addresses of other persons of whom~~  
 30 ~~the agency may inquire as to the financial responsibility of~~  
 31 ~~the applicant.~~

1 (f) Identification of all other homes or facilities,  
2 including the addresses and the license or licenses under  
3 which they operate, if applicable, which are currently  
4 operated by the applicant or administrator and which provide  
5 housing, meals, and personal services to residents ~~adults~~.

6 ~~(g) Such other reasonable information as may be~~  
7 ~~required by the agency to evaluate the ability of the~~  
8 ~~applicant to meet the responsibilities entailed under this~~  
9 ~~part.~~

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

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

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. A certificate  
20 of authority, pursuant to chapter 651, may be provided as  
21 proof of financial ability.~~An applicant applying for an~~  
22 ~~initial license shall submit a balance sheet setting forth the~~  
23 ~~assets and liabilities of the owner and a statement projecting~~  
24 ~~revenues, expenses, taxes, extraordinary items, and other~~  
25 ~~credits or charges for the first 12 months of operation of the~~  
26 ~~facility.~~

27 (5)(4) If the applicant is a continuing care facility  
28 certified under chapter 651, a copy of the facility's  
29 certificate of authority must be provided ~~offers continuing~~  
30 ~~care agreements, as defined in chapter 651, proof shall be~~  
31

1 ~~furnished that the applicant has obtained a certificate of~~  
2 ~~authority as required for operation under that chapter.~~

3 (6)(5) The applicant shall provide proof of liability  
4 insurance as defined in s. 624.605.

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

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

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

22 (10) The applicant must furnish documentation of a  
23 satisfactory sanitation inspection of the facility by the  
24 county health department.

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

30 (12)(10) No county or municipality shall issue an  
31 occupational license which is being obtained for the purpose

1 of operating a facility regulated under this part without  
2 first ascertaining that the applicant has been licensed to  
3 operate such facility at the specified location or locations  
4 by the agency. The agency shall furnish to local agencies  
5 responsible for issuing occupational licenses sufficient  
6 instruction for making such ~~the above-required~~ determinations.

7 Section 7. 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 in the manner provided in chapter 120. At the chapter 120  
14 hearing, the agency shall prove by a preponderance of the  
15 evidence that its actions are warranted.

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

19 (a) An intentional or negligent act seriously  
20 affecting the health, safety, or welfare of a resident of the  
21 facility.

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

28 (c) Misappropriation or conversion of the property of  
29 a resident of the facility.

30 (d) Failure to follow the criteria and procedures  
31 provided under part I of chapter 394 relating to the

1 transportation, voluntary admission, and involuntary  
2 examination of a facility resident.

3 (e) One or more class I, three or more class II, or  
4 five or more repeated or recurring identical or similar class  
5 III violations ~~of this part~~ which were identified by the  
6 agency within the last 2 years ~~during the last biennial~~  
7 ~~inspection, monitoring visit, or complaint investigation and~~  
8 ~~which, in the aggregate, affect the health, safety, or welfare~~  
9 ~~of the facility residents.~~

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

20 (g) Violation of a moratorium.

21 (h) Failure of the license applicant, the licensee  
22 during relicensure, or ~~failure of~~ a licensee that holds a  
23 provisional ~~an initial or change of ownership~~ license, to meet  
24 the minimum license ~~standards or the~~ requirements of rules  
25 ~~adopted under~~ this part, or related rules, at the time of  
26 license application or renewal.

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

30 (j) An intentional or negligent life-threatening act  
31 in violation of the uniform firesafety standards for assisted



1 living facilities or other firesafety standards ~~established by~~  
2 ~~the State Fire Marshal,~~that threatens the health, safety, or  
3 welfare of a resident of a facility, as communicated to the  
4 agency by the local State Fire Marshal, a local fire marshal,  
5 ~~or other~~ authority having jurisdiction or the State Fire  
6 Marshal.

7 (k) Knowingly operating any unlicensed facility or  
8 providing without a license any service that must be licensed  
9 under this chapter.

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

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

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

24 (3) The agency may deny a license to any applicant or  
25 to any officer or board member of an applicant who is a firm,  
26 corporation, partnership, or association or who owns 5 percent  
27 or more of the facility, if the applicant, officer, or board  
28 member has or had a 25-percent or greater financial or  
29 ownership interest in any other facility licensed under this  
30 part, or in any entity licensed by this state or another state  
31 to provide health or residential care, which facility or

1 entity during the 5 years prior to the application for a  
2 license closed due to financial inability to operate; had a  
3 receiver appointed or a license denied, suspended, or revoked;  
4 was subject to a moratorium on admissions; had an injunctive  
5 proceeding initiated against it; or has an outstanding fine  
6 assessed under this chapter.

