

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; revising
16 provisions relating to injunctive relief;
17 requiring certain information to be provided to
18 residents' legal representatives; conforming
19 terminology and correcting references and cross
20 references; amending s. 419.001, F.S.;
21 correcting a cross reference; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 400.616, Florida Statutes, is
27 amended to read:

28 400.616 Short title.--This part Sections
29 ~~400.616-400.629~~ may be cited as the "Adult Family-Care Home
30 Act."
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1 Section 2. Section 400.617, Florida Statutes, is
2 amended to read:

3 400.617 Legislative intent; purpose.--

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

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

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

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

30 (5) Rules of the department relating to adult
31 family-care homes shall be as minimal and flexible as possible

1 to ensure the protection of residents while minimizing the
2 obstacles that could inhibit the establishment of adult
3 family-care homes.

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

6 400.618 Definitions.--As used in this part ~~ss.~~
7 ~~400.616-400.629~~, the term:

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

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

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

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

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

28 ~~(3) "Aged person" means any person age 60 or over who~~
29 ~~is currently a resident of the state and who, because of a~~
30 ~~functional impairment, requires one or more personal services~~

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1 ~~but does not require 24-hour skilled nursing home or~~
2 ~~institutional care.~~

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

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

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

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

20 (7) "Department" means the Department of Elderly
21 Affairs.

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

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

1 ~~(10)(9)~~ "Personal care" includes services ~~include,~~
2 ~~but are not limited to,~~ individual assistance with or
3 supervision of the activities of daily living and the
4 self-administration of medication, ~~supervision of~~
5 ~~self-administered medication,~~ and other similar services ~~that~~
6 ~~the department defines by rule.~~

7 ~~(11)(10)~~ "Provider" means a person who is licensed to
8 operate an adult family-care home.

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

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

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

21 Section 4. Section 400.619, Florida Statutes, is
22 amended to read:

23 400.619 Licensure application and renewal
24 requirements.--

25 (1) Each person who intends to be ~~a provider of an~~
26 ~~adult family-care home~~ provider must apply for ~~obtain~~ a
27 license from the agency ~~before caring for a disabled adult or~~
28 ~~an aged person in the adult family-care home.~~ Such
29 ~~application must be made~~ at least 90 days before the applicant
30 intends to operate the adult family-care home.
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1 (2) A person who intends to be ~~a provider~~ of an adult
2 family-care home provider must own or rent, and live in, the
3 adult family-care home that is to be licensed.

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

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

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

28 (6) A license is effective for 1 year after the date
29 of issuance unless revoked sooner. Each license must state
30 the name of the provider, the address of the home to which the
31 license applies, and the maximum number of residents of the

1 home. A license may be issued with or without restrictions
 2 governing the residents or care offered in the adult
 3 family-care home. Failure to timely file a license renewal
 4 application shall result in a late fee equal to 50 percent of
 5 the license fee.

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

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

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

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

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1 ~~consultation with the agency.~~ The department shall, by rule,
2 establish criteria for issuing conditional licenses.

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

5 ~~(a) A confirmed report, obtained under s. 415.1075, of~~
6 ~~abuse, neglect, or exploitation, or conviction of a crime~~
7 ~~related to abuse, neglect, or exploitation.~~

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

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

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

17 ~~(e) Submission of fraudulent or inaccurate information~~
18 ~~to the agency.~~

19 ~~(f) Conviction of a felony involving violence to a~~
20 ~~person.~~

21 ~~(g) Failure to pay a civil penalty assessed under this~~
22 ~~part.~~

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

28 (12)~~(13)~~ The department shall adopt rules to implement
29 this section.

30 Section 5. Section 400.6194, Florida Statutes, is
31 created to read:

1 400.6194 Denial or revocation of a license.--The
2 agency may deny or revoke a license for any of the following
3 reasons:

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

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

10 (3) Failure to comply with any restrictions specified
11 in the license.

12 (4) Submission of fraudulent information or omission
13 of any material fact on a license application or any other
14 document required by the agency.

15 (5) Failure to pay an administrative fine assessed
16 under this part.

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

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

22 (8) Failure to submit a completed initial license
23 application, or to complete a license renewal application
24 within the specified timeframe.

25 Section 6. Paragraph (b) of subsection (1) of section
26 400.6196, Florida Statutes, is amended to read:

27 400.6196 Violations; penalties.--

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

1 (b) Violating any rule adopted under this part ss.
2 ~~400.616-400.629~~.

