

By the Committee on Health, Aging and Long-Term Care; and
Senator Brown-Waite

317-2118-00

1 A bill to be entitled
2 An act relating to nursing home regulation;
3 amending s. 400.021, F.S.; defining the term
4 "controlling person" for purposes of regulating
5 nursing homes; amending s. 400.071, F.S.;
6 requiring additional information on
7 applications for licensure as a nursing home;
8 amending s. 400.121, F.S.; providing for
9 denial, suspension, or revocation of a nursing
10 home license based on disclosure of certain
11 information; amending s. 400.141, F.S.;
12 requiring nursing home licensees to disclose
13 certain information about management companies
14 within a specified timeframe; amending s.
15 397.405, F.S.; conforming a cross-reference;
16 providing an effective date.

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

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20 Section 1. Section 400.021, Florida Statutes, is
21 amended to read:

22 400.021 Definitions.--When used in this part, unless
23 the context otherwise requires, the term:

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

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

28 (3) "Bed reservation policy" means the number of
29 consecutive days and the number of days per year that a
30 resident may leave the nursing home facility for overnight
31 therapeutic visits with family or friends or for

1 hospitalization for an acute condition before the licensee may
2 discharge the resident due to his or her absence from the
3 facility.

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

6 (5) "Controlling person," for purposes of this part,
7 means:

8 (a) The applicant for licensure and any management
9 company or other entity, related or unrelated, with which the
10 applicant may contract to operate the facility.

11 (b) Any person who serves as an officer, is on the
12 board of directors, or has a 5-percent or more ownership
13 interest in the applicant. Controlling person does not mean a
14 director of a not-for-profit corporation or organization if
15 the director serves solely in a voluntary capacity for the
16 corporation or organization, does not regularly take part in
17 the day-to-day operational decisions of the corporation or
18 organization, receives no remuneration for his or her services
19 on the corporation's or organization's board of directors, and
20 has no financial interest in the corporation or organization.
21 The license application must include a statement from the
22 director and the not-for-profit corporation or organization
23 affirming that the director's relationship to the corporation
24 or organization satisfies the requirements of this paragraph.

25 (c) Any person who serves as an officer, is on the
26 board of directors, or has a 5-percent or more ownership
27 interest in the management company or other entity with which
28 the applicant may contract to operate the facility.

29 (6)~~(5)~~ "Custodial service" means care for a person
30 which entails observation of diet and sleeping habits and
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1 maintenance of a watchfulness over the general health, safety,
2 and well-being of the aged or infirm.

3 (7)~~(6)~~ "Department" means the Department of Children
4 and Family Services.

5 (8)~~(7)~~ "District ombudsman council" means a district
6 long-term care ombudsman council established pursuant to s.
7 400.0069, located within the Older Americans Act planning and
8 service areas.

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

23 (10)~~(9)~~ "Geriatric outpatient clinic" means a site for
24 providing outpatient health care to persons 60 years of age or
25 older, which is staffed by a registered nurse or a physician
26 assistant.

27 (11)~~(10)~~ "Geriatric patient" means any patient who is
28 60 years of age or older.

29 (12)~~(11)~~ "Nursing home facility" means any facility
30 which provides nursing services as defined in chapter 464 and
31 which is licensed according to this part.

1 (13)~~(12)~~ "Nursing service" means such services or acts
2 as may be rendered, directly or indirectly, to and in behalf
3 of a person by individuals as defined in s. 464.003.

4 (14)~~(13)~~ "Planning and service area" means the
5 geographic area in which the Older Americans Act programs are
6 administered and services are delivered by the Department of
7 Elderly Affairs.

8 (15)~~(14)~~ "Respite care" means admission to a nursing
9 home for the purpose of providing a short period of rest or
10 relief or emergency alternative care for the primary caregiver
11 of an individual receiving care at home who, without
12 home-based care, would otherwise require institutional care.

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

21 (17)~~(16)~~ "Resident designee" means a person, other
22 than the owner, administrator, or employee of the facility,
23 designated in writing by a resident or a resident's guardian,
24 if the resident is adjudicated incompetent, to be the
25 resident's representative for a specific, limited purpose.

26 (18)~~(17)~~ "State ombudsman council" means the State
27 Long-Term Care Ombudsman Council established pursuant to s.
28 400.0067.

29 Section 2. Subsection (2) of section 400.071, Florida
30 Statutes, is amended to read:

31 400.071 Application for license.--

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

3 (a) The name, address, and social security number of
4 the applicant if an individual; if the applicant is a firm,
5 partnership, or association, its name, address, and employer
6 identification number (EIN), and the name and address of every
7 member; if the applicant is a corporation, its name, address,
8 and employer identification number (EIN), and the name and
9 address of its director and officers and of each person having
10 at least a 5 percent interest in the corporation; and the name
11 by which the facility is to be known.

12 (b) The name of any person whose name is required on
13 the application under the provisions of paragraph (a) and who
14 owns at least a 10 percent interest in any professional
15 service, firm, association, partnership, or corporation
16 providing goods, leases, or services to the facility for which
17 the application is made, and the name and address of the
18 professional service, firm, association, partnership, or
19 corporation in which such interest is held.

20 (c) The location of the facility for which a license
21 is sought and an indication, as in the original application,
22 that such location conforms to the local zoning ordinances.

23 (d) The name of the person or persons under whose
24 management or supervision the facility will be conducted,
25 including any controlling person, and the name of its licensed
26 administrator.