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

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

23 (5)(6) An action taken by the agency to suspend, deny,  
24 or revoke a facility's license under this part, in which the  
25 agency claims that the facility owner or an employee of the  
26 facility has threatened the health, safety, or welfare of a  
27 resident of the facility, shall, upon receipt of the  
28 facility's request for a hearing, be heard by the Division of  
29 Administrative Hearings of the Department of Management  
30 Services within 120 days after receipt of the facility's the  
31 request for a hearing, unless that time limitation period is

1 waived by both parties. The administrative law judge must  
2 render a decision within 30 days after receipt of a proposed  
3 recommended order ~~the hearing~~.

4 ~~(6)(7)~~ The agency shall provide to the Division of  
5 Hotels and Restaurants of the Department of Business and  
6 Professional Regulation, on a monthly basis, a list of those  
7 assisted living facilities which have had their licenses  
8 denied, suspended, or revoked or which are involved in an  
9 appellate proceeding pursuant to s. 120.60 related to the  
10 denial, suspension, or revocation of a license.

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

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

16 400.415 Moratorium on admissions; notice.--The agency  
17 may impose an immediate moratorium on admissions to any  
18 assisted living facility ~~if when~~ the agency determines that  
19 any condition in the facility presents a threat to the health,  
20 safety, or welfare of the residents in the facility.

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

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

29 (3) The department may by rule establish conditions  
30 that constitute grounds for imposing a moratorium on a  
31

1 facility and procedures for imposing and lifting a moratorium,  
2 as necessary to administer this section.

3 Section 9. Section 400.417, Florida Statutes, is  
4 amended to read:

5 400.417 Expiration of license; renewal; conditional  
6 license.--

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

29 (2) A license shall be renewed within 90 days upon the  
30 timely filing of an application on forms furnished by the  
31 agency and the provision of satisfactory proof of ability to

1 operate and conduct the facility in accordance with the  
2 requirements of this part and adopted rules, including ~~An~~  
3 ~~applicant for renewal of a license must furnish~~ proof that the  
4 facility has received a satisfactory firesafety inspection,  
5 conducted by the local ~~fire marshal or other~~ authority having  
6 jurisdiction or the State Fire Marshal, within the preceding  
7 12 months.

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

31

1           ~~(4)(2)~~ A licensee against whom a revocation or  
 2 suspension proceeding is pending at the time of license  
 3 renewal may be issued a conditional license effective until  
 4 final disposition by the agency ~~of such proceeding~~. If  
 5 judicial relief is sought from the final disposition, the  
 6 court having jurisdiction may issue a conditional license for  
 7 the duration of the judicial proceeding.

8           ~~(5)(3)~~ A conditional license may be issued to an  
 9 applicant for license renewal if ~~when~~ the applicant fails to  
 10 meet all standards and requirements for licensure. A  
 11 conditional license issued under this subsection shall be  
 12 limited in duration to a specific period of time not to exceed  
 13 6 months, as determined by the agency, and shall be  
 14 accompanied by an agency-approved ~~approved~~ plan of correction.

15           (6) When an extended care or limited nursing license  
 16 is requested during a facility's biennial license period, the  
 17 fee shall be prorated in order to permit the additional  
 18 license to expire at the end of the biennial license period.  
 19 The fee shall be calculated as of the date the additional  
 20 license application is received by the agency.

21           (7) The department may by rule establish renewal  
 22 procedures, identify forms, and specify documentation  
 23 necessary to administer this section.

24           Section 10. Section 400.4174, Florida Statutes, is  
 25 amended to read:

26           400.4174 Reports of abuse in facilities.--When an  
 27 employee, volunteer, administrator, or owner of a facility is  
 28 the subject of ~~has~~ a confirmed report of adult abuse, neglect,  
 29 or exploitation, as defined in s. 415.102, ~~or child abuse or~~  
 30 ~~neglect, as defined in s. 415.503,~~ and the protective  
 31 investigator knows that the individual is an employee,

