

CHAPTER 98-148

Committee Substitute for Senate Bill No. 1706

An act relating to the care of elderly persons (RAB); amending s. 400.404, F.S., relating to facilities to be licensed; amending s. 400.424, F.S.; providing requirements for the contract executed between the licensee and the resident of an assisted living facility; authorizing the Department of Elderly Affairs to adopt rules; amending s. 400.427, F.S.; revising requirements for a facility with respect to obtaining surety bonds; authorizing the Department of Elderly Affairs to adopt rules; creating s. 400.4275, F.S., relating to business records; amending s. 400.441, F.S., relating to rules; amending s. 400.442, F.S., relating to pharmacy and dietary services; amending s. 400.444, F.S., relating to construction requirements; amending s. 400.619, F.S., relating to licensure; amending s. 400.6196, F.S., relating to violations and penalties; amending s. 400.621, F.S., relating to rules for adult family care homes; amending s. 400.6211, F.S., relating to training; amending s. 409.212, F.S., relating to optional supplementation; providing an effective date.

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

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

400.404 Facilities to be licensed; exemptions.—

(2) The following are exempt from this part:

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

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

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

(d) Any facility that has been incorporated in this state for 50 years or more on or before July 1, 1983, and the board of directors of which is nominated or elected by the residents, until the facility is sold or its ownership is transferred; or any facility, with improvements or additions thereto, which has existed and operated continuously in this state for 60 years or more on or before July 1, 1989, is directly or indirectly owned and operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its own members and their spouses as residents.

(e) Any facility certified under chapter 651, or a retirement community, may provide services authorized under this part or part IV of this chapter to its residents who live in single-family homes, duplexes, quadruplexes, or

apartments located on the campus without obtaining a license to operate an assisted living facility if residential units within such buildings are used by residents who do not require staff supervision for that portion of the day when personal services are not being delivered and the owner obtains a home health license to provide such services. However, any building or distinct part of a building on the campus that is designated for persons who receive personal services and require supervision beyond that which is available while such services are being rendered must be licensed in accordance with this part. If a facility provides personal services to residents who do not otherwise require supervision and the owner is not licensed as a home health agency, the buildings or distinct parts of buildings where such services are rendered must be licensed under this part. A resident of a facility that obtains a home health license may contract with a home health agency of his or her choice, provided that the home health agency provides liability insurance and workers' compensation coverage for its employees. Facilities covered by this exemption may establish policies that give residents the option of contracting for services and care beyond that which is provided by the facility to enable them to age in place. For purposes of this section, a retirement community consists of a facility licensed under this part or under part II, and apartments designed for independent living located on the same campus.

(f) Any residential unit for independent living which is located within a facility certified under chapter 651, or any residential unit which is collocated with a nursing home licensed under part II or collocated with a facility licensed under this part in which services are provided through an outpatient clinic or a nursing home on an outpatient basis.

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

400.424 Contracts.—

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

(2) Each contract ~~must shall~~ contain express provisions specifically setting forth the services and accommodations to be provided by the facility; the rates or charges; provision for at least 30 days' written notice of a rate increase; the rights, duties, and obligations of the residents, other than those specified in s. 400.428; and other matters that ~~which~~ the parties deem appropriate. Whenever money is deposited or advanced by a resident in a contract as security for performance of the contract agreement or as advance rent for other than the next immediate rental period:

(a) Such funds shall be deposited held in a banking institution in this state ~~that is. Funds held shall be kept separate from the funds and property~~

of the facility; shall be deposited in a bank savings association, trust company, or credit union located in this state and, if possible, located, if possible, in the same community district in which the facility is located; shall be kept separate from the funds and property of the facility; may not be represented as part of the assets of the facility on financial statements; and shall be used, or otherwise expended, only for the account of the resident.

