

By the Committee on Elder Affairs & Long Term Care and
Representative Brooks

1 A bill to be entitled
2 An act relating to the care of elderly persons
3 (RAB); amending s. 400.404, F.S., relating to
4 facilities to be licensed; providing an
5 exemption; amending s. 400.424, F.S.; providing
6 requirements for the contract executed between
7 the licensee and the resident of an assisted
8 living facility; authorizing the department to
9 adopt rules; amending s. 400.427, F.S.;
10 revising requirements for facilities with
11 respect to obtaining surety bonds; authorizing
12 the department to adopt rules; creating s.
13 400.4275, F.S.; providing requirements relating
14 to business practices and records; authorizing
15 the department to adopt rules; amending s.
16 400.441, F.S.; revising provisions relating to
17 minimum standards established by department
18 rules; authorizing rules relating to waivers;
19 amending s. 400.442, F.S.; authorizing certain
20 rules relating to pharmacy and dietary
21 services; amending s. 400.444, F.S.;
22 authorizing certain rules relating to
23 construction requirements; amending s. 400.619,
24 F.S.; revising requirements for licensure to
25 operate an adult family-care home; amending s.
26 400.6196, F.S.; providing violations and
27 penalties; authorizing the department to adopt
28 rules; amending s. 400.621, F.S.; providing
29 additional authority and requirements for rules
30 for adult family-care homes; amending s.
31 400.6211, F.S., relating to training and

1 educational programs; authorizing the
2 department to adopt rules; amending s. 409.212,
3 F.S.; requiring facilities with residents
4 receiving optional supplementation to comply
5 with certain federal requirements; providing an
6 effective date.

7

8 Be It Enacted by the Legislature of the State of Florida:

9

10 Section 1. Subsection (2) of section 400.404, Florida
11 Statutes, is amended to read:

12 400.404 Facilities to be licensed; exemptions.--

13 (2) The following are exempt from this part:

14 (a) Any facility, institution, or other place operated
15 by the Federal Government or any agency of the Federal
16 Government.

17 (b) Any facility or part of a facility licensed under
18 chapter 393 or chapter 394.

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

23 (d) Any facility that has been incorporated in this
24 state for 50 years or more on or before July 1, 1983, and the
25 board of directors of which is nominated or elected by the
26 residents, until the facility is sold or its ownership is
27 transferred; or any facility, with improvements or additions
28 thereto, which has existed and operated continuously in this
29 state for 60 years or more on or before July 1, 1989, is
30 directly or indirectly owned and operated by a nationally
31 recognized fraternal organization, is not open to the public,

1 and accepts only its own members and their spouses as
2 residents.

3 (e) Any facility certified under chapter 651, or a
4 retirement community, may provide services authorized under
5 this part or part IV of this chapter to its residents who live
6 in single-family homes, duplexes, quadruplexes, or apartments
7 located on the campus without obtaining a license to operate
8 an assisted living facility if residential units within such
9 buildings are used by residents who do not require staff
10 supervision for that portion of the day when personal services
11 are not being delivered and the owner obtains a home health
12 license to provide such services. However, any building or
13 distinct part of a building on the campus that is designated
14 for persons who receive personal services and require
15 supervision beyond that which is available while such services
16 are being rendered must be licensed in accordance with this
17 part. If a facility provides personal services to residents
18 who do not otherwise require supervision and the owner is not
19 licensed as a home health agency, the buildings or distinct
20 parts of buildings where such services are rendered must be
21 licensed under this part. A resident of a facility that
22 obtains a home health license may contract with a home health
23 agency of his or her choice, provided that the home health
24 agency provides liability insurance and workers' compensation
25 coverage for its employees. Facilities covered by this
26 exemption may establish policies that give residents the
27 option of contracting for services and care beyond that which
28 is provided by the facility to enable them to age in place.
29 For purposes of this section, a retirement community consists
30 of a facility licensed under this part or under part II, and
31

1 apartments designed for independent living located on the same
2 campus.

3 (f) Any residential unit for independent living which
4 is located within a facility certified under chapter 651 or
5 which is colocated with a nursing home licensed under part II
6 or a facility licensed under this part in which services are
7 provided through an outpatient clinic or the nursing home on
8 an outpatient basis.

9 Section 2. Subsections (1), (2), (3), and (5) of
10 section 400.424, Florida Statutes, are amended, and subsection
11 (8) is added to said section, to read:

12 400.424 Contracts.--

13 (1) The presence of each resident in a facility shall
14 be covered by a contract, executed at the time of admission or
15 prior thereto, between the licensee and the resident or his or
16 her designee or legal representative. Each party to the
17 contract shall be provided with a duplicate original thereof,
18 and the licensee shall keep on file in the facility all such
19 contracts. The licensee may ~~shall~~ not destroy or otherwise
20 dispose of any such contract until 5 years after its
21 expiration ~~or such longer period as may be provided in the~~
22 ~~rules of the department.~~

23 (2) Each contract must ~~shall~~ contain express
24 provisions specifically setting forth the services and
25 accommodations to be provided by the facility; the rates or
26 charges; provision for at least 30 days' written notice of a
27 rate increase; the rights, duties, and obligations of the
28 residents, other than those specified in s. 400.428; and other
29 matters that ~~which~~ the parties deem appropriate. Whenever
30 money is deposited or advanced by a resident in a contract as
31

1 security for performance of the contract agreement or as
2 advance rent for other than the next immediate rental period:

3 (a) Such funds shall be deposited ~~held~~ in a banking
4 institution in this state that is. ~~Funds held shall be kept~~
5 ~~separate from the funds and property of the facility; shall be~~
6 ~~deposited in a bank savings association, trust company, or~~
7 ~~credit union located in this state and, if possible, located,~~
8 if possible, in the same community district in which the
9 facility is located; shall be kept separate from the funds and
10 property of the facility; may not be represented as part of
11 the assets of the facility on financial statements; and shall
12 be used, or otherwise expended, only for the account of the
13 resident.