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

3 Section 11. Section 400.4176, Florida Statutes, is  
4 amended to read:

5 400.4176 Notice of change of administrator.--If,  
6 during the period for which a license is issued, the owner  
7 changes administrators, the owner must notify the agency of  
8 the change within 10 ~~45~~ days ~~thereof~~ and ~~must~~ provide  
9 documentation within 90 days that the new administrator has  
10 completed the applicable core educational requirements under  
11 s. 400.452. Background screening shall be completed on any  
12 new administrator ~~to establish that the individual is of~~  
13 ~~suitable character~~ as specified in s. 400.411 ~~ss.~~  
14 ~~400.411(2)(c) and 400.456.~~

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

17 400.418 Disposition of fees and administrative  
18 fines.--

19 (1) Income from license fees, inspection fees, late  
20 fees, and administrative fines generated pursuant to ss.  
21 400.407, 400.408, 400.417, 400.419, and 400.431 shall be  
22 deposited in the Health Care Trust Fund administered by the  
23 agency. Such funds shall be directed to and used by the  
24 agency for the following purposes:

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

30 (b) An amount of \$5,000 of the trust funds accrued  
31 each year under this part shall be allocated to pay for

1 inspection-related physical and mental health examinations  
2 requested by the agency pursuant to s. 400.426 for residents  
3 who are either recipients of supplemental security income or  
4 have monthly incomes not in excess of the maximum combined  
5 federal and state cash subsidies available to supplemental  
6 security income recipients, as provided for in s. 409.212.  
7 Such funds shall only be used where the resident is ineligible  
8 for Medicaid.

9 (c) Any trust funds accrued each year under this part  
10 and not used for the purposes specified in paragraphs (a) and  
11 (b) shall be used to offset the costs of the licensure  
12 program, including the costs of conducting background  
13 investigations, verifying information submitted, defraying the  
14 costs of processing the names of applicants, and conducting  
15 inspections and monitoring visits pursuant to this part.

16 Section 13. Section 400.419, Florida Statutes, is  
17 amended to read:

18 400.419 Violations; administrative fines ~~penalties~~.--

19 ~~(1)(a) If the agency determines that a facility is not~~  
20 ~~in compliance with standards promulgated pursuant to the~~  
21 ~~provisions of this part, including the failure to report~~  
22 ~~evidence of the facility's financial instability or the~~  
23 ~~operation of a facility without a license, the agency, as an~~  
24 ~~alternative to or in conjunction with an administrative action~~  
25 ~~against a facility, shall make a reasonable attempt to discuss~~  
26 ~~each violation and recommended corrective action with the~~  
27 ~~owner or administrator of the facility, prior to written~~  
28 ~~notification thereof. The agency, instead of fixing a period~~  
29 ~~within which the facility shall enter into compliance with~~  
30 ~~standards, may request a plan of corrective action from the~~  
31 ~~facility which demonstrates a good faith effort to remedy each~~



1 ~~violation by a specific date, subject to the approval of the~~  
2 ~~agency.~~

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

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

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

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

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

28 ~~(a) The gravity of the violation, including the~~  
29 ~~probability that death or serious physical or emotional harm~~  
30 ~~to a resident will result or has resulted, the severity of the~~  
31

1 ~~action or potential harm, and the extent to which the~~  
2 ~~provisions of the applicable statutes or rules were violated.~~

3 ~~(b) Actions taken by the owner or administrator to~~  
4 ~~correct violations.~~

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

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

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

9 (1)(3) Each violation of this part and adopted rules  
10 shall be classified according to the nature of the violation  
11 and the gravity of its probable effect on facility residents.  
12 The agency shall indicate the classification ~~of each violation~~  
13 on the written ~~face of the~~ notice of the violation as follows:

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

28 (b) Class "II" 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 directly threaten the physical or emotional health,

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

10 (c) Class "III" 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 indirectly or potentially threaten the physical or  
14 emotional health, safety, or security of facility residents,  
15 other than class I or class II violations. A class III  
16 violation is subject to an administrative fine ~~a civil penalty~~  
17 of not less than \$100 and not exceeding \$1,000 ~~\$500~~ for each  
18 violation. A citation for a class III violation shall specify  
19 the time within which the violation is required to be  
20 corrected. If a class III violation is corrected within the  
21 time specified, no fine ~~civil penalty~~ may be imposed, unless  
22 it is a repeated offense.

23 (d) Class "IV" violations are those conditions or  
24 occurrences related to the operation and maintenance of a  
25 building or to required reports, forms, or documents that do  
26 not have the potential of negatively affecting residents.  
27 These violations are of a type that the agency determines do  
28 not threaten the health, safety, or security of residents of  
29 the facility. A facility that does not correct a class IV  
30 violation within the time ~~limit~~ specified in the  
31 agency-approved corrective action plan is subject to an

1 administrative fine ~~a civil penalty~~ of not less than \$50 nor  
2 more than \$200 for each violation. Any class IV violation  
3 that is corrected during the time an agency survey is being  
4 conducted will be identified as an agency finding and not as a  
5 violation.

