

By Senator Forman

32-1256-00

1 A bill to be entitled
2 An act relating to healthcare; amending s.
3 400.408, F.S.; requiring the Agency for Health
4 Care Administration in cooperation with other
5 specified entities to establish a statewide and
6 local coordinating workgroup to identify the
7 operation of unlicensed assisted living
8 facilities and to develop a plan to enforce
9 state laws relating to unlicensed assisted
10 living facilities; requiring a report to the
11 agency of the workgroup's findings and
12 recommendations; requiring health care
13 practitioners to report known operations of
14 unlicensed facilities; prohibiting hospitals
15 and community mental health centers from
16 discharging a patient or client to an
17 unlicensed facility; amending s. 415.1034,
18 F.S.; requiring paramedics and emergency
19 medical technicians to report acts of abuse
20 committed against a disabled adult or elderly
21 person; amending s. 509.032, F.S.; requiring
22 the Division of Hotels and Restaurants of the
23 Department of Business and Professional
24 Regulation to report to specified agencies
25 known incidents of abuse committed against
26 disabled adults or elderly persons at a public
27 lodging; requiring the division to develop
28 procedures and maintain records; providing an
29 effective date.

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

1 Section 1. Subsections (1) and (2) of section 400.408,
2 Florida Statutes, are amended to read:

3 400.408 Unlicensed facilities; referral of person for
4 residency to unlicensed facility; penalties; verification of
5 licensure status.--

6 (1)(a) It is unlawful to own, operate, or maintain an
7 assisted living facility without obtaining a license under
8 this part.

9 (b) Except as provided under paragraph (d), any person
10 who owns, operates, or maintains an unlicensed assisted living
11 facility commits a felony of the third degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
13 continued operation is a separate offense.

14 (c) Any person found guilty of violating paragraph (a)
15 a second or subsequent time commits a felony of the second
16 degree, punishable as provided under s. 775.082, s. 775.083,
17 or s. 775.084. Each day of continued operation is a separate
18 offense.

19 (d) Any person who owns, operates, or maintains an
20 unlicensed assisted living facility due to a change in this
21 part or a modification in department rule within 6 months
22 after the effective date of such change and who, within 10
23 working days after receiving notification from the agency,
24 fails to cease operation or apply for a license under this
25 part commits a felony of the third degree, punishable as
26 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
27 continued operation is a separate offense.

28 (e) Any facility that fails to cease operation after
29 agency notification may be fined for each day of noncompliance
30 pursuant to s. 400.419.

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1 (f) When a licensee has an interest in more than one
2 assisted living facility, and fails to license any one of
3 these facilities, the agency may revoke the license, impose a
4 moratorium, or impose a fine pursuant to s. 400.419, on any or
5 all of the licensed facilities until such time as the
6 unlicensed facility is licensed or ceases operation.

7 (g) If the agency determines that an owner is
8 operating or maintaining an assisted living facility without
9 obtaining a license and determines that a condition exists in
10 the facility that poses a threat to the health, safety, or
11 welfare of a resident of the facility, the owner is subject to
12 the same actions and fines imposed against a licensed facility
13 as specified in ss. 400.414 and 400.419.

14 (h) Any person aware of the operation of an unlicensed
15 assisted living facility must report that facility to the
16 agency. The agency shall provide to the department's elder
17 information and referral providers a list, by county, of
18 licensed assisted living facilities, to assist persons who are
19 considering an assisted living facility placement in locating
20 a licensed facility.

21 (i) The Agency for Health Care Administration in
22 cooperation with the Office of State Long-Term Care Ombudsman,
23 the Statewide Human Rights Advocacy Committee, the Department
24 of Children and Family Services, the Department of Elderly
25 Affairs, the Department of Law Enforcement, the Department of
26 Legal Affairs, the Division of State Fire Marshal of the
27 Department of Insurance, the state attorneys in each judicial
28 circuit, and the Florida Sheriffs' Association shall establish
29 a statewide and local coordinating workgroup to identify the
30 operation of unlicensed assisted living facilities, to develop
31 and implement a plan to ensure appropriate enforcement of

1 state laws relating to unlicensed assisted living facilities.
2 The workgroup shall report its findings, actions, and
3 recommendations quarterly to the Director of the Agency for
4 Health Care Administration.