14 (b) The licensee shall, within 30 days of receipt of
15 advance rent or a security deposit, notify the resident or
16 residents in writing of the manner in which the licensee is
17 holding the advance rent or security deposit and state the
18 name and address of the depository where the moneys are being
19 held. The licensee shall notify residents of the facility's
20 policy on advance deposits.

21 (3)(a) The contract shall include a refund policy to
22 be implemented at the time of a resident's transfer,
23 discharge, or death. The refund policy shall provide that the
24 resident or responsible party is entitled to a prorated refund
25 based on the daily rate for any unused portion of payment
26 beyond the termination date after all charges, including the
27 cost of damages to the residential unit resulting from
28 circumstances other than normal use, have been paid to the
29 licensee. For the purpose of this paragraph, the termination
30 date shall be the date the unit is vacated by the resident and
31 cleared of all personal belongings. If the amount of

1 belongings does not preclude renting the unit, the facility
2 may clear the unit and charge the resident or his or her
3 estate for moving and storing the items at a rate equal to the
4 actual cost to the facility, not to exceed 20 percent of the
5 regular rate for the unit, provided that 14 days' advance
6 written notification is given. If the resident's possessions
7 are not claimed within 45 days after notification, the
8 facility may dispose of them. The contract shall also specify
9 any other conditions under which claims will be made against
10 the refund due the resident. Except in the case of death or a
11 discharge due to medical reasons, the refunds shall be
12 computed in accordance with the notice of relocation
13 requirements specified in the contract. However, a resident
14 may not be required to provide the licensee with more than 30
15 days' notice of termination. If after a contract is
16 terminated, the facility intends to make a claim against a
17 refund due the resident, the facility shall notify the
18 resident or responsible party in writing of the claim and
19 shall provide said party with a reasonable time period of no
20 less than 14 calendar days to respond. The facility shall
21 provide a refund to the resident or responsible party within
22 45 days after the transfer, discharge, or death of the
23 resident. The agency shall impose a fine upon a facility that
24 fails to comply with the refund provisions of the paragraph,
25 which fine shall be equal to three times the amount due to the
26 resident. One-half of the fine shall be remitted to the
27 resident or his or her estate, and the other half to the
28 Health Care Trust Fund to be used for the purpose specified in
29 s. 400.418.

30 (b) If a licensee agrees to reserve a bed for a
31 resident who is admitted to a medical facility, including, but

1 not limited to, a nursing home, health care facility, or
2 psychiatric facility, the resident or his or her responsible
3 party shall notify the licensee of any change in status that
4 would prevent the resident from returning to the facility.
5 Until such notice is received, the agreed upon daily rate may
6 be charged by the licensee.

7 (c) The purpose of any advance payment and a refund
8 policy for such payment, including any advance payment for
9 housing, meals, lodging, or personal services, shall be
10 covered in the contract.

11 (5) Neither the ~~No contract nor,~~ or any provision
12 thereof relieves, ~~shall be construed to relieve~~ any licensee
13 of any requirement or obligation imposed upon it by this part
14 or rules adopted under this part ~~act or by standards or rules~~
15 ~~in force pursuant thereto.~~

16 (8) The department may by rule clarify terms,
17 establish procedures, clarify refund policies and contract
18 provisions, and specify documentation as necessary to
19 administer this section.

20 Section 3. Subsections (2), (3), and (7) of section
21 400.427, Florida Statutes, are amended, and subsection (8) is
22 added to said section, to read:

23 400.427 Property and personal affairs of residents.--

24 (2) A facility, or an owner, administrator, employee,
25 or representative thereof, may not act as the guardian,
26 trustee, or conservator for any resident of the assisted
27 living facility or any of such resident's property. An owner,
28 administrator, or staff member, or representative thereof, may
29 not act as a competent resident's payee for social security,
30 veteran's, or railroad benefits without the consent of the
31 resident. Any facility whose owner, administrator, or staff,

1 or representative thereof, serves as representative payee for
2 any resident of the facility shall file a surety bond with the
3 agency in an amount equal to twice the average monthly
4 aggregate income or personal funds due to residents, or
5 expendable for their account, which are received by a
6 facility. Any facility whose owner, administrator, or staff,
7 or a representative thereof, is granted power of attorney for
8 any resident of the facility shall file a surety bond with the
9 agency for each resident for whom such power of attorney is
10 granted. The surety bond shall be in an amount equal to twice
11 the average monthly income of the resident, plus the value of
12 any resident's other property ~~of the resident, which income~~
13 ~~and property are~~ under the control of the attorney in fact.
14 The bond shall be executed by the facility as principal and a
15 licensed surety company ~~authorized and licensed to do business~~
16 ~~in the state as surety~~. The bond shall be conditioned upon
17 the faithful compliance of the facility with this section and
18 shall run to the agency for the benefit of any resident who
19 suffers a financial loss as a result of the misuse or
20 misappropriation by a facility of funds held pursuant to this
21 subsection. Any surety company that ~~which~~ cancels or does not
22 renew the bond of any licensee shall notify the agency in
23 writing not less than 30 days in advance of such action,
24 giving the reason for the cancellation or nonrenewal. ~~The~~
25 ~~agency, in cooperation with insurance companies, associations,~~
26 ~~and organizations representing facilities licensed under this~~
27 ~~part, and the Department of Insurance shall develop procedures~~
28 ~~to implement the bonding requirements of this subsection.~~ Any
29 facility owner, administrator, or staff, or representative
30 thereof, who is granted power of attorney for any resident of
31 the facility shall, on a monthly basis, be required to provide

1 the resident a written statement of any transaction made on
2 behalf of the resident pursuant to this subsection, and a copy
3 of such statement given to the resident shall be retained ~~in~~
4 ~~the facility~~ in each resident's file and available for agency
5 inspection.

