

By the Committee on Elder Affairs & Long Term Care and
Representative Roberts-Burke

1 A bill to be entitled
2 An act relating to adult family-care homes;
3 amending ss. 400.616, 400.617, 400.618,
4 400.619, 400.6196, 400.621, 400.6211, 400.622,
5 400.625, 400.6255, 400.628, and 400.629, F.S.,
6 and creating s. 400.6194, F.S.; revising
7 legislative intent and purpose; revising
8 definitions; requiring adult family-care home
9 providers to meet certain screening
10 requirements; revising requirements for
11 licensure application and renewal; providing a
12 late renewal fee; revising grounds for denial,
13 suspension, or revocation of a license;
14 revising requirements for rules relating to
15 appropriate placement of residents; providing
16 certain limitations on rules; deleting
17 authority for rules relating to supervision of
18 residents; revising provisions relating to
19 injunctive relief; requiring certain
20 information to be provided to residents' legal
21 representatives; conforming terminology and
22 correcting references and cross references;
23 amending s. 419.001, F.S.; correcting a cross
24 reference; providing an effective date.
25

26 Be It Enacted by the Legislature of the State of Florida:
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28 Section 1. Section 400.616, Florida Statutes, is
29 amended to read:
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1 400.616 Short title.--This part Sections
2 ~~400.616-400.629~~ may be cited as the "Adult Family-Care Home
3 Act."

4 Section 2. Section 400.617, Florida Statutes, is
5 amended to read:

6 400.617 Legislative intent; purpose.--

7 (1) The Legislature encourages the provision of care
8 for disabled adults and frail elders ~~aged persons~~ in
9 family-type living arrangements in private homes.

10 (2) Adult family-care homes provide housing and
11 personal care for disabled adults and frail elders who choose
12 to live with an individual or family in a private home. The
13 adult family-care home provider must live in the home.The
14 purpose of this part ~~ss. 400.616-400.629~~ is to provide for the
15 health, safety, and welfare of residents of adult family-care
16 homes in the state.

17 (3) The Legislature recognizes that adult family-care
18 homes are an important part of the continuum of long-term
19 care. The personal care ~~services~~ available in these homes,
20 which may be provided directly or through contract or
21 agreement, is ~~are~~ intended to help residents remain as
22 independent as possible in order to delay or avoid placement
23 in a nursing home or other institution. Regulations governing
24 adult family-care homes must be sufficiently flexible to allow
25 residents to age in place if resources are available to meet
26 their needs and accommodate their preferences.

27 (4) The Legislature further finds and declares that
28 licensure under this part ~~ss. 400.616-400.629~~ is a public
29 trust and a privilege, and not an entitlement. This principle
30 must guide the finder of fact or trier of law at any
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1 administrative proceeding or circuit court action initiated by
2 the department to enforce this part ~~ss. 400.616-400.629~~.

3 Section 3. Section 400.618, Florida Statutes, is
4 amended to read:

5 400.618 Definitions.--As used in this part ~~ss.~~
6 ~~400.616-400.629~~, the term:

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

10 (2) "Adult family-care home" means a full-time,
11 family-type living arrangement, in a private home, under which
12 a person or persons provide, ~~for profit or not for profit,~~
13 room, board, and personal care ~~one or more personal services,~~
14 as appropriate for the level of functional impairment, for no
15 more than five ~~aged persons or~~ disabled adults or frail elders
16 who are not relatives. The following establishments are not
17 adult family-care homes:

18 (a) An establishment that provides personal care for
19 two services ~~for three~~ or fewer adults who do not receive
20 optional state supplementation under s. 409.212, ~~but that does~~
21 ~~not hold itself out to the public to be an establishment that~~
22 ~~regularly provides such services.~~

23 (b) An establishment in which a person or persons
24 provide personal care services only to their relatives.

25 (c) An establishment that is licensed as an assisted
26 living facility.

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

1 ~~(3)(4)~~ "Agency" means the Agency for Health Care
2 Administration.

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

9 (5) "Appropriate placement" means that the resident's
10 needs can be met by the adult family-care home or can be met
11 by services arranged by the adult family-care home or the
12 resident.

