

CHAPTER 98-338

Committee Substitute for House Bill No. 4035

An act relating to adult family-care homes; amending ss. 400.616, 400.617, 400.618, 400.619, 400.6196, 400.621, 400.6211, 400.622, 400.625, 400.6255, 400.628, and 400.629, F.S., and creating s. 400.6194, F.S.; revising legislative intent and purpose; revising definitions; requiring adult family-care home providers to meet certain screening requirements; revising requirements for licensure application and renewal; providing a late renewal fee; revising grounds for denial, suspension, or revocation of a license; revising requirements for rules relating to appropriate placement of residents; revising provisions relating to injunctive relief; requiring certain information to be provided to residents' legal representatives; conforming terminology, references, and cross-references; amending s. 419.001, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 400.616, Florida Statutes, is amended to read:

400.616 Short title.—~~This part Sections 400.616-400.629~~ may be cited as the “Adult Family-Care Home Act.”

Section 2. Section 400.617, Florida Statutes, is amended to read:

400.617 Legislative intent; purpose.—

(1) The Legislature encourages the provision of care for disabled adults and frail elders ~~aged persons~~ in family-type living arrangements in private homes.

(2) Adult family-care homes provide housing and personal care for disabled adults and frail elders who choose to live with an individual or family in a private home. The adult family-care home provider must live in the home. The purpose of this part ss. 400.616-400.629 is to provide for the health, safety, and welfare of residents of adult family-care homes in the state.

(3) The Legislature recognizes that adult family-care homes are an important part of the continuum of long-term care. The personal care services available in these homes, which may be provided directly or through contract or agreement, is are intended to help residents remain as independent as possible in order to delay or avoid placement in a nursing home or other institution. Regulations governing adult family-care homes must be sufficiently flexible to allow residents to age in place if resources are available to meet their needs and accommodate their preferences.

(4) The Legislature further finds and declares that licensure under this part ss. 400.616-400.629 is a public trust and a privilege, and not an entitlement. This principle must guide the finder of fact or trier of law at any

administrative proceeding or circuit court action initiated by the department to enforce this part ss. 400.616-400.629.

(5) Rules of the department relating to adult family-care homes shall be as minimal and flexible as possible to ensure the protection of residents while minimizing the obstacles that could inhibit the establishment of adult family-care homes.

Section 3. Section 400.618, Florida Statutes, is amended to read:

400.618 Definitions.—As used in this part ss. 400.616-400.629, the term:

(1) “Activities of daily living” means functions and tasks for self-care, including eating, bathing, grooming, dressing, ambulating, and other similar tasks.

(2) “Adult family-care home” means a full-time, family-type living arrangement, in a private home, under which a person or persons provide, ~~for profit or not for profit~~, room, board, and personal care one or more personal services, as appropriate for the level of functional impairment, for no more than five ~~aged persons or disabled adults or frail elders~~ who are not relatives. The following establishments are not adult family-care homes:

(a) An arrangement whereby the person who owns or rents the home provides room, board, and establishment that provides personal services for not more than two three or fewer adults who do not receive optional state supplementation under s. 409.212, but that does not hold itself out to the public to be an establishment that regularly provides such services. The person who provides the housing, meals, and personal care must own or rent the home and reside therein.

(b) An arrangement whereby the person who owns or rents the home provides room, board, and establishment in which a person or persons provide personal services only to his or her their relatives.

(c) An establishment that is licensed as an assisted living facility under part III.

~~(3) “Aged person” means any person age 60 or over who is currently a resident of the state and who, because of a functional impairment, requires one or more personal services but does not require 24-hour skilled nursing home or institutional care.~~

~~(3)(4)~~ “Agency” means the Agency for Health Care Administration.

~~(4)(5)~~ “Aging in place” means remaining in a noninstitutional living environment despite the physical or mental changes that may occur in a person who is aging. For aging in place to occur, needed services are added, increased, or adjusted to compensate for a person’s physical or mental changes.

(5) “Appropriate placement” means that the resident’s needs can be met by the adult family-care home or can be met by services arranged by the adult family-care home or the resident.

(6) “Chemical restraint” means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, and is used for discipline or convenience and not required for the treatment of medical symptoms.

(7) “Department” means the Department of Elderly Affairs.

(8) “Disabled adult” means any person between 18 and 59 years of age, inclusive, who is a resident of the state and who has one or more permanent physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

(9) “Frail elder” means a functionally impaired elderly person who is 60 years of age or older and who has physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living and that impede the person’s capacity to live independently.

~~(10)(9) “Personal services” or “personal care” includes include, but are not limited to, individual assistance with or supervision of the activities of daily living and the self-administration of medication; supervision of self-administered medication; and other similar services that the department defines by rule.~~

~~(11)(10) “Provider” means a person who is licensed to operate an adult family-care home.~~

~~(12)(11) “Relative” means an individual who is the father, mother, son, daughter, brother, sister, grandfather, grandmother, greatgrandfather, and greatgrandmother, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of a provider.~~

(13) “Relief person” means an adult designated by the provider to supervise the residents during the provider’s absence.