6 (3) A facility, upon mutual consent with the resident,
7 shall provide for the safekeeping in the facility of personal
8 effects not in excess of \$500 and funds of the resident not in
9 excess of \$200 cash, and. ~~A facility~~ shall keep complete and
10 accurate records of all such funds and personal effects
11 received ~~for safekeeping~~. If ~~when~~ a resident is absent from a
12 facility for 24 hours or more, the facility may provide for
13 the safekeeping of the resident's personal effects in excess
14 of \$500.

15 (7) In the event of the death of a resident, a
16 licensee shall return all refunds, funds, and property held in
17 trust to the resident's personal representative, if one has
18 been appointed at the time the facility disburses such funds,
19 and, if not, to the resident's spouse or adult next of kin
20 named in a beneficiary designation form provided by the
21 facility to the resident. If ~~in the event~~ the resident has no
22 spouse or adult next of kin or such person cannot be located,
23 funds due the resident shall be placed in an interest-bearing
24 account, and all property held in trust by the facility shall
25 be safeguarded until such time as the funds and property are
26 disbursed pursuant to the Florida Probate Code. Such funds
27 shall be kept separate from the funds and property of the
28 facility and other residents of the facility. If ~~in the event~~
29 the funds of the deceased resident are not disbursed pursuant
30 to ~~the provisions of~~ the Florida Probate Code within 2 years
31 after ~~of~~ the resident's death, the funds shall be deposited in

1 the Health Care Trust Fund administered by the agency ~~as~~
2 ~~provided in s. 400.418.~~

3 (8) The department may by rule clarify terms and
4 specify procedures and documentation necessary to administer
5 the provisions of this section relating to the proper
6 management of residents' funds and personal property and the
7 execution of surety bonds.

8 Section 4. Section 400.4275, Florida Statutes, is
9 created to read:

10 400.4275 Business practice; personnel records;
11 liability insurance.--The assisted living facility shall be
12 administered on a sound financial basis that is consistent
13 with good business practices.

14 (1) The administrator or owner of a facility shall
15 maintain accurate business records that identify, summarize,
16 and classify funds received and expenses disbursed and shall
17 use written accounting procedures and a recognized accounting
18 system.

19 (2) Evidence of filed bankruptcy of any owner;
20 issuance of checks returned for insufficient funds; delinquent
21 accounts; nonpayment of local, state, or federal taxes or
22 fees; unpaid utility expenses; tax or judgment liens against a
23 facility or the property of an owner of a facility; failure to
24 meet employee payroll; confirmed complaints to the agency or
25 ombudsman council regarding withholding of refunds or funds
26 due residents; failure to maintain liability insurance due to
27 nonpayment of premiums; nonpayment of rent or a mortgage;
28 nonpayment for essential services; or an adverse court action
29 that concerns the financial viability of the facility or any
30 other facility that is licensed under part II or under this
31 part, constitutes prima facie evidence that the owner lacks

1 satisfactory proof of financial ability to operate the
2 facility in accordance with the requirements of this part.

3 (3) The administrator or owner of a facility shall
4 maintain personnel records for each staff member which
5 contain, at a minimum, documentation of background screening,
6 if applicable, documentation of compliance with all training
7 requirements of this part or applicable rule, and a copy of
8 all licenses or certification held by each staff who performs
9 services for which licensure or certification is required
10 under this part or rule.

11 (4) The administrator or owner of a facility shall
12 maintain liability insurance coverage that is in force at all
13 times.

14 (5) The department may by rule clarify terms,
15 establish requirements for financial records, accounting
16 procedures, personnel procedures, insurance coverage, and
17 reporting procedures, and specify documentation as necessary
18 to implement the requirements of this section.

19 Section 5. Subsections (1) and (3) of section 400.441,
20 Florida Statutes, are amended to read:

21 400.441 Rules establishing standards.--

22 (1) It is the intent of the Legislature that rules
23 published and enforced pursuant to this section shall include
24 criteria by which a reasonable and consistent quality of
25 resident care and quality of life may be ensured and the
26 results of such resident care may be demonstrated. Such rules
27 shall also ensure a safe and sanitary environment that is
28 residential and noninstitutional in design or nature. It is
29 further intended that reasonable efforts be made to
30 accommodate the needs and preferences of residents to enhance
31 the quality of life in a facility. In order to provide safe

1 and sanitary facilities and the highest quality of resident
2 care accommodating the needs and preferences of residents, the
3 department, in consultation with the agency, the Department of
4 Children and Family Services, and the Department of Health ~~and~~
5 ~~Rehabilitative Services~~, shall adopt rules, policies, and
6 procedures to administer this part, which must include
7 reasonable and fair minimum standards in relation to:
8 (a) The requirements for and maintenance of
9 facilities, not in conflict with the provisions of chapter
10 553, relating to plumbing, heating, lighting, ventilation,
11 living space, and other housing conditions, which will ensure
12 the health, safety, and comfort of residents and protection
13 from fire hazard, including adequate provisions for fire alarm
14 and other fire protection suitable to the size of the
15 structure. Uniform firesafety standards shall be established
16 and enforced by the State Fire Marshal in cooperation with the
17 agency, the department, and the Department of Health ~~and~~
18 ~~Rehabilitative Services~~.
19 1. Evacuation capability determination.--
20 a. The provisions of the National Fire Protection
21 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
22 for determining the ability of the residents, with or without
23 staff assistance, to relocate from or within a licensed
24 facility to a point of safety as provided in the fire codes
25 adopted herein. An evacuation capability evaluation for
26 initial licensure shall be conducted within 6 months after the
27 date of licensure. For existing licensed facilities that are
28 not equipped with an automatic fire sprinkler system, the
29 administrator shall evaluate the evacuation capability of
30 residents at least annually. The evacuation capability
31 evaluation for each facility not equipped with an automatic