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

18 (7) "Department" means the Department of Elderly
19 Affairs.

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

25 (9) "Frail elder" means a functionally impaired
26 elderly person who is 60 years of age or older and who has
27 physical or mental limitations that restrict the person's
28 ability to perform the normal activities of daily living and
29 that impede the person's capacity to live independently.

30 ~~(10)(9)~~ "Personal care ~~includes services~~ include,
31 ~~but are not limited to,~~ individual assistance with or

1 supervision of the activities of daily living and the
2 self-administration of medication, ~~supervision of~~
3 ~~self-administered medication~~ and other similar services ~~that~~
4 ~~the department defines by rule.~~

5 (11)~~(10)~~ "Provider" means a person who is licensed to
6 operate an adult family-care home.

7 (12)~~(11)~~ "Relative" means an individual who is the
8 father, mother, son, daughter, brother, sister, uncle, aunt,
9 first cousin, nephew, niece, husband, wife, father-in-law,
10 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
11 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
12 stepbrother, stepsister, half brother, or half sister of a
13 provider.

14 (13) "Relief person" means an adult designated by the
15 provider to supervise the residents during the provider's
16 absence.

17 (14) "Resident" means a person receiving room, board,
18 and personal care in an adult family-care home.

19 Section 4. Section 400.619, Florida Statutes, is
20 amended to read:

21 400.619 Licensure application and renewal
22 requirements.--

23 (1) Each person who intends to be ~~a provider~~ of an
24 adult family-care home provider must apply for ~~obtain~~ a
25 license from the agency ~~before caring for a disabled adult or~~
26 ~~an aged person in the adult family-care home.~~ Such
27 ~~application must be made~~ at least 90 days before the applicant
28 intends to operate the adult family-care home.

29 (2) A person who intends to be ~~a provider~~ of an adult
30 family-care home provider must own or rent, and live in, the
31 adult family-care home that is to be licensed.

1 (3) Application for a license or annual license
2 renewal ~~to operate an adult family-care home~~ must be made on a
3 form provided by the agency, signed under oath, and must be
4 accompanied by a licensing fee of \$100 per year ~~to offset the~~
5 ~~cost of training and education programs by the Department of~~
6 ~~Elderly Affairs for providers.~~

7 (4) Upon receipt of a license application or license
8 renewal, and the fee, the agency shall conduct a level 1
9 background screening as provided under chapter 435 on must
10 ~~check with the abuse registry and the Department of Law~~
11 ~~Enforcement concerning the adult family-care home provider~~
12 applicant, the designated relief person, all adult household
13 members, and all staff members. The agency shall also conduct
14 an onsite visit to the home that is to be licensed.

15 (5) Access to a licensed adult family-care home must
16 be provided at reasonable times for the appropriate officials
17 of the department, the Department of Health, the Department of
18 Children and Family ~~and Rehabilitative~~ Services, the agency,
19 and the State Fire Marshal, who are responsible for the
20 development and maintenance of fire, health, sanitary, and
21 safety standards, to inspect the facility to assure compliance
22 with these standards. In addition, access to a licensed adult
23 family-care home must be provided at reasonable times for the
24 district long-term care ombudsman council.

25 (6) A license is effective for 1 year after the date
26 of issuance unless revoked sooner. Each license must state
27 the name of the provider, the address of the home to which the
28 license applies, and the maximum number of residents of the
29 home. A license may be issued with or without restrictions
30 governing the residents or care offered in the adult
31 family-care home. Failure to timely file a license renewal

1 application shall result in a late fee equal to 50 percent of
2 the license fee.

3 (7) A license is not transferable or applicable to any
4 location or person other than the location and ~~or~~ person
5 indicated on the license ~~application for licensure.~~

6 (8) The licensed maximum capacity of each adult
7 family-care home is based on the service needs of the
8 residents and the capability of the provider to meet the needs
9 of the residents. Any relative who lives in the adult
10 family-care home and who is ~~an aged person or a disabled adult~~
11 or frail elder must be included in that limitation.

