

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, references, and cross-references;
20 amending s. 419.001, F.S.; conforming a
21 cross-reference; providing an effective date.

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

24
25 Section 1. Section 400.616, Florida Statutes, is
26 amended to read:
27 400.616 Short title.--This part Sections
28 ~~400.616-400.629~~ may be cited as the "Adult Family-Care Home
29 Act."

30 Section 2. Section 400.617, Florida Statutes, is
31 amended to read:

1 400.617 Legislative intent; purpose.--

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

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

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

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

28 (5) Rules of the department relating to adult
29 family-care homes shall be as minimal and flexible as possible
30 to ensure the protection of residents while minimizing the
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1 obstacles that could inhibit the establishment of adult
2 family-care homes.

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 arrangement whereby the person who owns or
19 rents the home provides room, board, and ~~establishment that~~
20 ~~provides~~ personal services for not more than two ~~three or~~
21 ~~fewer~~ adults who do not receive optional state supplementation
22 under s. 409.212, ~~but that does not hold itself out to the~~
23 ~~public to be an establishment that regularly provides such~~
24 ~~services.~~ The person who provides the housing, meals, and
25 personal care must own or rent the home and reside therein.

26 (b) An arrangement whereby the person who owns or
27 rents the home provides room, board, and ~~establishment in~~
28 ~~which a person or persons provide~~ personal services only to
29 his or her ~~their~~ relatives.

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

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

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

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

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

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

23 (7) "Department" means the Department of Elderly
24 Affairs.

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

30 (9) "Frail elder" means a functionally impaired
31 elderly person who is 60 years of age or older and who has

1 physical or mental limitations that restrict the person's
2 ability to perform the normal activities of daily living and
3 that impede the person's capacity to live independently.

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

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

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

20 (13) "Relief person" means an adult designated by the
21 provider to supervise the residents during the provider's
22 absence.

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

25 Section 4. Section 400.619, Florida Statutes, is
26 amended to read:

27 400.619 Licensure application and renewal
28 requirements.--

29 (1) Each person who intends to be ~~a provider~~ of an
30 adult family-care home provider must apply for ~~obtain~~ a
31 license from the agency ~~before caring for a disabled adult or~~

1 ~~an aged person in the adult family-care home. Such~~
2 ~~application must be made~~ at least 90 days before the applicant
3 intends to operate the adult family-care home.

4 (2) A person who intends to be ~~a provider of an adult~~
5 family-care home provider must own or rent ~~and live in the~~
6 adult family-care home that is to be licensed and reside
7 therein.

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

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

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

1 (6) A license is effective for 1 year after the date
 2 of issuance unless revoked sooner. Each license must state
 3 the name of the provider, the address of the home to which the
 4 license applies, and the maximum number of residents of the
 5 home. Failure to timely file a license renewal application
 6 shall result in a late fee equal to 50 percent of the license
 7 fee. ~~A license may be issued with or without restrictions~~
 8 ~~governing the residents or care offered in the adult~~
 9 ~~family-care home.~~

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

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

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

30 (10) The agency may issue a conditional license to a
 31 provider for the purpose of bringing the adult family-care

1 home into compliance with licensure requirements. A
2 conditional license must be limited to a specific period, not
3 exceeding 6 months, ~~as determined by the department, in~~
4 ~~consultation with the agency.~~ The department shall, by rule,
5 establish criteria for issuing conditional licenses.

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

8 ~~(a) A confirmed report, obtained under s. 415.1075, of~~
9 ~~abuse, neglect, or exploitation, or conviction of a crime~~
10 ~~related to abuse, neglect, or exploitation.~~

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

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

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

20 ~~(e) Submission of fraudulent or inaccurate information~~
21 ~~to the agency.~~

22 ~~(f) Conviction of a felony involving violence to a~~
23 ~~person.~~

24 ~~(g) Failure to pay a civil penalty assessed under this~~
25 ~~part.~~

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

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1 ~~(12)(13)~~ The department shall adopt rules to implement
2 this section.

3 Section 5. Section 400.6194, Florida Statutes, is
4 created to read:

5 400.6194 Denial or revocation of a license.--The
6 agency may deny or revoke a license for any of the following
7 reasons:

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

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

14 (3) Submission of fraudulent information or omission
15 of any material fact on a license application or any other
16 document required by the agency.

17 (4) Failure to pay an administrative fine assessed
18 under this part.

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

22 (6) Failure to correct cited fire code violations that
23 threaten the health, safety, or welfare of residents.

24 (7) Failure to submit a completed initial license
25 application, or to complete a license renewal application
26 within the specified timeframe.

27 Section 6. Paragraph (b) of subsection (1) of section
28 400.6196, Florida Statutes, is amended to read:

29 400.6196 Violations; penalties.--
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1 (1) In addition to any other liability or penalty
2 provided by law, the agency may impose a civil penalty on a
3 person for:

4 (b) Violating any rule adopted under this part ~~ss.~~
5 ~~400.616-400.629~~.