(14) “Resident” means a person receiving room, board, and personal care in an adult family-care home.

Section 4. Section 400.619, Florida Statutes, is amended to read:

400.619 Licensure application and renewal requirements.—

~~(1) Each person who intends to be a provider of an adult family-care home provider must apply for obtain a license from the agency before caring for a disabled adult or an aged person in the adult family-care home. Such application must be made at least 90 days before the applicant intends to operate the adult family-care home.~~

(2) A person who intends to be a provider of an adult family-care home provider must own or rent ~~and live in~~ the adult family-care home that is to be licensed and reside therein.

(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 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.

(5) Access to a licensed adult family-care home must be provided at reasonable times for the appropriate officials of the department, the Department of Health, ~~the Department of Children and Family and Rehabilitative Services,~~ the agency, and the State Fire Marshal, who are responsible for the development and maintenance of fire, health, sanitary, and safety standards, to inspect the facility to assure compliance with these standards. In addition, access to a licensed adult family-care home must be provided at reasonable times for the district long-term care ombudsman council.

(6) A license is effective for 1 year after the date of issuance unless revoked sooner. Each license must state the name of the provider, the address of the home to which the license applies, and the maximum number of residents of the home. Failure to timely file a license renewal application shall result in a late fee equal to 50 percent of the license fee. A license may be issued with or without restrictions governing the residents or care offered in the adult family-care home.

(7) A license is not transferable or applicable to any location or person other than the location and ~~or~~ person indicated on the license application ~~for licensure.~~

(8) The licensed maximum capacity of each adult family-care home is based on the service needs of the residents and the capability of the provider to meet the needs of the residents. Any relative who lives in the adult family-care home and who is ~~an aged person or a disabled adult~~ or frail elder must be included in that limitation.

(9) Each adult family-care home must designate at least one licensed space for a resident receiving optional state supplementation as defined in s. 409.212. ~~The department of Health and Rehabilitative Services shall specify by rule the procedures to be followed for referring residents who receive optional state supplementation to adult family-care homes. Those homes licensed as adult foster homes or assisted living facilities prior to January 1, 1994, that convert to adult family-care homes, are exempt from~~ this the requirement of designating one space for a resident receiving optional state supplementation.

(10) The agency may issue a conditional license to a provider for the purpose of bringing the adult family-care home into compliance with licen-

sure requirements. A conditional license must be limited to a specific period, not exceeding 6 months, ~~as determined by the department, in consultation with the agency.~~ The department shall, by rule, establish criteria for issuing conditional licenses.

~~(11) The agency may deny, suspend, or revoke a license for any of the following reasons:~~

~~(a) A confirmed report, obtained under s. 415.1075, of abuse, neglect, or exploitation, or conviction of a crime related to abuse, neglect, or exploitation.~~

~~(b) A proposed confirmed report that remains unserved and is maintained in the central abuse registry and tracking system pursuant to s. 415.1065(2)(c).~~

~~(c) An intentional or negligent act materially affecting the health, safety, or welfare of the adult family-care home residents.~~

~~(d) A violation of ss. 400.616-400.629 or rules adopted under ss. 400.616-400.629, including the failure to comply with any restrictions specified in the license.~~

~~(e) Submission of fraudulent or inaccurate information to the agency.~~

~~(f) Conviction of a felony involving violence to a person.~~

~~(g) Failure to pay a civil penalty assessed under this part.~~

~~(11)(12) All moneys collected under this section must be deposited into the Department of Elderly Affairs Administrative Trust Fund and must be used to offset the expenses of departmental training and education for adult family-care home providers.~~

~~(12)(13) The department shall adopt rules to implement this section.~~

Section 5. Section 400.6194, Florida Statutes, is created to read:

400.6194 Denial or revocation of a license.—The agency may deny or revoke a license for any of the following reasons:

(1) Failure of any of the persons required to undergo background screening under s. 400.619 to meet the level 1 screening standards of s. 435.03.

(2) An intentional or negligent act materially affecting the health, safety, or welfare of the adult family-care home residents.

(3) Submission of fraudulent information or omission of any material fact on a license application or any other document required by the agency.

(4) Failure to pay an administrative fine assessed under this part.

(5) A violation of this part or adopted rules which results in conditions or practices that directly threaten the physical or emotional health, safety, or welfare of residents.

(6) Failure to correct cited fire code violations that threaten the health, safety, or welfare of residents.

(7) Failure to submit a completed initial license application, or to complete a license renewal application within the specified timeframe.

Section 6. Paragraph (b) of subsection (1) of 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 person for:

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

Section 7. Paragraph (f) of subsection (1) and subsection (4) of section 400.621, Florida Statutes, are 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 and Rehabilitative Services and the agency, by rule, establish minimum standards and licensure procedures for adult family-care homes. The rules must, at a minimum:

(f) 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 unless such resident is an enrolled hospice patient and the resident's continued residency is mutually agreeable to the resident and the provider. 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.

