

By Senator Brown-Waite

10-1205A-00

1                                   A bill to be entitled  
2           An act relating to nursing homes; amending s.  
3           400.021, F.S.; defining the term "controlling  
4           person" for purposes of regulating nursing  
5           homes; amending s. 400.071, F.S.; requiring  
6           additional information on applications for  
7           licensure as a nursing home; amending s.  
8           397.405, F.S.; conforming a cross-reference;  
9           providing an effective date.

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

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13           Section 1. Section 400.021, Florida Statutes, is  
14 amended to read:

15           400.021 Definitions.--When used in this part, unless  
16 the context otherwise requires, the term:

17           (1) "Administrator" means the licensed individual who  
18 has the general administrative charge of a facility.

19           (2) "Agency" means the Agency for Health Care  
20 Administration, which is the licensing agency under this part.

21           (3) "Bed reservation policy" means the number of  
22 consecutive days and the number of days per year that a  
23 resident may leave the nursing home facility for overnight  
24 therapeutic visits with family or friends or for  
25 hospitalization for an acute condition before the licensee may  
26 discharge the resident due to his or her absence from the  
27 facility.

28           (4) "Board" means the Board of Nursing Home  
29 Administrators.

30           (5) "Controlling person" means a person that has the  
31 ability, acting alone or in concert with others, to directly

1 or indirectly influence or direct the management, expenditure  
2 of money, or policies of an institution or other person. The  
3 term includes:

4 (a) A management company, landlord, or other entity  
5 that operates, or contracts with others for the operation of,  
6 an institution;

7 (b) Any person who, acting alone or in concert with  
8 others, directly or indirectly influences, directs, or causes  
9 the direction of the management, expenditure of money, or  
10 policies of such a management company or other entity; and

11 (c) Any other individual who, because of a personal,  
12 familial, or other relationship with the owner, manager,  
13 landlord, tenant, or provider of an institution, is in a  
14 position of actual control or authority with respect to the  
15 institution, whether or not the individual has any formal  
16 ownership, management, or other capacity with the institution.

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18 The term does not include a person, such as an employee,  
19 lender, secured creditor, or landlord, who does not exercise  
20 any influence or control over the operation of the institution  
21 and does not operate, or contract with others for such  
22 operation.

23 (6)(5) "Custodial service" means care for a person  
24 which entails observation of diet and sleeping habits and  
25 maintenance of a watchfulness over the general health, safety,  
26 and well-being of the aged or infirm.

27 (7)(6) "Department" means the Department of Children  
28 and Family Services.

29 (8)(7) "District ombudsman council" means a district  
30 long-term care ombudsman council established pursuant to s.

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1 400.0069, located within the Older Americans Act planning and  
2 service areas.

3 (9)~~(8)~~ "Facility" means any institution, building,  
4 residence, private home, or other place, whether operated for  
5 profit or not, including a place operated by a county or  
6 municipality, which undertakes through its ownership or  
7 management to provide for a period exceeding 24-hour nursing  
8 care, personal care, or custodial care for three or more  
9 persons not related to the owner or manager by blood or  
10 marriage, who by reason of illness, physical infirmity, or  
11 advanced age require such services, but does not include any  
12 place providing care and treatment primarily for the acutely  
13 ill. A facility offering services for fewer than three persons  
14 is within the meaning of this definition if it holds itself  
15 out to the public to be an establishment which regularly  
16 provides such services.

17 (10)~~(9)~~ "Geriatric outpatient clinic" means a site for  
18 providing outpatient health care to persons 60 years of age or  
19 older, which is staffed by a registered nurse or a physician  
20 assistant.

21 (11)~~(10)~~ "Geriatric patient" means any patient who is  
22 60 years of age or older.

23 (12)~~(11)~~ "Nursing home facility" means any facility  
24 which provides nursing services as defined in chapter 464 and  
25 which is licensed according to this part.

26 (13)~~(12)~~ "Nursing service" means such services or acts  
27 as may be rendered, directly or indirectly, to and in behalf  
28 of a person by individuals as defined in s. 464.003.

29 (14)~~(13)~~ "Planning and service area" means the  
30 geographic area in which the Older Americans Act programs are  
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1 administered and services are delivered by the Department of  
2 Elderly Affairs.