12 (9) Each adult family-care home must designate at
13 least one licensed space for a resident receiving optional
14 state supplementation as defined in s. 409.212. The
15 department ~~of Health and Rehabilitative Services~~ shall specify
16 by rule the procedures to be followed for referring residents
17 who receive optional state supplementation to adult
18 family-care homes. Those homes licensed as adult foster homes
19 or assisted living facilities prior to January 1, 1994, that
20 convert to adult family-care homes, are exempt from this the
21 ~~requirement of designating one space for a resident receiving~~
22 ~~optional state supplementation.~~

23 (10) The agency may issue a conditional license to a
24 provider for the purpose of bringing the adult family-care
25 home into compliance with licensure requirements. A
26 conditional license must be limited to a specific period, not
27 exceeding 6 months, ~~as determined by the department, in~~
28 ~~consultation with the agency.~~ The department shall, by rule,
29 establish criteria for issuing conditional licenses.

30 ~~(11) The agency may deny, suspend, or revoke a license~~
31 ~~for any of the following reasons:~~

1 ~~(a) A confirmed report, obtained under s. 415.1075, of~~
2 ~~abuse, neglect, or exploitation, or conviction of a crime~~
3 ~~related to abuse, neglect, or exploitation.~~

4 ~~(b) A proposed confirmed report that remains unserved~~
5 ~~and is maintained in the central abuse registry and tracking~~
6 ~~system pursuant to s. 415.1065(2)(c).~~

7 ~~(c) An intentional or negligent act materially~~
8 ~~affecting the health, safety, or welfare of the adult~~
9 ~~family-care home residents.~~

10 ~~(d) A violation of ss. 400.616-400.629 or rules~~
11 ~~adopted under ss. 400.616-400.629, including the failure to~~
12 ~~comply with any restrictions specified in the license.~~

13 ~~(e) Submission of fraudulent or inaccurate information~~
14 ~~to the agency.~~

15 ~~(f) Conviction of a felony involving violence to a~~
16 ~~person.~~

17 ~~(g) Failure to pay a civil penalty assessed under this~~
18 ~~part.~~

19 (11)~~(12)~~ All moneys collected under this section must
20 be deposited into the Department of Elderly Affairs
21 Administrative Trust Fund and ~~must be~~ used to offset the
22 expenses of departmental training and education for adult
23 family-care home providers.

24 (12)~~(13)~~ The department shall adopt rules to implement
25 this section.

26 Section 5. Section 400.6194, Florida Statutes, is
27 created to read:

28 400.6194 Denial or revocation of a license.--The
29 agency may deny or revoke a license for any of the following
30 reasons:

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1 (1) Failure of any of the persons required to undergo
2 background screening under s. 400.619 to meet the level 1
3 screening standards of s. 435.03.

4 (2) An intentional or negligent act materially
5 affecting the health, safety, or welfare of the adult
6 family-care home residents.

7 (3) Failure to comply with any restrictions specified
8 in the license.

9 (4) Submission of fraudulent information or omission
10 of any material fact on a license application or any other
11 document required by the agency.

12 (5) Failure to pay an administrative fine assessed
13 under this part.

14 (6) A violation of this part or adopted rules which
15 results in conditions or practices that directly threaten the
16 physical or emotional health, safety, or welfare of residents.

17 (7) Failure to correct cited fire code violations that
18 threaten the health, safety, or welfare of residents.

19 (8) Failure to submit a completed initial license
20 application, or to complete a license renewal application
21 within the specified timeframe.

22 Section 6. Paragraph (b) of subsection (1) of section
23 400.6196, Florida Statutes, is amended to read:

24 400.6196 Violations; penalties.--

25 (1) In addition to any other liability or penalty
26 provided by law, the agency may impose a civil penalty on a
27 person for:

28 (b) Violating any rule adopted under this part ~~ss.~~
29 ~~400.616-400.629.~~