5 (2) It is unlawful to knowingly refer a person for
6 residency to an unlicensed assisted living facility; to an
7 assisted living facility the license of which is under denial
8 or has been suspended or revoked; or to an assisted living
9 facility that has a moratorium on admissions. Any person who
10 violates this subsection commits a noncriminal violation,
11 punishable by a fine not exceeding \$500 as provided in s.
12 775.083.

13 (a) Any health care practitioner, as defined in s.
14 455.501, which is aware of the operation of an unlicensed
15 assisted living facility shall report that facility to the
16 agency. Failure to report a facility that the practitioner
17 knows or has reasonable cause to suspect is unlicensed shall
18 be reported to the practitioner's licensing board.

19 (b) Any hospital or community mental health center
20 licensed under chapter 395 or chapter 394 which discharges a
21 patient or client to an assisted living facility that the
22 hospital or community mental health center knows or has
23 reasonable cause to suspect is operating as an unlicensed
24 assisted living facility is subject to an automatic sanction
25 under chapter 394 or chapter 395.

26 (c)~~(a)~~ Any employee of the agency or department, or
27 the Department of Children and Family Services, who knowingly
28 refers a person for residency to an unlicensed facility; to a
29 facility the license of which is under denial or has been
30 suspended or revoked; or to a facility that has a moratorium
31 on admissions is subject to disciplinary action by the agency

1 or department, or the Department of Children and Family
2 Services.

3 (d)~~(b)~~ The employer of any person who is under
4 contract with the agency or department, or the Department of
5 Children and Family Services, and who knowingly refers a
6 person for residency to an unlicensed facility; to a facility
7 the license of which is under denial or has been suspended or
8 revoked; or to a facility that has a moratorium on admissions
9 shall be fined and required to prepare a corrective action
10 plan designed to prevent such referrals.

11 (e)~~(c)~~ The agency shall provide the department and the
12 Department of Children and Family Services with a list of
13 licensed facilities within each county and shall update the
14 list at least quarterly.

15 (f)~~(d)~~ At least annually, the agency shall notify, in
16 appropriate trade publications, physicians licensed under
17 chapter 458 or chapter 459, hospitals licensed under chapter
18 395, nursing home facilities licensed under part II of this
19 chapter, and employees of the agency or the department, or the
20 Department of Children and Family Services, who are
21 responsible for referring persons for residency, that it is
22 unlawful to knowingly refer a person for residency to an
23 unlicensed assisted living facility and shall notify them of
24 the penalty for violating such prohibition. The department and
25 the Department of Children and Family Services shall, in turn,
26 notify service providers under contract to the respective
27 departments who have responsibility for resident referrals to
28 facilities. Further, the notice must direct each noticed
29 facility and individual to contact the appropriate agency
30 office in order to verify the licensure status of any facility
31 prior to referring any person for residency. Each notice must

1 include the name, telephone number, and mailing address of the
2 appropriate office to contact.

3 Section 2. Subsection (1) of section 415.1034, Florida
4 Statutes, is amended to read:

5 415.1034 Mandatory reporting of abuse, neglect, or
6 exploitation of disabled adults or elderly persons; mandatory
7 reports of death.--

8 (1) MANDATORY REPORTING.--

9 (a) Any person, including, but not limited to, any:

10 1. Physician, osteopathic physician, medical examiner,
11 chiropractic physician, nurse, paramedic, emergency medical
12 technician, or hospital personnel engaged in the admission,
13 examination, care, or treatment of disabled adults or elderly
14 persons;

15 2. Health professional or mental health professional
16 other than one listed in subparagraph 1.;

17 3. Practitioner who relies solely on spiritual means
18 for healing;

19 4. Nursing home staff; assisted living facility staff;
20 adult day care center staff; adult family-care home staff;
21 social worker; or other professional adult care, residential,
22 or institutional staff;

23 5. State, county, or municipal criminal justice
24 employee or law enforcement officer;

25 6. An employee of the Department of Business and
26 Professional Regulation conducting inspections of public
27 lodging establishments under s. 509.032;

28 ~~7.6.~~ Human rights advocacy committee or long-term care
29 ombudsman council member; or

30 ~~8.7.~~ Bank, savings and loan, or credit union officer,
31 trustee, or employee,

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2 who knows, or has reasonable cause to suspect, that a disabled
3 adult or an elderly person has been or is being abused,
4 neglected, or exploited shall immediately report such
5 knowledge or suspicion to the central abuse registry and
6 tracking system on the single statewide toll-free telephone
7 number.

