

## CHAPTER 98-80

### Committee Substitute for Senate Bill No. 1960

An act relating to assisted living facilities and adult family-care homes; amending s. 400.402, F.S.; revising definitions; amending s. 400.404, F.S.; providing additional exemptions from licensure as an assisted living facility; amending ss. 400.407, 400.408, F.S.; reorganizing and revising provisions relating to unlawful facilities; providing penalties; requiring report of unlicensed facilities; providing for disciplinary actions; revising provisions relating to referral to unlicensed facilities; providing for certain notice to service providers; amending s. 400.4075, F.S.; providing requirements for obtaining a limited mental health license; amending s. 400.411, F.S.; revising requirements for an initial application for license; providing for a fee; amending s. 400.414, F.S.; revising authority and grounds for denial, revocation, or suspension of licenses or imposition of administrative fines; specifying terms for review of proceedings challenging administrative actions; amending s. 400.415, F.S.; requiring a facility to post notice of a moratorium on admissions; providing for rules establishing grounds for imposition of a moratorium; amending s. 400.417, F.S.; providing for coordinated expiration of a facility's license; revising requirements for license renewal; providing for rules; amending s. 400.4174, F.S.; amending an outdated reference to child abuse or neglect; amending s. 400.4176, F.S.; revising time requirement for notice of change of administrator; amending ss. 400.418, 400.422, 400.452, 408.036, F.S., relating to the disposition of fees and fines, receivership proceedings, staff training and education, and the review of certain projects; conforming cross-references to changes made by the act; amending s. 400.419, F.S.; revising procedures relating to violations and penalties; increasing administrative fines for specified classes of violations; providing fines for unlicensed operation of a facility and for failure to apply for a change of ownership license; authorizing a survey fee to cover the cost of certain complaint investigations; providing for corrective action plans to correct violations; expanding dissemination of information regarding facilities sanctioned or fined; amending s. 400.4195, F.S., relating to prohibitions and rebates; creating s. 400.4256, F.S., relating to assistance with the self-administration of medication; amending s. 400.428, F.S.; providing for surveys to determine compliance with facility standards and residents' rights; amending s. 400.474, F.S.; providing for disciplinary action against a home health agency or employee who knowingly provides services in an unlicensed assisted living facility or adult family-care home; amending s. 400.618, F.S.; revising the definition of the term "adult-family care home"; amending s. 394.4574, F.S.; requiring district administrators of the Department of Children and Family Services to develop plans to ensure the provision of mental health and substance abuse treatment services to residents of assisted living facilities that hold a limited mental health license; providing an effective date.

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

Section 1. Section 400.402, Florida Statutes, is amended to read:

400.402 Definitions.—When used in this part, ~~unless the context otherwise requires,~~ the term:

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

(2) “Administrator” means an individual at least 21 years of age who is responsible for the operation and maintenance ~~who has general administrative charge~~ of an assisted living facility.

(3) ~~“Assisted living facility,” hereinafter referred to as “facility,” means any building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing, food service, and one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services; or to provide extended congregate care, limited nursing services, or limited mental health services, when specifically licensed to do so pursuant to s. 400.407, unless the facility is licensed as an adult family care home. A facility offering personal services, extended congregate care, limited nursing services, or limited mental health services for fewer than four adults is within the meaning of this definition if it formally or informally advertises to or solicits the public for residents or referrals and holds itself out to the public to be an establishment which regularly provides such services, unless the facility is licensed as an adult family care home.~~

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

~~(4)~~(5) “Aging in place” or “age in place” means the process of providing increased or adjusted services to a person to compensate for ~~by which a person chooses to remain in a residential environment despite the physical or mental decline that may occur with the aging process, in order to maximize.~~ For aging in place to occur, needed services are added, increased, or adjusted to compensate for the physical or mental decline of the individual, while maximizing the person’s dignity and independence and permit them to remain in a familiar, noninstitutional, residential environment for as long as possible. Such services may be provided by facility staff, volunteers, family, or friends, or through contractual arrangements with a third party.

~~(5)~~(6) “Applicant” means an individual owner, corporation, partnership, firm, association, or governmental entity that applies ~~any facility owner, or if a business entity, a person appointed by such entity to make application for a license.~~

~~(7) “Assistance with activities of daily living” means direct physical assistance with activities of daily living as defined in subsection (1).~~

(6) “Assisted living facility” means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

~~(7)~~(8) “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.