3 Section 7. Paragraph (f) of subsection (1) of section
4 400.621, Florida Statutes, is amended to read:

5 400.621 Rules and standards relating to adult
6 family-care homes.--

7 (f) Assure that an adult family-care home is the
8 appropriate living arrangement for each resident. A resident
9 who requires 24-hour nursing supervision may not be retained
10 in an adult family-care home unless such resident is an
11 enrolled hospice patient and the resident's continued
12 residency is mutually agreeable to the resident and the
13 provider. ~~A person who would not be an appropriate resident~~
14 ~~in any assisted living facility under s. 400.426 would not be~~
15 ~~an appropriate resident in an adult family-care home.~~

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

19 400.6211 Training and education programs.--

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

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

24 (3) Providers must complete the training and education
25 program within a reasonable time determined by the department.
26 Failure to complete the training and education program within
27 the time set by the department is a violation of this part ss.
28 ~~400.616-400.629~~ and subjects the provider to revocation of the
29 license.

30 (4) If the Department of Children and Family Health
31 ~~and Rehabilitative~~ Services, the agency, or the department

1 determines that there are problems in an adult family-care
2 home which could be reduced through specific training or
3 education beyond that required under this section, the agency
4 ~~department~~ may require the provider or staff to complete such
5 training or education.

6 Section 9. Section 400.622, Florida Statutes, is
7 amended to read:

8 400.622 Injunctive proceedings.--

9 ~~(1)~~ The department, the Department of Children and
10 Family Health and Rehabilitative Services, or the agency may
11 institute injunctive proceedings in a court of competent
12 jurisdiction to:

13 ~~(1)(a)~~ Enforce the provisions of this part ss.
14 ~~400.616-400.629~~ or any license requirement, minimum standard,
15 rule, or order issued or entered into under this part ss.
16 ~~400.616-400.629~~; or

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

21 ~~(2)~~ ~~Such injunctive relief may be temporary or~~
22 ~~permanent.~~

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

25 400.625 Residency agreements.--

26 (2) Each residency agreement must specify the personal
27 care services and accommodations to be provided by the adult
28 family-care home, the rates or charges, a requirement of at
29 least 30 days' notice before a rate increase, and any other
30 provisions required by rule of the department.

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1 Section 11. Section 400.6255, Florida Statutes, is
2 amended to read:

3 400.6255 Residents ~~Patients~~ with Alzheimer's disease
4 or other related disorders; certain disclosures.--An adult
5 family-care home licensed under this part which claims that it
6 provides special care for persons who have Alzheimer's disease
7 or other related disorders must disclose in its advertisements
8 or in a separate document those services that distinguish the
9 care as being especially applicable to, or suitable for, such
10 persons. The home must give a copy of all such advertisements
11 or a copy of the document to each person who requests
12 information about programs and services for persons with
13 Alzheimer's disease or other related disorders offered by the
14 home and must maintain a copy of all such advertisements and
15 documents in its records. The agency ~~department~~ shall examine
16 all such advertisements and documents in the home's records as
17 part of the license renewal procedure.

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

21 400.628 Residents' bill of rights.--

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

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

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

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

14 Section 13. Section 400.629, Florida Statutes, is
15 amended to read:

16 400.629 Civil actions to enforce rights.--Any person
17 or resident whose rights as specified in this part ~~ss.~~
18 ~~400.616-400.629~~ are violated has a cause of action against any
19 adult family-care home, provider, or staff responsible for the
20 violation. The action may be brought by the resident or the
21 resident's guardian, or by a person or organization acting on
22 behalf of a resident with the consent of the resident or the
23 resident's guardian, to enforce the right. The action may be
24 brought in any court of competent jurisdiction to enforce such
25 rights and to recover actual damages, and punitive damages
26 when malicious, wanton, or willful disregard of the rights of
27 others can be shown. Any plaintiff who prevails in any such
28 action is entitled to recover reasonable attorney's fees,
29 costs of the action, and damages, unless the court finds that
30 the plaintiff has acted in bad faith or with malicious purpose
31 or that there was a complete absence of a justiciable issue of

1 either law or fact. A prevailing defendant is entitled to
2 recover reasonable attorney's fees pursuant to s. 57.105. The
3 remedies provided in this section are in addition to other
4 legal and administrative remedies available to a resident or
5 to the agency ~~department~~.

6 Section 14. Paragraph (d) of subsection (1) of section
7 419.001, Florida Statutes, is amended to read:

8 419.001 Site selection of community residential
9 homes.--

10 (1) For the purposes of this section, the following
11 definitions shall apply:

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

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

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