6 Section 7. Paragraph (f) of subsection (1) and
7 subsection (4) of section 400.621, Florida Statutes, are
8 amended to read:

9 400.621 Rules and standards relating to adult
10 family-care homes.--

11 (1) The department shall, in consultation with the
12 Department of Health and Rehabilitative Services and the
13 agency, by rule, establish minimum standards and licensure
14 procedures for adult family-care homes. The rules must, at a
15 minimum:

16 (f) Assure that an adult family-care home is the
17 appropriate living arrangement for each resident. A resident
18 who requires 24-hour nursing supervision may not be retained
19 in an adult family-care home unless such resident is an
20 enrolled hospice patient and the resident's continued
21 residency is mutually agreeable to the resident and the
22 provider. ~~A person who would not be an appropriate resident in~~
23 ~~any assisted living facility under s. 400.426 would not be an~~
24 ~~appropriate resident in an adult family care home.~~

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

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

4 400.6211 Training and education programs.--

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

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

9 (3) Providers must complete the training and education
10 program within a reasonable time determined by the department.
11 Failure to complete the training and education program within
12 the time set by the department is a violation of this part ss.
13 ~~400.616-400.629~~ and subjects the provider to revocation of the
14 license.

15 (4) If the Department of Children and Family Health
16 ~~and Rehabilitative~~ Services, the agency, or the department
17 determines that there are problems in an adult family-care
18 home which could be reduced through specific training or
19 education beyond that required under this section, the agency
20 ~~department~~ may require the provider or staff to complete such
21 training or education.

22 Section 9. Section 400.622, Florida Statutes, is
23 amended to read:

24 400.622 Injunctive proceedings.--

25 ~~(1)~~ The department, the Department of Children and
26 Family Health and Rehabilitative Services, or the agency may
27 institute injunctive proceedings in a court of competent
28 jurisdiction to:

29 ~~(1)(a)~~ Enforce the provisions of this part ss.
30 ~~400.616-400.629~~ or any license requirement, minimum standard,
31

1 rule, or order issued or entered into under this part ~~ss.~~
2 ~~400.616-400.629~~; or

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

7 ~~(2) Such injunctive relief may be temporary or~~
8 ~~permanent.~~

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

11 400.625 Residency agreements.--

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

17 Section 11. Section 400.6255, Florida Statutes, is
18 amended to read:

19 400.6255 Residents ~~Patients~~ with Alzheimer's disease
20 or other related disorders; certain disclosures.--An adult
21 family-care home licensed under this part which claims that it
22 provides special care for persons who have Alzheimer's disease
23 or other related disorders must disclose in its advertisements
24 or in a separate document those services that distinguish the
25 care as being especially applicable to, or suitable for, such
26 persons. The home must give a copy of all such advertisements
27 or a copy of the document to each person who requests
28 information about programs and services for persons with
29 Alzheimer's disease or other related disorders offered by the
30 home and must maintain a copy of all such advertisements and
31 documents in its records. The agency ~~department~~ shall examine

1 all such advertisements and documents in the home's records as
2 part of the license renewal procedure.

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

6 400.628 Residents' bill of rights.--

7 (2) The provider shall ensure that residents and their
8 legal representatives are made aware of the rights,
9 obligations, and prohibitions set forth in this part ~~ss.~~
10 ~~400.616-400.629~~. Residents must also be given the names,
11 addresses, and telephone numbers of the district ombudsman
12 council and the adult abuse registry where they may lodge
13 complaints.

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

17 (c) Files a civil action alleging a violation of this
18 part ~~ss. 400.616-400.629~~ or notifies a state attorney or the
19 Attorney General of a possible violation of this part ~~these~~
20 ~~sections~~.

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

30 Section 13. Section 400.629, Florida Statutes, is
31 amended to read:

1 400.629 Civil actions to enforce rights.--Any person
 2 or resident whose rights as specified in this part ~~ss.~~
 3 ~~400.616-400.629~~ are violated has a cause of action against any
 4 adult family-care home, provider, or staff responsible for the
 5 violation. The action may be brought by the resident or the
 6 resident's guardian, or by a person or organization acting on
 7 behalf of a resident with the consent of the resident or the
 8 resident's guardian, to enforce the right. The action may be
 9 brought in any court of competent jurisdiction to enforce such
 10 rights and to recover actual damages, and punitive damages
 11 when malicious, wanton, or willful disregard of the rights of
 12 others can be shown. Any plaintiff who prevails in any such
 13 action is entitled to recover reasonable attorney's fees,
 14 costs of the action, and damages, unless the court finds that
 15 the plaintiff has acted in bad faith or with malicious purpose
 16 or that there was a complete absence of a justiciable issue of
 17 either law or fact. A prevailing defendant is entitled to
 18 recover reasonable attorney's fees pursuant to s. 57.105. The
 19 remedies provided in this section are in addition to other
 20 legal and administrative remedies available to a resident or
 21 to the agency ~~department~~.

22 Section 14. Paragraph (d) of subsection (1) of section
 23 419.001, Florida Statutes, is amended to read:

24 419.001 Site selection of community residential
 25 homes.--

26 (1) For the purposes of this section, the following
 27 definitions shall apply:

28 (d) "Resident" means any of the following: a frail
 29 elder ~~an aged person~~ as defined in s. 400.618(3); a physically
 30 disabled or handicapped person as defined in s. 760.22(7)(a);
 31 a developmentally disabled person as defined in s.

1 393.063(11); a nondangerous mentally ill person as defined in
2 s. 394.455(18)~~(16)~~; or a child as defined in s. 39.01(12) and
3 (14).

4 Section 15. This act shall take effect on October 1,
5 1998.

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