1 fire sprinkler system shall be validated, without liability,
2 by the State Fire Marshal, by the local fire marshal, or by
3 the local authority having jurisdiction over firesafety,
4 before the license renewal date. If the State Fire Marshal,
5 local fire marshal, or local authority having jurisdiction
6 over firesafety has reason to believe that the evacuation
7 capability of a facility as reported by the administrator may
8 have changed, it may, with assistance from the facility
9 administrator, reevaluate the evacuation capability through
10 timed exiting drills. Translation of timed fire exiting drills
11 to evacuation capability may be determined:

12 (I) Three minutes or less: prompt.

13 (II) More than 3 minutes, but not more than 13
14 minutes: slow.

15 (III) More than 13 minutes: impractical.

16 b. The Office of the State Fire Marshal shall provide
17 or cause the provision of training and education on the proper
18 application of Chapter 5, NFPA 101A, 1995 edition, to its
19 employees, to staff of the Agency for Health Care
20 Administration who are responsible for regulating facilities
21 under this part, and to local governmental inspectors. The
22 Office of the State Fire Marshal shall provide or cause the
23 provision of this training within its existing budget, but may
24 charge a fee for this training to offset its costs. The
25 initial training must be delivered within 6 months after July
26 1, 1995, and as needed thereafter.

27 c. The Office of the State Fire Marshal, in
28 cooperation with provider associations, shall provide or cause
29 the provision of a training program designed to inform
30 facility operators on how to properly review bid documents
31 relating to the installation of automatic fire sprinklers.

1 The Office of the State Fire Marshal shall provide or cause
2 the provision of this training within its existing budget, but
3 may charge a fee for this training to offset its costs. The
4 initial training must be delivered within 6 months after July
5 1, 1995, and as needed thereafter.

6 d. The administrator of a licensed facility shall sign
7 an affidavit verifying the number of residents occupying the
8 facility at the time of the evacuation capability evaluation.

9 2. Firesafety requirements.--

10 a. Except for the special applications provided
11 herein, effective January 1, 1996, the provisions of the
12 National Fire Protection Association, Life Safety Code, NFPA
13 101, 1994 edition, Chapter 22 for new facilities and Chapter
14 23 for existing facilities shall be the uniform fire code
15 applied by the State Fire Marshal for assisted living
16 facilities, pursuant to s. 633.022.

17 b. Any new facility, regardless of size, that applies
18 for a license on or after January 1, 1996, must be equipped
19 with an automatic fire sprinkler system. The exceptions as
20 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
21 adopted herein, apply to any new facility housing eight or
22 fewer residents. On July 1, 1995, local governmental entities
23 responsible for the issuance of permits for construction shall
24 inform, without liability, any facility whose permit for
25 construction is obtained prior to January 1, 1996, of this
26 automatic fire sprinkler requirement. As used in this part,
27 the term "a new facility" does not mean an existing facility
28 that has undergone change of ownership.

29 c. Notwithstanding any provision of s. 633.022 or of
30 the National Fire Protection Association, NFPA 101A, Chapter
31 5, 1995 edition, to the contrary, any existing facility

1 housing eight or fewer residents is not required to install an
2 automatic fire sprinkler system, nor to comply with any other
3 requirement in Chapter 23 of NFPA 101, 1994 edition, that
4 exceeds the firesafety requirements of NFPA 101, 1988 edition,
5 that applies to this size facility, unless the facility has
6 been classified as impractical to evacuate. Any existing
7 facility housing eight or fewer residents that is classified
8 as impractical to evacuate must install an automatic fire
9 sprinkler system within the timeframes granted in this
10 section.

11 d. Any existing facility that is required to install
12 an automatic fire sprinkler system under this paragraph need
13 not meet other firesafety requirements of Chapter 23, NFPA
14 101, 1994 edition, which exceed the provisions of NFPA 101,
15 1988 edition. The mandate contained in this paragraph which
16 requires certain facilities to install an automatic fire
17 sprinkler system supersedes any other requirement.

18 e. This paragraph does not supersede the exceptions
19 granted in NFPA 101, 1988 edition or 1994 edition.

20 f. This paragraph does not exempt facilities from
21 other firesafety provisions adopted under s. 633.022 and local
22 building code requirements in effect before July 1, 1995.

23 g. A local government may charge fees only in an
24 amount not to exceed the actual expenses incurred by local
25 government relating to the installation and maintenance of an
26 automatic fire sprinkler system in an existing and properly
27 licensed assisted living facility structure as of January 1,
28 1996.

29 h. If a licensed facility undergoes major
30 reconstruction or addition to an existing building on or after
31 January 1, 1996, the entire building must be equipped with an

1 automatic fire sprinkler system. Major reconstruction of a
2 building means repair or restoration that costs in excess of
3 50 percent of the value of the building as reported on the tax
4 rolls, excluding land, before reconstruction. Multiple
5 reconstruction projects within a 5-year period the total costs
6 of which exceed 50 percent of the initial value of the
7 building at the time the first reconstruction project was
8 permitted are to be considered as major reconstruction.
9 Application for a permit for an automatic fire sprinkler
10 system is required upon application for a permit for a
11 reconstruction project that creates costs that go over the
12 50-percent threshold.