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

(3)(a) The contract shall include a refund policy to be implemented at the time of a resident's transfer, discharge, or death. The refund policy shall provide that the resident or responsible party is entitled to a prorated refund based on the daily rate for any unused portion of payment beyond the termination date after all charges, including the cost of damages to the residential unit resulting from circumstances other than normal use, have been paid to the licensee. For the purpose of this paragraph, the termination date shall be the date the unit is vacated by the resident and cleared of all personal belongings. If the amount of belongings does not preclude renting the unit, the facility may clear the unit and charge the resident or his or her estate for moving and storing the items at a rate equal to the actual cost to the facility, not to exceed 20 percent of the regular rate for the unit, provided that 14 days' advance written notification is given. If the resident's possessions are not claimed within 45 days after notification, the facility may dispose of them. The contract shall also specify any other conditions under which claims will be made against the refund due the resident. Except in the case of death or a discharge due to medical reasons, the refunds shall be computed in accordance with the notice of relocation requirements specified in the contract. However, a resident may not be required to provide the licensee with more than 30 days' notice of termination. If after a contract is terminated, the facility intends to make a claim against a refund due the resident, the facility shall notify the resident or responsible party in writing of the claim and shall provide said party with a reasonable time period of no less than 14 calendar days to respond. The facility shall provide a refund to the resident or responsible party within 45 days after the transfer, discharge, or death of the resident. The agency shall impose a fine upon a facility that fails to comply with the refund provisions of the paragraph, which fine shall be equal to three times the amount due to the resident. One-half of the fine shall be remitted to the resident or his or her estate, and the other half to the Health Care Trust Fund to be used for the purpose specified in s. 400.418.

(b) If a licensee agrees to reserve a bed for a resident who is admitted to a medical facility, including, but not limited to, a nursing home, health care facility, or psychiatric facility, the resident or his or her responsible party shall notify the licensee of any change in status that would prevent the resident from returning to the facility. Until such notice is received, the agreed upon daily rate may be charged by the licensee.

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

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

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

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

400.427 Property and personal affairs of residents.—

(2) A facility, or an owner, administrator, employee, or representative thereof, may not act as the guardian, trustee, or conservator for any resident of the assisted living facility or any of such resident's property. An owner, administrator, or staff member, or representative thereof, may not act as a competent resident's payee for social security, veteran's, or railroad benefits without the consent of the resident. Any facility whose owner, administrator, or staff, or representative thereof, serves as representative payee for any resident of the facility shall file a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to residents, or expendable for their account, which are received by a facility. Any facility whose owner, administrator, or staff, or a representative thereof, is granted power of attorney for any resident of the facility shall file a surety bond with the agency for each resident for whom such power of attorney is granted. The surety bond shall be in an amount equal to twice the average monthly income of the resident, plus the value of any resident's ~~other property of the resident, which income and property are under the control of the attorney in fact.~~ The bond shall be executed by the facility as principal and a licensed surety company authorized and licensed to do business in the state as surety. The bond shall be conditioned upon the faithful compliance of the facility with this section and shall run to the agency for the benefit of any resident who suffers a financial loss as a result of the misuse or misappropriation by a facility of funds held pursuant to this subsection. Any surety company ~~that which~~ cancels or does not renew the bond of any licensee shall notify the agency in writing not less than 30 days in advance of such action, giving the reason for the cancellation or non-renewal. ~~The agency, in cooperation with insurance companies, associations, and organizations representing facilities licensed under this part, and the Department of Insurance shall develop procedures to implement the bonding requirements of this subsection.~~ Any facility owner, administrator, or staff, or representative thereof, who is granted power of attorney for any resident of the facility shall, on a monthly basis, be required to provide the resident a written statement of any transaction made on behalf of the resident pursuant to this subsection, and a copy of such statement given to the resident shall be retained ~~in the facility~~ in each resident's file and available for agency inspection.

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

(7) In the event of the death of a resident, a licensee shall return all refunds, funds, and property held in trust to the resident's personal representative, if one has been appointed at the time the facility disburses such funds, and, if not, to the resident's spouse or adult next of kin named in a beneficiary designation form provided by the facility to the resident. ~~If In the event~~ the resident has no spouse or adult next of kin or such person cannot be located, funds due the resident shall be placed in an interest-bearing account, and all property held in trust by the facility shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code. Such funds shall be kept separate from the funds and property of the facility and other residents of the facility. ~~If In the event~~ the funds of the deceased resident are not disbursed pursuant to the provisions of the Florida Probate Code within 2 years ~~after of~~ the resident's death, the funds shall be deposited in the Health Care Trust Fund administered by the agency as provided in s. 400.418.