6 ~~(2)(4)~~ The agency may set and levy a fine not to  
7 exceed ~~\$1,000~~\$500 for each violation which cannot be  
8 classified according to subsection ~~(1)(3)~~. ~~In no event may~~  
9 Such fines ~~fine~~ in the aggregate may not exceed \$10,000 per  
10 survey~~\$5,000~~.

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

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

19 (b) Actions taken by the owner or administrator to  
20 correct violations.

21 (c) Any previous violations.

22 (d) The financial benefit to the facility of  
23 committing or continuing the violation.

24 (e) The licensed capacity of the facility.

25 (4) Each day of continuing violation after the date  
26 fixed for termination of the violation, as ordered by the  
27 agency, constitutes an additional, separate, and distinct  
28 violation.

29 (5) Any action taken to correct a violation shall be  
30 documented in writing by the owner or administrator of the  
31 facility and verified through followup visits by agency

1 personnel. The agency may impose a fine and, in the case of an  
2 owner-operated facility, revoke or deny a facility's license  
3 when a facility administrator fraudulently misrepresents  
4 action taken to correct a violation.

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

9 (7) Except as provided in subsection (8), any facility  
10 that continues to operate without having applied for a license  
11 10 days after agency notification is subject to a \$1,000 fine.  
12 Each day beyond 20 days after agency notification constitutes  
13 a separate violation and the facility is subject to a fine of  
14 \$500 per day.

15 (8) Unlicensed facilities whose owner or administrator  
16 concurrently operates a licensed facility, has previously  
17 operated a licensed facility, or has been employed in a  
18 licensed facility shall immediately be subject to an  
19 administrative fine of \$5,000 upon agency notification. Each  
20 day that a facility continues to operate without having  
21 applied for a license within 10 working days after agency  
22 notification constitutes a separate violation, and such  
23 facility shall be subject to a fine of \$500 per day  
24 retroactive to the date of agency notification.

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

29 (10) In addition to any administrative fines imposed,  
30 the agency may assess a survey fee, equal to the lesser of one  
31 half of the facility's biennial license and bed fee or \$500,

1 to cover the cost of conducting initial complaint  
2 investigations that result in the finding of a violation that  
3 was the subject of the complaint or monitoring visits  
4 conducted under s. 400.428(3)(c) to verify the correction of  
5 the violations.

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

17 (12)~~(5)~~ Administrative fines ~~Civil penalties~~ paid by  
18 any facility under this section ~~the provisions of subsection~~  
19 ~~(3)~~ shall be deposited into the Health Care Trust Fund and  
20 expended as provided in s. 400.418.

21 (13)~~(6)~~ The agency shall develop and disseminate an  
22 annual list of all facilities sanctioned or fined \$5,000 or  
23 more ~~in excess of \$500~~ for violations of state standards, the  
24 number and class of violations involved, the penalties  
25 imposed, and the current status of cases. The list shall be  
26 disseminated, at no charge, to the Department of Elderly  
27 Affairs, the Department of Health ~~and Rehabilitative Services,~~  
28 the Department of Children and Family Services, the area  
29 agencies on aging, the Statewide Human Rights Advocacy  
30 Committee, and the state and district nursing home ~~and~~  
31 ~~long-term care facility~~ ombudsman councils. The Department of

1 Children and Family Services shall disseminate the list to  
2 service providers under contract to the department who are  
3 responsible for referring persons to a facility for residency.

4 The agency may charge a fee commensurate with the cost of  
5 printing and postage to other interested parties requesting a  
6 copy of this list.

7 Section 14. Section 400.4195, Florida Statutes, is  
8 amended to read:

9 400.4195 Rebates prohibited; penalties.--

10 (1) It is unlawful for any assisted living facility  
11 licensed under this part to contract or promise to pay or  
12 receive any commission, bonus, kickback, or rebate or engage  
13 in any split-fee arrangement in any form whatsoever with any  
14 physician, surgeon, organization, agency, or person, either  
15 directly or indirectly, for residents referred to an assisted  
16 living facility licensed under this part. A facility may  
17 employ or contract with persons to market the facility,  
18 provided the employee or contract provider clearly indicates  
19 that he or she represents the facility. A person or agency  
20 independent of the facility may provide placement or referral  
21 services for a fee to individuals seeking assistance in  
22 finding a suitable facility; however, any fee paid for  
23 placement or referral services must be paid by the individual  
24 looking for a facility, not by the facility.