13 i. Any facility licensed before January 1, 1996, that
14 is required to install an automatic fire sprinkler system
15 shall ensure that the installation is completed within the
16 following timeframes based upon evacuation capability of the
17 facility as determined under subparagraph 1.:

18 (I) Impractical evacuation capability, 24 months.

19 (II) Slow evacuation capability, 48 months.

20 (III) Prompt evacuation capability, 60 months.

21

22 The beginning date from which the deadline for the automatic
23 fire sprinkler installation requirement must be calculated is
24 upon receipt of written notice from the local fire official
25 that an automatic fire sprinkler system must be installed. The
26 local fire official shall send a copy of the document
27 indicating the requirement of a fire sprinkler system to the
28 Agency for Health Care Administration.

29 j. It is recognized that the installation of an
30 automatic fire sprinkler system may create financial hardship
31 for some facilities. The appropriate local fire official

1 shall, without liability, grant two 1-year extensions to the
2 timeframes for installation established herein, if an
3 automatic fire sprinkler installation cost estimate and proof
4 of denial from two financial institutions for a construction
5 loan to install the automatic fire sprinkler system are
6 submitted. However, for any facility with a class I or class
7 II, or a history of uncorrected class III, firesafety
8 deficiencies, an extension must not be granted. The local
9 fire official shall send a copy of the document granting the
10 time extension to the Agency for Health Care Administration.

11 k. A facility owner whose facility is required to be
12 equipped with an automatic fire sprinkler system under Chapter
13 23, NFPA 101, 1994 edition, as adopted herein, must disclose
14 to any potential buyer of the facility that an installation of
15 an automatic fire sprinkler requirement exists. The sale of
16 the facility does not alter the timeframe for the installation
17 of the automatic fire sprinkler system.

18 l. Existing facilities required to install an
19 automatic fire sprinkler system as a result of
20 construction-type restrictions in Chapter 23, NFPA 101, 1994
21 edition, as adopted herein, or evacuation capability
22 requirements shall be notified by the local fire official in
23 writing of the automatic fire sprinkler requirement, as well
24 as the appropriate date for final compliance as provided in
25 this subparagraph. The local fire official shall send a copy
26 of the document to the Agency for Health Care Administration.

27 m. Except in cases of life-threatening fire hazards,
28 if an existing facility experiences a change in the evacuation
29 capability, or if the local authority having jurisdiction
30 identifies a construction-type restriction, such that an
31 automatic fire sprinkler system is required, it shall be

1 afforded time for installation as provided in this
2 subparagraph.

3 ~~n. There is created a study-work group consisting of~~
4 ~~representatives of the Office of the State Fire Marshal,~~
5 ~~Florida Fire Chiefs' Association, Florida Fire Marshals'~~
6 ~~Association, Florida Assisted Living Association, Florida~~
7 ~~Association of Homes for the Aging, Florida Health Care~~
8 ~~Association, Florida League of Cities, Florida Association of~~
9 ~~Counties, Florida State Firemen's Association, Building~~
10 ~~Officials' Association of Florida, the Aging and Adult~~
11 ~~Services Program Office of the Department of Health and~~
12 ~~Rehabilitative Services, and the Agency for Health Care~~
13 ~~Administration. Each entity involved shall select its~~
14 ~~representative to the study-work group. The Florida Fire~~
15 ~~Chiefs' Association shall coordinate study-work group~~
16 ~~activities. The study-work group shall examine the National~~
17 ~~Fire Protection Association, NFPA 101, Chapter 23, 1994~~
18 ~~edition, and shall report to the Legislature by December 31,~~
19 ~~1995, its recommendations for firesafety standards that will~~
20 ~~provide a reasonable level of firesafety for the protection of~~
21 ~~assisted living facility residents without imposing~~
22 ~~unnecessary economic impact on facilities regulated under this~~
23 ~~part. Expenses incurred while participating in this study-work~~
24 ~~group activity shall be borne by the participants.~~

25
26 Facilities that are fully sprinkled and in compliance with
27 other firesafety standards are not required to conduct more
28 than one of the required fire drills between the hours of 11
29 p.m. and 7 a.m., per year. In lieu of the remaining drills,
30 staff responsible for residents during such hours may be
31 required to participate in a mock drill that includes a review

1 of evacuation procedures. Such standards must be included or
2 referenced in the rules adopted by the ~~department after~~
3 ~~consultation with the~~ State Fire Marshal. Pursuant to s.
4 633.022(1)(b), the State Fire Marshal is the final
5 administrative authority for firesafety standards established
6 and enforced pursuant to this section. All licensed facilities
7 must have an annual fire inspection conducted by the local
8 fire marshal or authority having jurisdiction.

9 (b) The preparation and annual update of a
10 comprehensive emergency management plan. Such standards must
11 be included in the rules adopted by the department after
12 consultation with the Department of Community Affairs. At a
13 minimum, the rules must provide for plan components that
14 address emergency evacuation transportation; adequate
15 sheltering arrangements; postdisaster activities, including
16 provision of emergency power, food, and water; postdisaster
17 transportation; supplies; staffing; emergency equipment;
18 individual identification of residents and transfer of
19 records; communication with families; and responses to family
20 inquiries. The comprehensive emergency management plan is
21 subject to review and approval by the local emergency
22 management agency. During its review, the local emergency
23 management agency shall ensure that the following agencies, at
24 a minimum, are given the opportunity to review the plan: the
25 Department of Elderly Affairs, the Department of Health ~~and~~
26 ~~Rehabilitative Services~~, the Agency for Health Care
27 Administration, and the Department of Community Affairs.
28 Also, appropriate volunteer organizations must be given the
29 opportunity to review the plan. The local emergency
30 management agency shall complete its review within 60 days and
31

1 either approve the plan or advise the facility of necessary
2 revisions.