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

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

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

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

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

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

(4) The department may by rule clarify terms, establish requirements for financial records, accounting procedures, personnel procedures, insurance

coverage, and reporting procedures, and specify documentation as necessary to implement the requirements of this section.

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

400.441 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health and Rehabilitative Services, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

(a) The requirements for and maintenance of facilities, not in conflict with the provisions of chapter 553, relating to plumbing, heating, lighting, ventilation, living space, and other housing conditions, which will ensure the health, safety, and comfort of residents and protection from fire hazard, including adequate provisions for fire alarm and other fire protection suitable to the size of the structure. Uniform firesafety standards shall be established and enforced by the State Fire Marshal in cooperation with the agency, the department, and the Department of Health and Rehabilitative Services.

1. Evacuation capability determination.—

a. The provisions of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, shall be used for determining the ability of the residents, with or without staff assistance, to relocate from or within a licensed facility to a point of safety as provided in the fire codes adopted herein. An evacuation capability evaluation for initial licensure shall be conducted within 6 months after the date of licensure. For existing licensed facilities that are not equipped with an automatic fire sprinkler system, the administrator shall evaluate the evacuation capability of residents at least annually. The evacuation capability evaluation for each facility not equipped with an automatic fire sprinkler system shall be validated, without liability, by the State Fire Marshal, by the local fire marshal, or by the local authority having jurisdiction over firesafety, before the license renewal date. If the State Fire Marshal, local fire marshal, or local authority having jurisdiction over firesafety has reason to believe that the evacuation capability of a facility as reported by the administrator may have changed, it may, with assistance from the facility administrator, reevaluate the evacuation capability through timed exiting drills. Translation of timed fire exiting drills to evacuation capability may be determined:

- (I) Three minutes or less: prompt.
- (II) More than 3 minutes, but not more than 13 minutes: slow.
- (III) More than 13 minutes: impractical.

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

c. The Office of the State Fire Marshal, in cooperation with provider associations, shall provide or cause the provision of a training program designed to inform facility operators on how to properly review bid documents relating to the installation of automatic fire sprinklers. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

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

2. Firesafety requirements.—

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

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

c. Notwithstanding any provision of s. 633.022 or of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, to the contrary, any existing facility housing eight or fewer residents is not required to install an automatic fire sprinkler system, nor to comply with any other requirement in Chapter 23 of NFPA 101, 1994 edition, that exceeds the

firesafety requirements of NFPA 101, 1988 edition, that applies to this size facility, unless the facility has been classified as impractical to evacuate. Any existing facility housing eight or fewer residents that is classified as impractical to evacuate must install an automatic fire sprinkler system within the timeframes granted in this section.

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

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

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

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

h. If a licensed facility undergoes major reconstruction or addition to an existing building on or after January 1, 1996, the entire building must be equipped with an automatic fire sprinkler system. Major reconstruction of a building means repair or restoration that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before reconstruction. Multiple reconstruction projects within a 5-year period the total costs of which exceed 50 percent of the initial value of the building at the time the first reconstruction project was permitted are to be considered as major reconstruction. Application for a permit for an automatic fire sprinkler system is required upon application for a permit for a reconstruction project that creates costs that go over the 50-percent threshold.

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

- (I) Impractical evacuation capability, 24 months.
- (II) Slow evacuation capability, 48 months.
- (III) Prompt evacuation capability, 60 months.

The beginning date from which the deadline for the automatic fire sprinkler installation requirement must be calculated is upon receipt of written notice from the local fire official that an automatic fire sprinkler system must be installed. The local fire official shall send a copy of the document indicating

the requirement of a fire sprinkler system to the Agency for Health Care Administration.

j. It is recognized that the installation of an automatic fire sprinkler system may create financial hardship for some facilities. The appropriate local fire official shall, without liability, grant two 1-year extensions to the timeframes for installation established herein, if an automatic fire sprinkler installation cost estimate and proof of denial from two financial institutions for a construction loan to install the automatic fire sprinkler system are submitted. However, for any facility with a class I or class II, or a history of uncorrected class III, firesafety deficiencies, an extension must not be granted. The local fire official shall send a copy of the document granting the time extension to the Agency for Health Care Administration.

