

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

317-1822-00

1 A bill to be entitled
2 An act relating to healthcare; amending s.
3 400.408, F.S.; requiring field offices of the
4 Agency for Health Care Administration to
5 establish local coordinating workgroups to
6 identify the operation of unlicensed assisted
7 living facilities and to develop a plan to
8 enforce state laws relating to unlicensed
9 assisted living facilities; requiring a report
10 to the agency of the workgroup's findings and
11 recommendations; requiring health care
12 practitioners to report known operations of
13 unlicensed facilities; prohibiting hospitals
14 and community mental health centers from
15 discharging a patient or client to an
16 unlicensed facility; amending s. 415.1034,
17 F.S.; requiring paramedics and emergency
18 medical technicians to report acts of abuse
19 committed against a disabled adult or elderly
20 person; providing an effective date.

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

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

26 400.408 Unlicensed facilities; referral of person for
27 residency to unlicensed facility; penalties; verification of
28 licensure status.--

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

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

6 (c) Any person found guilty of violating paragraph (a)
7 a second or subsequent time commits a felony of the second
8 degree, punishable as provided under s. 775.082, s. 775.083,
9 or s. 775.084. Each day of continued operation is a separate
10 offense.

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

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

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

29 (g) If the agency determines that an owner is
30 operating or maintaining an assisted living facility without
31 obtaining a license and determines that a condition exists in

1 the facility that poses a threat to the health, safety, or
2 welfare of a resident of the facility, the owner is subject to
3 the same actions and fines imposed against a licensed facility
4 as specified in ss. 400.414 and 400.419.

5 (h) Any person aware of the operation of an unlicensed
6 assisted living facility must report that facility to the
7 agency. The agency shall provide to the department's elder
8 information and referral providers a list, by county, of
9 licensed assisted living facilities, to assist persons who are
10 considering an assisted living facility placement in locating
11 a licensed facility.

12 (i) Each field office of the Agency for Health Care
13 Administration shall establish a local coordinating workgroup
14 which includes representatives of local law enforcement
15 agencies, state attorneys, local fire authorities, the
16 Department of Children and Family Services, the district
17 long-term care ombudsman council, and the district human
18 rights advocacy committee to assist in identifying the
19 operation of unlicensed assisted living facilities and to
20 develop and implement a plan to ensure effective enforcement
21 of state laws relating to such facilities. The workgroup shall
22 report its findings, actions, and recommendations
23 semi-annually to the Director of Health Facility Regulation of
24 the agency.

25 (2) It is unlawful to knowingly refer a person for
26 residency to an unlicensed assisted living facility; to an
27 assisted living facility the license of which is under denial
28 or has been suspended or revoked; or to an assisted living
29 facility that has a moratorium on admissions. Any person who
30 violates this subsection commits a noncriminal violation,
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1 punishable by a fine not exceeding \$500 as provided in s.
2 775.083.

3 (a) Any health care practitioner, as defined in s.
4 455.501, which is aware of the operation of an unlicensed
5 assisted living facility shall report that facility to the
6 agency. Failure to report a facility that the practitioner
7 knows or has reasonable cause to suspect is unlicensed shall
8 be reported to the practitioner's licensing board.

9 (b) Any hospital or community mental health center
10 licensed under chapter 395 or chapter 394 which knowingly
11 discharges a patient or client to an unlicensed assisted
12 living facility is subject to sanction by the agency.

13 (c)~~(a)~~ Any employee of the agency or department, or
14 the Department of Children and Family Services, who knowingly
15 refers a person for residency to an unlicensed facility; to a
16 facility the license of which is under denial or has been
17 suspended or revoked; or to a facility that has a moratorium
18 on admissions is subject to disciplinary action by the agency
19 or department, or the Department of Children and Family
20 Services.

21 (d)~~(b)~~ The employer of any person who is under
22 contract with the agency or department, or the Department of
23 Children and Family Services, and who knowingly refers a
24 person for residency to an unlicensed facility; to a facility
25 the license of which is under denial or has been suspended or
26 revoked; or to a facility that has a moratorium on admissions
27 shall be fined and required to prepare a corrective action
28 plan designed to prevent such referrals.