3 (c) The number, training, and qualifications of all
4 personnel having responsibility for the care of residents.
5 The rules must require adequate staff to provide for the
6 safety of all residents. Facilities licensed for 17 or more
7 residents are required to maintain an alert staff for 24 hours
8 per day.

9 (d) All sanitary conditions within the facility and
10 its surroundings, ~~including water supply, sewage disposal,~~
11 ~~food handling, and general hygiene, and maintenance thereof,~~
12 which will ensure the health and comfort of residents. The
13 rules must clearly delineate the responsibilities of the
14 agency's licensure and survey staff, ~~and the responsibilities~~
15 ~~of the county health departments and the local authority~~
16 having jurisdiction over fire safety and ensure that
17 inspections are not duplicative. The agency may collect fees
18 for food service inspections conducted by the county health
19 departments and transfer such fees to the Department of Health
20 ~~and Rehabilitative Services.~~

21 (e) License application and license renewal, transfer
22 of ownership, proper management of resident funds and personal
23 property, surety bonds, resident contracts, refund policies,
24 financial ability to operate, and facility and staff records.

25 (f)(e) Inspections, complaint investigations,
26 moratoriums, the classification of deficiencies, and The
27 levying and enforcement of penalties and use of income from
28 fees and fines.

29 (g)(f) The enforcement of the resident bill of rights
30 specified in s. 400.428.

31

1 ~~(h)(g)~~ The care and maintenance of residents, which
2 must include, but is not limited to:
3 1. The supervision of residents;
4 ~~2.1.~~ The provision of personal services;
5 ~~3.2.~~ The provision of, or arrangement for, social and
6 leisure activities;
7 ~~4.3.~~ The arrangement for appointments and
8 transportation to appropriate medical, dental, nursing, or
9 mental health services, as needed by residents;
10 ~~4. The provision of limited nursing services;~~
11 5. The management of medication;~~The provision of~~
12 ~~extended congregate care services;~~ and
13 6. The nutritional needs of residents; and ~~The~~
14 ~~provision of limited mental health services.~~
15 7. Resident records.
16 (i) Facilities holding a limited nursing, extended
17 congregate care, or limited mental health license.
18 ~~(j)(h)~~ The establishment of specific criteria to
19 define appropriateness of resident admission and continued
20 residency in a facility holding a standard, limited nursing,
21 extended congregate care, and limited mental health license.
22 ~~(k)(i)~~ The ~~definition and~~ use of physical or chemical
23 restraints. The use of physical restraints is limited to
24 half-bed rails as prescribed and documented by the resident's
25 physician with the consent of the resident or, if applicable,
26 the resident's representative or designee or the resident's
27 surrogate, guardian, or attorney in fact. The use of chemical
28 restraints is limited to prescribed dosages of medications
29 authorized by the resident's physician and must be consistent
30 with the resident's diagnosis. Residents who are receiving
31

1 medications that can serve as chemical restraints must be
2 evaluated by their physician at least annually to assess:
3 1. The continued need for the medication.
4 2. The level of the medication in the resident's
5 blood.
6 3. The need for adjustments in the prescription.
7 (3) The department shall submit a copy of proposed
8 rules to the Speaker of the House of Representatives, the
9 President of the Senate, and appropriate committees of
10 substance for review and comment prior to the promulgation
11 thereof.
12 (a) Rules promulgated by the department shall
13 encourage the development of homelike facilities which promote
14 the dignity, individuality, personal strengths, and
15 decisionmaking ability of residents.
16 (b) The agency, in consultation with the department,
17 may waive rules promulgated pursuant to this part in order to
18 demonstrate and evaluate innovative or cost-effective
19 congregate care alternatives which enable individuals to age
20 in place. Such waivers may be granted only in instances where
21 there is reasonable assurance that the health, safety, or
22 welfare of residents will not be endangered. To apply for a
23 waiver, the licensee shall submit to the agency a written
24 description of the concept to be demonstrated, including
25 goals, objectives, and anticipated benefits; the number and
26 types of residents who will be affected, if applicable; a
27 brief description of how the demonstration will be evaluated;
28 and any other information deemed appropriate by the agency.
29 Any facility granted a waiver shall submit a report of
30 findings to the agency and the department within 12 months.
31 At such time, the agency may renew or revoke the waiver or

1 pursue any regulatory or statutory changes necessary to allow
2 other facilities to adopt the same practices. The department
3 may by rule clarify terms and establish waiver application
4 procedures, criteria for reviewing waiver proposals, and
5 procedures for reporting findings, as necessary to implement
6 this subsection.

7 Section 6. Subsection (3) is added to section 400.442,
8 Florida Statutes, to read:

9 400.442 Pharmacy and dietary services.--

10 (3) The department may by rule establish procedures
11 and specify documentation as necessary to implement this
12 section.

13 Section 7. Subsection (3) is added to section 400.444,
14 Florida Statutes, to read:

15 400.444 Construction and renovation; requirements.--

16 (3) The department may adopt rules to establish
17 procedures and specify the documentation necessary to
18 implement this section.