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

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

m. Except in cases of life-threatening fire hazards, if an existing facility experiences a change in the evacuation capability, or if the local authority having jurisdiction identifies a construction-type restriction, such that an automatic fire sprinkler system is required, it shall be afforded time for installation as provided in this subparagraph.

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

Facilities that are fully sprinkled and in compliance with other firesafety standards are not required to conduct more than one of the required fire drills between the hours of 11 p.m. and 7 a.m., per year. In lieu of the remaining drills, staff responsible for residents during such hours may be required to participate in a mock drill that includes a review of evacuation procedures. Such standards must be included or referenced in the rules adopted by the department ~~after consultation with the State Fire Marshal~~. Pursuant to s. 633.022(1)(b), the State Fire Marshal is the final administrative authority for firesafety standards established and enforced pursuant to this section. All licensed facilities must have an annual fire inspection conducted by the local fire marshal or authority having jurisdiction.

(b) The preparation and annual update of a comprehensive emergency management plan. Such standards must be included in the rules adopted by the department after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; communication with families; and responses to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health and ~~Rehabilitative Services~~, the Agency for Health Care Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

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

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

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

(f)(e) Inspections, complaint investigations, moratoriums, classification of deficiencies,

The levying and enforcement of penalties, and use of income from fees and fines.

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

(h)(g) The care and maintenance of residents, which must include, but is not limited to:

1. The supervision of residents;

2.1. The provision of personal services;

3.2. The provision of, or arrangement for, social and leisure activities;

4.3. The arrangement for appointments and transportation to appropriate medical, dental, nursing, or mental health services, as needed by residents;

4.—The provision of limited nursing services;

5. The management of medication; The provision of extended congregate care services; and

6. The nutritional needs of residents; and The provision of limited mental health services.

7. Resident records.

(i) Facilities holding a limited nursing, extended congregate care, or limited mental health license.

(j)(h) The establishment of specific criteria to define appropriateness of resident admission and continued residency in a facility holding a standard, limited nursing, extended congregate care, and limited mental health license.

(k)(i) The definition and use of physical or chemical restraints. The use of physical restraints is limited to half-bed rails as prescribed and documented by the resident's physician with the consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact. The use of chemical restraints is limited to prescribed dosages of medications authorized by the resident's physician and must be consistent with the resident's diagnosis. Residents who are receiving medications that can serve as chemical restraints must be evaluated by their physician at least annually to assess:

1. The continued need for the medication.

2. The level of the medication in the resident's blood.

3. The need for adjustments in the prescription.

(3) The department shall submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to the promulgation thereof.

(a) Rules promulgated by the department shall encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decisionmaking ability of residents.

(b) The agency, in consultation with the department, may waive rules promulgated pursuant to this part in order to demonstrate and evaluate innovative or cost-effective congregate care alternatives which enable individuals to age in place. Such waivers may be granted only in instances where there is reasonable assurance that the health, safety, or welfare of residents will not be endangered. To apply for a waiver, the licensee shall submit to the agency a written description of the concept to be demonstrated, including goals, objectives, and anticipated benefits; the number and types of residents who will be affected, if applicable; a brief description of how the demonstration will be evaluated; and any other information deemed appropriate by the agency. Any facility granted a waiver shall submit a report of findings to the agency and the department within 12 months. At such time, the agency may renew or revoke the waiver or pursue any regulatory or statutory changes necessary to allow other facilities to adopt the same practices. The department may by rule clarify terms and establish waiver application procedures, criteria for reviewing waiver proposals, and procedures for reporting findings, as necessary to implement this subsection.