(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 those new or revised rules and standards.

Section 8. Paragraph (c) of subsection (2) and subsections (3) and (4) of section 400.6211, Florida Statutes, are amended to read:

400.6211 Training and education programs.—

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

(c) Identifying and meeting the special needs of ~~aged persons and disabled adults~~ and frail elders.

(3) Providers must complete the training and education program within a reasonable time determined by the department. Failure to complete the training and education program within the time set by the department is a violation of this part ss. 400.616-400.629 and subjects the provider to revocation of the license.

(4) If the Department of Children and Family 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 agency department may require the provider or staff to complete such training or education.

Section 9. Section 400.622, Florida Statutes, is amended to read:

400.622 Injunctive proceedings.—

(4) The department, the Department of Children and Family Health and Rehabilitative Services, or the agency may institute injunctive proceedings in a court of competent jurisdiction to:

(1)(a) Enforce the provisions of this part ~~ss. 400.616-400.629~~ or any license requirement, minimum standard, rule, or order issued or entered into under this part ~~ss. 400.616-400.629~~; or

(2)(b) Terminate the operation of an adult family-care home when violations of any license requirement, standard, or rule adopted under this part ~~ss. 400.616-400.629~~ exist which materially affect the health, safety, or welfare of residents.

(2)—~~Such injunctive relief may be temporary or permanent.~~

Section 10. Subsection (2) of section 400.625, Florida Statutes, is amended to read:

400.625 Residency agreements.—

(2) Each residency agreement must specify the personal care services and accommodations to be provided by the adult family-care home, the rates or charges, a requirement of at least 30 days' notice before a rate increase, and any other provisions required by rule of the department.

Section 11. Section 400.6255, Florida Statutes, is amended to read:

400.6255 Residents Patients with Alzheimer's disease or other related disorders; certain disclosures.—An adult family-care home licensed under this part which claims that it provides special care for persons who have Alzheimer's disease or other related disorders must disclose in its advertisements or in a separate document those services that distinguish the care as being especially applicable to, or suitable for, such persons. The home must give a copy of all such advertisements or a copy of the document to each person who requests information about programs and services for persons with Alzheimer's disease or other related disorders offered by the home and must maintain a copy of all such advertisements and documents in its records. The agency department shall examine all such advertisements and documents in the home's records as part of the license renewal procedure.

Section 12. Subsections (2) and (6) and paragraph (c) of subsection (4) of section 400.628, Florida Statutes, are amended to read:

400.628 Residents' bill of rights.—

(2) The provider shall ensure that residents and their legal representatives are made aware of the rights, obligations, and prohibitions set forth in this part ss. 400.616-400.629. Residents must also be given the names, addresses, and telephone numbers of the district ombudsman council and the adult abuse registry where they may lodge complaints.

(4) A provider or staff of an adult family-care home may not serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

(c) Files a civil action alleging a violation of this part ss. 400.616-400.629 or notifies a state attorney or the Attorney General of a possible violation of this part these sections.

(6) Any person who reports a complaint concerning a suspected violation of this part ss. 400.616-400.629 or the services and conditions in an adult family-care home, or who testifies in any administrative or judicial proceeding arising from such a complaint, is immune from any civil or criminal liability therefor, unless the person acted in bad faith or with malicious purpose or the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

Section 13. Section 400.629, Florida Statutes, is amended to read:

400.629 Civil actions to enforce rights.—Any person or resident whose rights as specified in this part ss. 400.616-400.629 are violated has a cause of action against any adult family-care home, provider, or staff responsible for the violation. The action may be brought by the resident or the resident's guardian, or by a person or organization acting on behalf of a resident with the consent of the resident or the resident's guardian, to enforce the right. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual damages, and punitive damages when malicious, wanton, or willful disregard of the rights of others can be shown. Any plaintiff who prevails in any such action is entitled to recover reasonable attorney's fees, costs of the action, and damages, unless the court finds that the plaintiff has acted in bad faith or with malicious purpose or that there was a complete absence of a justiciable issue of either law or fact. A prevailing defendant is entitled to recover reasonable attorney's fees pursuant to s. 57.105. The remedies provided in this section are in addition to other legal and administrative remedies available to a resident or to the agency department.

Section 14. Paragraph (d) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the following definitions shall apply:

(d) "Resident" means any of the following: a frail elder ~~an aged person~~ as defined in s. 400.618(3); a physically disabled or handicapped person as

defined in s. 760.22(7)(a); a developmentally disabled person as defined in s. 393.063(11); a nondangerous mentally ill person as defined in s. 394.455(~~18~~)(16); or a child as defined in s. 39.01(12) and (14).

Section 15. This act shall take effect on October 1, 1998.

Became a law without the Governor's approval May 30, 1998.

Filed in Office Secretary of State May 29, 1998.