19 Section 8. Subsections (3), (4), and (13) of section
20 400.619, Florida Statutes, are amended to read:

21 400.619 Licensure requirements.--

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

28 (4) Upon receipt of a completed license application or
29 license renewal, and the fee, the agency shall conduct a level
30 1 background screening as provided under chapter 435 on ~~must~~
31 ~~check with the abuse registry and the Department of Law~~

1 ~~Enforcement concerning~~ the adult family-care home provider
2 applicant, the designated relief person, all adult household
3 members, and all staff members. The agency shall ~~also~~ conduct
4 an onsite visit to the home that is to be licensed.

5 (13) The department may ~~shall~~ adopt rules to establish
6 procedures, identify forms, specify documentation, and clarify
7 terms, as necessary, to administer ~~implement~~ this section.

8 Section 9. Section 400.6196, Florida Statutes, is
9 amended to read:

10 400.6196 Violations; penalties.--

11 (1) In addition to any other liability or penalty
12 provided by law, the agency may impose a civil penalty on a
13 provider according to the following classification ~~person for:~~

14 (a) Class I violations are those conditions or
15 practices related to the operation and maintenance of an adult
16 family-care home or to the 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 that constitutes a class I violation
21 must 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 deficiency is subject to an
24 administrative fine in an amount not less than \$500 and not
25 exceeding \$1,000 for each violation. A fine may be levied
26 notwithstanding the correction of the deficiency.

27 (b) Class II violations are those conditions or
28 practices related to the operation and maintenance of an adult
29 family-care home or to the care of residents which the agency
30 determines directly threaten the physical or emotional health,
31 safety, or security of the residents, other than class I

1 violations. A class II violation is subject to an
2 administrative fine in an amount not less than \$250 and not
3 exceeding \$500 for each violation. A citation for a class II
4 violation must specify the time within which the violation is
5 required to be corrected. If a class II violation is corrected
6 within the time specified, no civil penalty shall be imposed,
7 unless it is a repeated offence.

8 (c) Class III violations are those conditions or
9 practices related to the operation and maintenance of an adult
10 family-care home or to the care of residents which the agency
11 determines indirectly or potentially threaten the physical or
12 emotional health, safety, or security of residents, other than
13 class I or class II violations. A class III violation is
14 subject to an administrative fine in an amount not less than
15 \$100 and not exceeding \$250 for each violation. A citation for
16 a class III violation shall specify the time within which the
17 violation is required to be corrected. If a class III
18 violation is corrected within the time specified, no civil
19 penalty shall be imposed, unless it is a repeated offense.

20 (d) Class IV violations are those conditions or
21 occurrences related to the operation and maintenance of an
22 adult family-care home, or related to the required reports,
23 forms or documents which do not have the potential of
24 negatively affecting the residents. A provider that does not
25 correct a class IV violation within the time limit specified
26 by the agency is subject to an administrative fine in an
27 amount not less than \$50 and not exceeding \$100 for each
28 violation. Any class IV violation that is corrected during the
29 time the agency survey is conducted will be identified as an
30 agency finding and not as a violation.

31

1 (2) The agency may impose an administrative fine for
2 violations which do not qualify as class I, class II, class
3 III, or class IV violations. The amount of the fine shall not
4 exceed \$250 for each violation or \$2,000 in the aggregate.
5 Unclassified violations include:
6 (a) Violating any term or condition of a license.~~† or~~
7 (b) Violating any rule adopted under this part ss.
8 ~~400.616-400.629.~~
9 (c) Failure to follow the criteria and procedures
10 provided under part I of chapter 394 relating to the
11 transportation, voluntary admission, and involuntary
12 examination of adult family-care home residents.
13 (d) Exceeding licensed capacity.
14 (e) Providing services beyond the scope of the
15 license.
16 (f) Violating a moratorium.
17 (3)(2) Each day during which a violation occurs
18 constitutes a separate offense violation.
19 (4)(3) In determining whether a penalty is to be
20 imposed, and in fixing the amount of any penalty to be
21 imposed, the agency must consider:
22 (a) The gravity of the violation.
23 (b) Actions taken by the provider to correct a
24 violation.
25 (c) Any previous violation by the provider.
26 (d) The financial benefit to the provider of
27 committing or continuing the violation.
28 (5)(4) As an alternative to or in conjunction with an
29 administrative action against a provider, the agency may
30 request a plan of corrective action that demonstrates a good
31

1 faith effort to remedy each violation by a specific date,
2 subject to the approval of the agency ~~department~~.

3 ~~(6)(5)~~ The department shall set forth, by rule, notice
4 requirements and procedures for correction of deficiencies
5 ~~classifications of violations and civil penalties to be~~
6 ~~levied.~~

7 ~~(7)(6)~~ Civil penalties paid by a provider must be
8 deposited into the Department of Elderly Affairs
9 Administrative Trust Fund and used to offset the expenses of
10 departmental training and education for adult family-care home
11 providers.

12 ~~(8)(7)~~ The agency may impose an immediate moratorium
13 on admissions to any adult family-care home if the agency
14 finds that a condition in the home presents a threat to the
15 health, safety, or welfare of its residents. The department
16 may by rule establish facility conditions that constitute
17 grounds for imposing a moratorium and establish procedures for
18 imposing and lifting a moratorium.

19 Section 10. Section 400.621, Florida Statutes, is
20 amended to read:

21 400.621 Rules and standards relating to adult
22 family-care homes.--

23 (1) The department ~~shall~~, in consultation with the
24 Department of Health, the Department of Children and Family
25 Services, and Rehabilitative Services and the agency shall, by
26 rule, establish minimum standards to ensure ~~and licensure~~
27 ~~procedures for adult family-care homes. The rules must, at a~~
28 ~~minimum:~~

29 ~~(a) Provide for~~ the health, safety, and well-being of
30 each resident in the adult family-care home. The rules must
31 address:

1 (a) Requirements for the physical site of the facility
2 and facility maintenance.