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

400.442 Pharmacy and dietary services.—

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

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

400.444 Construction and renovation; requirements.—

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

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

400.619 Licensure requirements.—

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

(4) Upon receipt of a completed license application or license renewal, and the fee, the agency shall conduct a level 1 background screening as provided under chapter 435 on must check with the abuse registry and the Department of Law Enforcement concerning the adult family-care home provider applicant, the designated relief person, all adult household members, and all staff members. The agency shall also conduct an onsite visit to the home that is to be licensed.

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

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

400.6196 Violations; penalties.—

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

(a) Class I violations are those conditions or practices related to the operation and maintenance of an adult family-care home or to the care of residents which the agency determines present an imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice that constitutes a class I violation must be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. A class I deficiency is subject to an administrative fine in an amount not less that \$500 and not exceeding \$1,000 for each violation. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II violations are those conditions or practices related to the operation and maintenance of an adult family-care home or to the care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the residents, other than class I violations. A class II violation is subject to an administrative fine in an amount not less that \$250 and not exceeding \$500 for each violation. A citation for a class II violation must specify the time within which the violation is required to be corrected. If a class II violation is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

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

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

(2) The agency may impose an administrative fine for violations which do not qualify as class I, class II, class III, or class IV violations. The amount of the fine shall not exceed \$250 for each violation or \$2,000 in the aggregate. Unclassified violations include:

(a) Violating any term or condition of a license; ~~or~~

(b) Violating any rule adopted under this part ss. 400.616-400.629.

(c) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of adult family-care home residents.

(d) Exceeding licensed capacity.

(e) Providing services beyond the scope of the license.

(f) Violating a moratorium.

(3)(2) Each day during which a violation occurs constitutes a separate offense violation.

(4)(3) In determining whether a penalty is to be imposed, and in fixing the amount of any penalty to be imposed, the agency must consider:

(a) The gravity of the violation.

(b) Actions taken by the provider to correct a violation.

(c) Any previous violation by the provider.

(d) The financial benefit to the provider of committing or continuing the violation.

(5)(4) As an alternative to or in conjunction with an administrative action against a provider, the agency may request a plan of corrective action that demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency department.

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

(7)(6) Civil penalties paid by a provider must be deposited into the Department of Elderly Affairs Administrative Trust Fund and used to offset

the expenses of departmental training and education for adult family-care home providers.

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

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

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

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

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

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

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

~~1. Room and board.~~

~~2. Assistance necessary to perform the activities of daily living.~~

~~3. Assistance necessary to administer medication.~~

~~4. Supervision of residents.~~

~~5. Health monitoring.~~

~~6. Social and leisure activities.~~

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

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

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

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

(e) Mandate Compliance with chapter 419, relating to community residential homes.

(f) Criteria and procedures for determining the appropriateness of a resident's placement and continued residency in ~~Assure that an adult family-care home is the appropriate living arrangement for each resident.~~ A resident who requires 24-hour nursing supervision may not be retained in an adult family-care home. A person who would not be an appropriate resident in any assisted living facility under s. 400.426 would not be an appropriate resident in an adult family-care home.

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

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

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

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

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

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

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

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

400.6211 Training and education programs.—

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

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

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

- (b) Identifying and reporting abuse, neglect, and exploitation.
- (c) Identifying and meeting the special needs of aged persons and disabled adults.
- (d) Monitoring the health of residents, including guidelines for prevention and care of pressure ulcers.
- (3) Providers must complete the training and education program within a reasonable time determined by the department by rule. Failure to complete the training and education program within the time set by the department ~~is a violation of ss. 400.616-400.629 and~~ subjects the provider to revocation or denial of the license under this part.
- (4) If the Department of Children and Family Services ~~Health and Rehabilitative Services~~, the agency, or the department determines that there are problems in an adult family-care home which could be reduced through specific training or education beyond that required under this section, the department may require the provider or staff to complete such training or education.

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

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

409.212 Optional supplementation.—

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

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

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

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

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

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

~~(5)~~(4) When contributions are made in accordance with the provisions of subsection ~~(4)~~(3), the department shall not count such supplements as income to the client for purposes of determining eligibility for, or computing the amount of, optional state supplementation benefits, nor shall the department increase an optional state supplementation payment to offset the reduction in Supplemental Security Income benefits that will occur because of the third-party contribution.

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

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.