30 Section 7. Section 400.621, Florida Statutes, is
31 amended to read:

1 400.621 Rules and standards relating to adult
2 family-care homes.--
3 (1) The department shall, in consultation with the
4 Department of Children and Family ~~Health and Rehabilitative~~
5 Services and the agency, by rule, establish minimum standards
6 and licensure procedures for adult family-care homes. The
7 rules must, at a minimum:
8 (a) Provide for the health, safety, and well-being of
9 each resident in the adult family-care home.
10 (b) Provide procedures for annual license renewal,
11 prevention of abuse, proper management of each resident's
12 property and personal affairs, inspections, and records and
13 reports.
14 (c) Promote the growth of adult family-care homes as a
15 component of a long-term care system.
16 (d) Promote the goal of aging in place.
17 (e) Mandate compliance with chapter 419.
18 (f) Assure that an adult family-care home is the
19 appropriate living arrangement for each resident. A resident
20 who requires 24-hour nursing supervision may not be retained
21 in an adult family-care home unless such resident is an
22 enrolled hospice patient and the resident's continued
23 residency is mutually agreeable to the resident and the
24 provider. ~~A person who would not be an appropriate resident~~
25 ~~in any assisted living facility under s. 400.426 would not be~~
26 ~~an appropriate resident in an adult family-care home.~~
27 (g) Assure the least possible disruption of residents'
28 lives when an adult family-care home is closed.
29 (h) Provide procedures to protect the residents'
30 rights as provided in s. 400.628.
31

1 (2) The department and agency rules that implement
2 regulatory requirements for adult family-care homes shall be
3 as minimal and flexible as possible, to ensure the protection
4 of residents while minimizing obstacles that could inhibit the
5 establishment of adult family-care homes.

6 (3)~~(2)~~ Minimum firesafety standards shall be
7 established and enforced by the State Fire Marshal in
8 cooperation with the department and the agency. Such
9 standards must be included in the rules adopted by the
10 department after consultation with the State Fire Marshal and
11 the agency.

12 ~~(3) The department shall by rule establish standards~~
13 ~~for the adequate supervision of adult family-care residents.~~

14 (4) The provider of any adult family-care home that is
15 in operation at the time any rules are adopted or amended
16 under this part ~~ss. 400.616-400.629~~ may be given a reasonable
17 time, not exceeding 6 months, within which to comply with
18 those new or revised rules and standards.

19 Section 8. Paragraph (c) of subsection (2) and
20 subsections (3) and (4) of section 400.6211, Florida Statutes,
21 are amended to read:

22 400.6211 Training and education programs.--

23 (2) Training and education programs must include, but
24 are not limited to, information relating to:

25 (c) Identifying and meeting the special needs of ~~aged~~
26 ~~persons and disabled adults~~ and frail elders.

27 (3) Providers must complete the training and education
28 program within a reasonable time determined by the department.
29 Failure to complete the training and education program within
30 the time set by the department is a violation of this part ~~ss.~~

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1 ~~400.616-400.629~~ and subjects the provider to revocation of the
2 license.

3 (4) If the Department of Children and Family Health
4 ~~and Rehabilitative~~ Services, the agency, or the department
5 determines that there are problems in an adult family-care
6 home which could be reduced through specific training or
7 education beyond that required under this section, the agency
8 ~~department~~ may require the provider or staff to complete such
9 training or education.

10 Section 9. Section 400.622, Florida Statutes, is
11 amended to read:

12 400.622 Injunctive proceedings.--

13 ~~(1)~~ The department, the Department of Children and
14 Family Health and Rehabilitative Services, or the agency may
15 institute injunctive proceedings in a court of competent
16 jurisdiction to:

17 ~~(1)(a)~~ Enforce the provisions of this part ss.
18 ~~400.616-400.629~~ or any license requirement, minimum standard,
19 rule, or order issued or entered into under this part ss.
20 ~~400.616-400.629~~; or

21 ~~(2)(b)~~ Terminate the operation of an adult family-care
22 home when violations of any license requirement, standard, or
23 rule adopted under this part ss. ~~400.616-400.629~~ exist which
24 materially affect the health, safety, or welfare of residents.

25 ~~(2)~~ ~~Such injunctive relief may be temporary or~~
26 ~~permanent.~~

27 Section 10. Subsection (2) of section 400.625, Florida
28 Statutes, is amended to read:

29 400.625 Residency agreements.--

30 (2) Each residency agreement must specify the personal
31 care services and accommodations to be provided by the adult

1 family-care home, the rates or charges, a requirement of at
2 least 30 days' notice before a rate increase, and any other
3 provisions required by rule of the department.