3 (b) Services that must be provided to all residents of
4 an adult family-care home and standards for such services,
5 which must include, but need not be limited to:

6 1. Room and board.

7 2. Assistance necessary to perform the activities of
8 daily living.

9 3. Assistance necessary to administer medication.

10 4. Supervision of residents.

11 5. Health monitoring.

12 6. Social and leisure activities.

13 (c)(b) Standards and ~~Provide~~ procedures for license
14 application and annual license renewal, advertising ~~prevention~~
15 of abuse, proper management of each resident's funds and
16 personal property and personal affairs, financial ability to
17 operate, medication management, inspections, complaint
18 investigations, and facility, staff and resident ~~and~~ records
19 and reports.

20 (d) Qualifications, training, standards, and
21 responsibilities for providers and staff.

22 ~~(c) Promote the growth of adult family-care homes as a~~
23 ~~component of a long-term care system.~~

24 ~~(d) Promote the goal of aging in place.~~

25 (e) Mandate compliance with chapter 419, relating to
26 community residential homes.

27 (f) Criteria and procedures for determining the
28 appropriateness of a resident's placement and continued
29 residency in ~~Assure that~~ an adult family-care home ~~is the~~
30 appropriate living arrangement for each resident. A resident
31 who requires 24-hour nursing supervision may not be retained

1 in an adult family-care home. A person who would not be an
2 appropriate resident in any assisted living facility under s.
3 400.426 would not be an appropriate resident in an adult
4 family-care home.

5 (g) Procedures for providing notice and assuring
6 ~~Assure~~ the least possible disruption of residents' lives when
7 residents are relocated, an adult family-care home is closed,
8 or the ownership of an adult family-care home is transferred.

9 (h) ~~Provide~~ Procedures to protect the residents'
10 rights as provided in s. 400.628.

11 (i) Procedures to promote the growth of adult
12 family-care homes as a component of a long-term-care system.

13 (j) Procedures to promote the goal of aging in place
14 for residents of adult family-care homes.

15 (2) The department shall by rule provide minimum
16 standards and procedures for emergencies. Minimum firesafety
17 standards shall be established and enforced by the State Fire
18 Marshal in cooperation with the department and the agency.
19 Such standards must be included in the rules adopted by the
20 department after consultation with the State Fire Marshal and
21 the agency.

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

24 (3)(4) The provider of any adult family-care home that
25 is in operation at the time any rules are adopted or amended
26 under this part ss. 400.616-400.629 may be given a reasonable
27 time, not exceeding 6 months, within which to comply with the
28 ~~those~~ new or revised rules and standards.

29 Section 11. Section 400.6211, Florida Statutes, is
30 amended to read:

31 400.6211 Training and education programs.--

1 (1) The department ~~of Elderly Affairs~~ must provide
2 training and education programs for all adult family-care home
3 providers.

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

6 (a) State law and rules governing adult family-care
7 homes, with emphasis on appropriateness of placement of
8 residents in an adult family-care home.

9 (b) Identifying and reporting abuse, neglect, and
10 exploitation.

11 (c) Identifying and meeting the special needs of aged
12 persons and disabled adults.

13 (d) Monitoring the health of residents, including
14 guidelines for prevention and care of pressure ulcers.

15 (3) Providers must complete the training and education
16 program within a reasonable time determined by the department
17 by rule. Failure to complete the training and education
18 program within the time set by the department ~~is a violation~~
19 ~~of ss. 400.616-400.629~~ and subjects the provider to revocation
20 or denial of the license under this part.

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

28 (5) The department shall specify by rule training and
29 education programs, training requirements and the assignment
30 of training responsibilities for staff, training procedures,
31 and training fees as necessary to administer this section.

1 Section 12. Present subsections (3) and (4) of section
2 409.212, Florida Statutes, are redesignated as subsections (4)
3 and (5), respectively, and amended, and a new subsection (3)
4 is added to said section, to read:

5 409.212 Optional supplementation.--

6 (3) Assisted living facilities, adult family-care
7 homes, family placement, or any other specialized living
8 arrangement accepting residents who receive optional
9 supplementation payments must comply with the requirements of
10 42 U.S.C. s. 1382e(e).

11 ~~(4)(3)~~ In addition to the amount of optional
12 supplementation provided by the state, a person may receive
13 additional supplementation from third parties to contribute to
14 his or her cost of care. Additional supplementation may be
15 provided under the following conditions:

16 (a) Payments shall be made to the assisted living
17 facility, or to the operator of an adult family-care home,
18 family placement, or other special living arrangement, on
19 behalf of the person and not directly to the optional state
20 supplementation recipient.

21 (b) Contributions made by third parties shall be
22 entirely voluntary and shall not be a condition of providing
23 proper care to the client.

24 (c) The additional supplementation shall not exceed
25 two times the provider rate recognized under the optional
26 state supplementation program.

27 (d) Rent vouchers issued pursuant to a federal, state,
28 or local housing program may be issued directly to a recipient
29 of optional state supplementation.

30 ~~(5)(4)~~ When contributions are made in accordance with
31 the provisions of subsection ~~(4)(3)~~, the department shall not

1 count such supplements as income to the client for purposes of
2 determining eligibility for, or computing the amount of,
3 optional state supplementation benefits, nor shall the
4 department increase an optional state supplementation payment
5 to offset the reduction in Supplemental Security Income
6 benefits that will occur because of the third-party
7 contribution.

8 Section 13. This act shall take effect July 1 of the
9 year in which enacted.

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