27 (e) A signed affidavit disclosing any financial or
28 ownership interest that the applicant, or any person listed in
29 paragraph (d), has held within the last 5 years in any entity
30 licensed by this state or any other state to provide health or
31 residential care which entity has closed voluntarily or

1 involuntarily, and disclosing the reason for the closure; has
2 filed for bankruptcy; has had a receiver appointed or a
3 license denied, suspended, or revoked; or has had an
4 injunction issued against it which was initiated by a
5 regulatory agency.

6 (f)~~(e)~~ The total number of beds and the total number
7 of Medicare and Medicaid certified beds.

8 (g)~~(f)~~ Information relating to the number, experience,
9 and training of the employees of the facility and of the moral
10 character of the applicant and employees which the agency
11 requires by rule, including the name and address of any
12 nursing home with which the applicant or employees have been
13 affiliated through ownership or employment within 5 years of
14 the date of the application for a license and the record of
15 any criminal convictions involving the applicant and any
16 criminal convictions involving an employee if known by the
17 applicant after inquiring of the employee. The applicant must
18 demonstrate that sufficient numbers of qualified staff, by
19 training or experience, will be employed to properly care for
20 the type and number of residents who will reside in the
21 facility.

22 (h)~~(g)~~ Copies of any civil verdict or judgment
23 involving the applicant rendered within the 10 years preceding
24 the application, relating to medical negligence, violation of
25 residents' rights, or wrongful death. As a condition of
26 licensure, the licensee agrees to provide to the agency copies
27 of any new verdict or judgment involving the applicant,
28 relating to such matters, within 30 days after filing with the
29 clerk of the court. The information required in this
30 paragraph shall be maintained in the facility's licensure file
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1 and in an agency database which is available as a public
2 record.

3 Section 3. Subsection (7) is added to section 400.121,
4 Florida Statutes, to read:

5 400.121 Denial, suspension, revocation of license;
6 moratorium on admissions; administrative fines; procedure;
7 order to increase staffing.--

8 (7) The agency may deny an application for an initial
9 or change-of-ownership license based upon the disclosure of
10 information as required in s. 400.071(2)(e), if such
11 information demonstrates financial or care-related instability
12 of the applicant or any controlling person, except as provided
13 in this subsection. If such information demonstrates:

14 (a) Financial or care-related instability of the
15 management company only which would result in a denial of an
16 initial or change-of-ownership license, the applicant shall be
17 given 30 days within which to remedy the instability, and the
18 application shall be denied if the applicant fails to remedy
19 the instability within 31 days after receiving notice from the
20 agency.

21 (b) Financial instability of the management company
22 only, when the agency is considering an initial licensure
23 application or a change-of-ownership application and the
24 management contract does not require the management company to
25 provide working capital or other financial support to the
26 applicant, the information may not be used to deny the
27 licensure of the applicant, but may be used as a basis for
28 additional monitoring by the agency of the licensed facility,
29 as specified in s. 400.118.

30 (c) Financial or care-related instability of the
31 applicant or any controlling person, when the agency is

1 considering an application for license renewal, the agency may
2 use such information as a basis for additional monitoring of
3 the licensed facility, as specified in s. 400.118.

4 Section 4. Subsection (14) is added to section
5 400.141, Florida Statutes, to read:

6 400.141 Administration and management of nursing home
7 facilities.--Every licensed facility shall comply with all
8 applicable standards and rules of the agency and shall:

9 (14) Provide to the agency information specified in s.
10 400.071(2)(e) for a management company within 30 days after
11 the start of the management agreement.

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13 Facilities that have been awarded a Gold Seal under the
14 program established in s. 400.235 may develop a plan to
15 provide certified nursing assistant training as prescribed by
16 federal regulations and state rules and may apply to the
17 agency for approval of its program.

18 Section 5. Subsection (2) of section 397.405, Florida
19 Statutes, is amended to read:

20 397.405 Exemptions from licensure.--The following are
21 exempt from the licensing provisions of this chapter:

22 (2) A nursing home facility as defined in s. 400.021
23 ~~s. 400.021(11)~~.

24
25 The exemptions from licensure in this section do not apply to
26 any facility or entity which receives an appropriation, grant,
27 or contract from the state to operate as a service provider as
28 defined in this chapter or to any substance abuse program
29 regulated pursuant to s. 397.406. No provision of this
30 chapter shall be construed to limit the practice of a
31 physician licensed under chapter 458 or chapter 459, a

1 psychologist licensed under chapter 490, or a psychotherapist
2 licensed under chapter 491, providing outpatient or inpatient
3 substance abuse treatment to a voluntary patient, so long as
4 the physician, psychologist, or psychotherapist does not
5 represent to the public that he or she is a licensed service
6 provider under this act. Failure to comply with any
7 requirement necessary to maintain an exempt status under this
8 section is a misdemeanor of the first degree, punishable as
9 provided in s. 775.082 or s. 775.083.

10 Section 6. This act shall take effect July 1, 2000.

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 2210

15 Revises the definition created in the bill for the term
16 "controlling person." Revises the affidavit requirement
17 relating to the nursing home licensure process by eliminating
18 the requirement that certain specified details be provided in
19 the affidavit. Adds authority to law for the Agency for Health
20 Care Administration to deny an application for licensure,
21 subject to certain explicit exceptions, based on information
22 provided in the affidavit that must be submitted with a
23 licensure application. Requires nursing home administrators or
24 managers to provide the Agency for Health Care Administration
25 information submitted in an affidavit for a management company
26 within a specified timeframe.
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