8 (b) To the extent possible, a report made pursuant to
9 paragraph (a) must contain, but need not be limited to, the
10 following information:

11 1. Name, age, race, sex, physical description, and
12 location of each disabled adult or an elderly person alleged
13 to have been abused, neglected, or exploited.

14 2. Names, addresses, and telephone numbers of the
15 disabled adult's or elderly person's family members.

16 3. Name, address, and telephone number of each alleged
17 perpetrator.

18 4. Name, address, and telephone number of the
19 caregiver of the disabled adult or elderly person, if
20 different from the alleged perpetrator.

21 5. Name, address, and telephone number of the person
22 reporting the alleged abuse, neglect, or exploitation.

23 6. Description of the physical or psychological
24 injuries sustained.

25 7. Actions taken by the reporter, if any, such as
26 notification of the criminal justice agency.

27 8. Any other information available to the reporting
28 person which may establish the cause of abuse, neglect, or
29 exploitation that occurred or is occurring.

30 Section 3. Paragraph (a) of subsection (2) of section
31 509.032, Florida Statutes, is amended to read:

1 509.032 Duties.--
2 (2) INSPECTION OF PREMISES.--
3 (a) The division has responsibility and jurisdiction
4 for all inspections required by this chapter. The division
5 has responsibility for quality assurance. Each licensed
6 establishment shall be inspected at least biannually and at
7 such other times as the division determines is necessary to
8 ensure the public's health, safety, and welfare. The division
9 shall establish a system to determine inspection frequency.
10 Public lodging units classified as resort condominiums or
11 resort dwellings are not subject to this requirement, but
12 shall be made available to the division upon request. If,
13 during the inspection of a public lodging establishment
14 classified for renting to transient or nontransient tenants,
15 an inspector identifies disabled adults or elderly persons who
16 appear to be victims of neglect, as defined in s. 415.102, or,
17 in the case of a building that is not equipped with automatic
18 sprinkler systems, tenants or clients who may be unable to
19 self-preserve in an emergency, the division shall report such
20 incidents to the Agency for Health Care Administration, the
21 Office of State Long-Term Care Ombudsman, and the Statewide
22 Human Rights Advocacy Committee and shall make a report to the
23 central abuse registry and tracking system. The division in
24 cooperation with the agency shall develop procedures for
25 reporting possible acts of abuse by public lodging
26 establishments housing frail elderly persons and disabled
27 adults to the agency, the Office of State Long-Term Care
28 Ombudsman, the Statewide Human Rights Advocacy Committee, and
29 the central abuse registry and tracking system. The division
30 shall maintain a statewide record of reports and actions taken
31 by division staff.~~convene meetings with the following~~

1 ~~agencies as appropriate to the individual situation; the~~
2 ~~Department of Health, the Department of Elderly Affairs, the~~
3 ~~area agency on aging, the local fire marshal, the landlord and~~
4 ~~affected tenants and clients, and other relevant~~
5 ~~organizations, to develop a plan which improves the prospects~~
6 ~~for safety of affected residents and, if necessary, identifies~~
7 ~~alternative living arrangements such as facilities licensed~~
8 ~~under part II or part III of chapter 400.~~

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

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12 SENATE SUMMARY

13 Requires the Agency for Health Care Administration in
14 cooperation with other specified entities to establish a
15 statewide and local coordinating workgroup to identify
16 the operation of unlicensed assisted living facilities
17 and to develop a plan to enforce state laws relating to
18 unlicensed assisted living facilities. Requires a report
19 to the agency of the workgroup's findings and
20 recommendations. Requires health care practitioners to
21 report known operation of unlicensed facilities.
22 Prohibits hospital and community mental health centers
23 from discharging a patient or client to an unlicensed
24 facility. Requires paramedics and emergency medical
25 technicians to report acts of abuse committed against a
26 disabled adult or elderly person. Requires the Division
27 of Hotels and Restaurants of the Department of Business
28 and Professional Regulation to report to specified
29 agencies any known incidents of abuse committed against
30 disabled adults or elderly persons at a public lodging.
31 Requires the division to develop procedures and maintain
records.