3 (15)~~(14)~~ "Respite care" means admission to a nursing  
4 home for the purpose of providing a short period of rest or  
5 relief or emergency alternative care for the primary caregiver  
6 of an individual receiving care at home who, without  
7 home-based care, would otherwise require institutional care.

8 (16)~~(15)~~ "Resident care plan" means a written plan  
9 developed, maintained, and reviewed not less than quarterly by  
10 a registered nurse, with participation from other facility  
11 staff and the resident or his or her designee or legal  
12 representative, which includes a comprehensive assessment of  
13 the needs of an individual resident, a listing of services  
14 provided within or outside the facility to meet those needs,  
15 and an explanation of service goals.

16 (17)~~(16)~~ "Resident designee" means a person, other  
17 than the owner, administrator, or employee of the facility,  
18 designated in writing by a resident or a resident's guardian,  
19 if the resident is adjudicated incompetent, to be the  
20 resident's representative for a specific, limited purpose.

21 (18)~~(17)~~ "State ombudsman council" means the State  
22 Long-Term Care Ombudsman Council established pursuant to s.  
23 400.0067.

24 Section 2. Paragraph (d) of subsection (2) of section  
25 400.071, Florida Statutes, is amended, and paragraphs (h),  
26 (i), and (j) are added to that subsection, to read:

27 400.071 Application for license.--

28 (2) The application shall be under oath and shall  
29 contain the following:

30 (d) The name of the person or persons under whose  
31 management or supervision the facility will be conducted,

1 including any controlling person, and the name of its licensed  
2 administrator.

3 (h) A signed affidavit disclosing any financial or  
4 ownership interest that the applicant or any person listed in  
5 paragraph (d) has held within the last 5 years in any entity  
6 licensed in any state to provide health or residential care,  
7 which entity:

8 1. Closed or ceased to operate as a result of  
9 financial problems;

10 2. Has had a receiver appointed or a license denied,  
11 suspended, or revoked;

12 3. Was subject to a moratorium on admission; or

13 4. Has had an injunctive proceeding initiated against  
14 it.

15 (i) Documentation to establish the background and  
16 qualifications of the following, as revelant:

17 1. The applicant or licenseholder;

18 2. A partner, officer, director, or managing employee  
19 of the applicant or licenseholder; and

20 3. A controlling person, with respect to the  
21 institution for which the license or license renewal is  
22 requested.

23 (j) Information relating to the history of the  
24 financial condition of the applicant or licenseholder and any  
25 other person described in paragraph (d), with respect to an  
26 institution operated in another state or jurisdiction at any  
27 time during the 5-year period preceding the date on which the  
28 application is made.

29 Section 3. Subsection (2) of section 397.405, Florida  
30 Statutes, is amended to read:

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1           397.405 Exemptions from licensure.--The following are  
2 exempt from the licensing provisions of this chapter:

3           (2) A nursing home facility as defined in s. 400.021  
4 ~~s. 400.021(11)~~.

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6 The exemptions from licensure in this section do not apply to  
7 any facility or entity which receives an appropriation, grant,  
8 or contract from the state to operate as a service provider as  
9 defined in this chapter or to any substance abuse program  
10 regulated pursuant to s. 397.406. No provision of this  
11 chapter shall be construed to limit the practice of a  
12 physician licensed under chapter 458 or chapter 459, a  
13 psychologist licensed under chapter 490, or a psychotherapist  
14 licensed under chapter 491, providing outpatient or inpatient  
15 substance abuse treatment to a voluntary patient, so long as  
16 the physician, psychologist, or psychotherapist does not  
17 represent to the public that he or she is a licensed service  
18 provider under this act. Failure to comply with any  
19 requirement necessary to maintain an exempt status under this  
20 section is a misdemeanor of the first degree, punishable as  
21 provided in s. 775.082 or s. 775.083.

22           Section 4. This act shall take effect July 1, 2000.

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25                               SENATE SUMMARY

26           Defines the term "controlling person" for purposes of  
27           nursing-home regulation. Requires additional information  
28           to be included with an application for licensure as a  
29           nursing home.  
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