4 Section 11. Section 400.6255, Florida Statutes, is
5 amended to read:

6 400.6255 Residents ~~Patients~~ with Alzheimer's disease
7 or other related disorders; certain disclosures.--An adult
8 family-care home licensed under this part which claims that it
9 provides special care for persons who have Alzheimer's disease
10 or other related disorders must disclose in its advertisements
11 or in a separate document those services that distinguish the
12 care as being especially applicable to, or suitable for, such
13 persons. The home must give a copy of all such advertisements
14 or a copy of the document to each person who requests
15 information about programs and services for persons with
16 Alzheimer's disease or other related disorders offered by the
17 home and must maintain a copy of all such advertisements and
18 documents in its records. The agency ~~department~~ shall examine
19 all such advertisements and documents in the home's records as
20 part of the license renewal procedure.

21 Section 12. Subsections (2) and (6) and paragraph (c)
22 of subsection (4) of section 400.628, Florida Statutes, are
23 amended to read:

24 400.628 Residents' bill of rights.--

25 (2) The provider shall ensure that residents and their
26 legal representatives are made aware of the rights,
27 obligations, and prohibitions set forth in this part ~~ss.~~
28 ~~400.616-400.629~~. Residents must also be given the names,
29 addresses, and telephone numbers of the district ombudsman
30 council and the adult abuse registry where they may lodge
31 complaints.

1 (4) A provider or staff of an adult family-care home
2 may not serve notice upon a resident to leave the premises or
3 take any other retaliatory action against any person who:

4 (c) Files a civil action alleging a violation of this
5 part ~~ss. 400.616-400.629~~ or notifies a state attorney or the
6 Attorney General of a possible violation of this part ~~these~~
7 ~~sections~~.

8 (6) Any person who reports a complaint concerning a
9 suspected violation of this part ~~ss. 400.616-400.629~~ or the
10 services and conditions in an adult family-care home, or who
11 testifies in any administrative or judicial proceeding arising
12 from such a complaint, is immune from any civil or criminal
13 liability therefor, unless the person acted in bad faith or
14 with malicious purpose or the court finds that there was a
15 complete absence of a justiciable issue of either law or fact
16 raised by the losing party.

17 Section 13. Section 400.629, Florida Statutes, is
18 amended to read:

19 400.629 Civil actions to enforce rights.--Any person
20 or resident whose rights as specified in this part ~~ss.~~
21 ~~400.616-400.629~~ are violated has a cause of action against any
22 adult family-care home, provider, or staff responsible for the
23 violation. The action may be brought by the resident or the
24 resident's guardian, or by a person or organization acting on
25 behalf of a resident with the consent of the resident or the
26 resident's guardian, to enforce the right. The action may be
27 brought in any court of competent jurisdiction to enforce such
28 rights and to recover actual damages, and punitive damages
29 when malicious, wanton, or willful disregard of the rights of
30 others can be shown. Any plaintiff who prevails in any such
31 action is entitled to recover reasonable attorney's fees,

1 costs of the action, and damages, unless the court finds that
2 the plaintiff has acted in bad faith or with malicious purpose
3 or that there was a complete absence of a justiciable issue of
4 either law or fact. A prevailing defendant is entitled to
5 recover reasonable attorney's fees pursuant to s. 57.105. The
6 remedies provided in this section are in addition to other
7 legal and administrative remedies available to a resident or
8 to the agency ~~department~~.

9 Section 14. Paragraph (d) of subsection (1) of section
10 419.001, Florida Statutes, is amended to read:

11 419.001 Site selection of community residential
12 homes.--

13 (1) For the purposes of this section, the following
14 definitions shall apply:

15 (d) "Resident" means any of the following: a frail
16 elder ~~an aged person~~ as defined in s. 400.618~~(3)~~; a physically
17 disabled or handicapped person as defined in s. 760.22(7)(a);
18 a developmentally disabled person as defined in s.
19 393.063(11); a nondangerous mentally ill person as defined in
20 s. 394.455~~(18)~~~~(16)~~; or a child as defined in s. 39.01(12) and
21 (14).

22 Section 15. This act shall take effect on October 1 of
23 the year in which enacted.

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