25 (2) A violation of this section shall be considered  
26 patient brokering and is punishable as provided in s. 817.505.

27 ~~The department, in consultation with the agency, shall adopt~~  
28 ~~rules which assess administrative penalties for acts~~  
29 ~~prohibited by subsection (1).~~

30 Section 15. Paragraph (a) of subsection (1) of section  
31 400.422, Florida Statutes, is amended to read:

1           400.422 Receivership proceedings.--

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

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

10           Section 16. Section 400.4256, Florida Statutes, is  
11 created to read:

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

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

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

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

29           (2) Residents who are capable of self-administering  
30 their own medications without assistance shall be encouraged  
31 and allowed to do so. However, an unlicensed person may,



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

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

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

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

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

26 (d) Applying topical medications.

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

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

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 tabled or crushing a  
6 tablet as prescribed.

7           (b) The preparation of syringes for injection or the  
8 administration of 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 that 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 and interpret terms as necessary to implement this  
3 section.

4           Section 17. 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 18. 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 to 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,  
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 19. 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 3  
23 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 pursuant to a curriculum developed by the department,  
8 provided by a registered nurse, licensed pharmacist, or  
9 department staff. ~~Administrators and staff of facilities more~~  
10 ~~than 10 percent of whose residents are mental health residents~~  
11 ~~shall participate in training in the care and supervision of~~  
12 ~~such residents as specified by rule of the department.~~

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

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

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

7 (9) The department shall adopt rules pursuant to the  
8 Administrative Procedure Act to establish training programs,  
9 standards and curriculum for training, staff training  
10 requirements, procedures for approving training programs, and  
11 training fees.

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

14 400.474 Denial, suspension, revocation of license;  
15 injunction; grounds.--

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

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

24 Section 21. Section 400.618, Florida Statutes, is  
25 amended to read:

26 400.618 Definitions.--As used in this part ~~ss.~~  
27 ~~400.616-400.629~~, the term:

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

31



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

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

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

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

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

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

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

7           (6) "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           (7) "Department" means the Department of Elderly  
13 Affairs.

14           (8) "Disabled adult" means any person between 18 and  
15 59 years of age, inclusive, who is a resident of the state and  
16 who has one or more permanent physical or mental limitations  
17 that restrict the person's ability to perform the normal  
18 activities of daily living.

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

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

25           (11) "Relative" means an individual who is the father,  
26 mother, son, daughter, brother, sister, uncle, aunt, first  
27 cousin, nephew, niece, husband, wife, father-in-law,  
28 mother-in-law, son-in-law, daughter-in-law, brother-in-law,  
29 sister-in-law, stepfather, stepmother, stepson, stepdaughter,  
30 stepbrother, stepsister, half brother, or half sister of a  
31 provider.

1           Section 22. Paragraph (h) of subsection (3) of section  
2 408.036, Florida Statutes, is amended to read:

3           408.036 Projects subject to review.--

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

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

10 ~~400.404(2)(e)~~; or a residential facility that serves only  
11 retired military personnel, their dependents, and the  
12 surviving dependents of deceased military personnel.

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

23  
24 A request for exemption under this subsection may be made at  
25 any time and is not subject to the batching requirements of  
26 this section.

27           Section 23. Subsection (3) is added to section  
28 394.4574, Florida Statutes, to read:

29           394.4574 Department responsibilities for a mental  
30 health resident who resides in an assisted living facility  
31 that holds a limited mental health license.--

1           (3) The secretary of the department, in consultation  
2 with the Agency for Health Care Administration, shall annually  
3 require each district administrator to develop, with community  
4 input, detailed plans that demonstrate how the district will  
5 ensure the provision of state-funded mental health and  
6 substance abuse treatment services to residents of assisted  
7 living facilities that hold a limited mental health license.  
8 These plans must be consistent with the alcohol, drug abuse,  
9 and mental health district plan developed pursuant to s.  
10 394.75 and must address case management services; access to  
11 consumer-operated drop-in centers; access to services during  
12 evenings, weekends, and holidays; supervision of the clinical  
13 needs of the residents; and access to emergency psychiatric  
14 care.

15           Section 24. Except as otherwise provided herein, this  
16 act shall take effect October 1 of the year in which enacted.