29 (e)~~(c)~~ The agency shall provide the department and the
30 Department of Children and Family Services with a list of
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1 licensed facilities within each county and shall update the
2 list at least quarterly.

3 (f)~~(d)~~ At least annually, the agency shall notify, in
4 appropriate trade publications, physicians licensed under
5 chapter 458 or chapter 459, hospitals licensed under chapter
6 395, nursing home facilities licensed under part II of this
7 chapter, and employees of the agency or the department, or the
8 Department of Children and Family Services, who are
9 responsible for referring persons for residency, that it is
10 unlawful to knowingly refer a person for residency to an
11 unlicensed assisted living facility and shall notify them of
12 the penalty for violating such prohibition. The department and
13 the Department of Children and Family Services shall, in turn,
14 notify service providers under contract to the respective
15 departments who have responsibility for resident referrals to
16 facilities. Further, the notice must direct each noticed
17 facility and individual to contact the appropriate agency
18 office in order to verify the licensure status of any facility
19 prior to referring any person for residency. Each notice must
20 include the name, telephone number, and mailing address of the
21 appropriate office to contact.

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

24 415.1034 Mandatory reporting of abuse, neglect, or
25 exploitation of disabled adults or elderly persons; mandatory
26 reports of death.--

27 (1) MANDATORY REPORTING.--

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

29 1. Physician, osteopathic physician, medical examiner,
30 chiropractic physician, nurse, paramedic, emergency medical
31 technician, or hospital personnel engaged in the admission,

1 examination, care, or treatment of disabled adults or elderly
2 persons;
3 2. Health professional or mental health professional
4 other than one listed in subparagraph 1.;
5 3. Practitioner who relies solely on spiritual means
6 for healing;
7 4. Nursing home staff; assisted living facility staff;
8 adult day care center staff; adult family-care home staff;
9 social worker; or other professional adult care, residential,
10 or institutional staff;
11 5. State, county, or municipal criminal justice
12 employee or law enforcement officer;
13 6. An employee of the Department of Business and
14 Professional Regulation conducting inspections of public
15 lodging establishments under s. 509.032;
16 ~~7.6.~~ Human rights advocacy committee or long-term care
17 ombudsman council member; or
18 ~~8.7.~~ Bank, savings and loan, or credit union officer,
19 trustee, or employee,
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21 who knows, or has reasonable cause to suspect, that a disabled
22 adult or an elderly person has been or is being abused,
23 neglected, or exploited shall immediately report such
24 knowledge or suspicion to the central abuse registry and
25 tracking system on the single statewide toll-free telephone
26 number.
27 (b) To the extent possible, a report made pursuant to
28 paragraph (a) must contain, but need not be limited to, the
29 following information:
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1 1. Name, age, race, sex, physical description, and
2 location of each disabled adult or an elderly person alleged
3 to have been abused, neglected, or exploited.

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

6 3. Name, address, and telephone number of each alleged
7 perpetrator.

8 4. Name, address, and telephone number of the
9 caregiver of the disabled adult or elderly person, if
10 different from the alleged perpetrator.

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

13 6. Description of the physical or psychological
14 injuries sustained.

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

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

20 Section 3. This act shall take effect July 1, 2000.

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22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 COMMITTEE SUBSTITUTE FOR
24 SB 2266

25 Changes the method by which workgroups created by the bill are
26 established and revises the membership of workgroups. Limits
27 the authority for the Agency for Health Care Administration to
28 sanction a hospital or a community mental health center to
29 those instances when such facilities discharge their patients
30 or clients to an unlicensed assisted living facility that is
31 known to the facilities to be unlicensed. Deletes language
from the bill that requires employees of the Division of
Hotels and Restaurants of the Department of Business and
Professional Regulation to report certain specified
information about disabled adults or elderly persons to the
Agency for Health Care Administration, the Office of State
Long-Term Care Ombudsman, the Statewide Human Rights Advocacy
Committee, and the central abuse registry and tracking system.