~~(8)~~(9) “Community living support plan” means a written document prepared by a mental health resident and the resident’s mental health case manager ~~of that resident~~ in consultation with the administrator of an assisted living the facility with a limited mental health license or the administrator’s designee. A copy must be provided to the administrator. The plan must include information about the supports, services, and special needs of the resident which enable the resident to live in the assisted living facility and a method by which facility staff can recognize and respond to the signs and symptoms particular to that resident which indicate the need for professional services.

~~(9)~~(10) “Cooperative agreement” means a written statement of understanding between a mental health care ~~services~~ provider and the administrator of the assisted living facility with a limited mental health license in which a mental health resident is living. The agreement must specify specifies directions for accessing emergency and after-hours care for the mental health resident and a method by which the staff of the facility can recognize and respond to the signs and symptoms particular to that mental health resident that indicate the need for professional services. ~~The cooperative agreement may be a component of the community living support plan. A single cooperative agreement may service all mental health residents who are clients of the same mental health care provider.~~

~~(10)~~(11) “Department” means the Department of Elderly Affairs.

~~(11)~~(12) “Emergency” means a situation, physical condition, or method of operation which presents imminent danger of death or serious physical or mental harm to facility residents.

~~(12)~~(13) “Extended congregate care” means acts beyond those authorized in subsection (17) ~~(16)~~ that may be performed pursuant to chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

~~(13)~~(14) “Guardian” means a person to whom the law has entrusted the custody and control of the person or property, or both, of a person who has been legally adjudged incapacitated.

(14)(15) "Limited nursing services" means acts that may be performed pursuant to chapter 464 by persons licensed thereunder while carrying out their professional duties but limited to those acts which the department specifies by rule. Acts which may be specified by rule as allowable limited nursing services shall be for persons who meet the admission criteria established by the department for assisted living facilities and shall not be complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints.

(15)(16) "Managed risk" means the process by which the facility staff discuss the service plan and the needs of the resident with the resident and, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact, in such a way that the consequences of a decision, including any inherent risk, are explained to all parties and reviewed periodically in conjunction with the service plan, taking into account changes in the resident's status and the ability of the facility to respond accordingly.

(16)(17) "Mental health resident" means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation.

~~(17)(18) "Personal services" means direct physical include, but are not limited to, such services as: individual assistance with or supervision of the essential activities of daily living and the self-administration of medication as defined in subsection (1), and other similar services which the department may define by rule. "Personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility, except as provided in this part. In addition, an emergency response device installed in the apartment or living area of a resident shall not be classified as a personal service.~~

(18)(19) "Physical restraint" means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term "physical restraint" shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury.

(19) "Relative" means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, 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, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister of an owner or administrator.

(20) "Resident" means a person 18 years of age or older, residing in and receiving care from a facility.

(21) “Resident’s representative or designee” means a person other than the owner, or an agent or employee of the facility, designated in writing by the resident, if legally competent, to receive notice of changes in the contract executed pursuant to s. 400.424; to receive notice of and to participate in meetings between the resident and the facility owner, administrator, or staff concerning the rights of the resident; to assist the resident in contacting the ombudsman council if the resident has a complaint against the facility; or to bring legal action on behalf of the resident pursuant to s. 400.429.

(22) “Service plan” means a written plan, developed and agreed upon by the resident and, if applicable, the resident’s representative or designee or the resident’s surrogate, guardian, or attorney in fact, if any, and the administrator or designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

(23) “Shared responsibility” means exploring the options available to a resident within a facility and the risks involved with each option when making decisions pertaining to the resident’s abilities, preferences, and service needs, thereby enabling the resident and, if applicable, the resident’s representative or designee, or the resident’s surrogate, guardian, or attorney in fact, and the facility to develop a service plan which best meets the resident’s needs and seeks to improve the resident’s quality of life.

(24) “Supervision of activities of daily living” means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities.

~~(25) “Supervision of self-administered medication” means reminding residents to take medication, opening bottle caps for residents, opening pre-packaged medication for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dosage against the label of the container, reassuring residents that they have obtained and are taking the dosage as prescribed, keeping daily records of when residents receive supervision pursuant to this subsection, and immediately reporting noticeable changes in the condition of a resident to the resident’s physician and the resident’s case manager, if one exists. Residents who are capable of administering their own medication shall be allowed to do so.~~

(25)(26) “Supplemental security income,” Title XVI of the Social Security Act, means a program through which the Federal Government guarantees a minimum monthly income to every person who is age 65 or older, or disabled, or blind and meets the income and asset requirements.

(26)(27) “Supportive services” means services designed to encourage and assist aged persons or adults with disabilities to remain in the least restrictive living environment and to maintain their independence as long as possible.

~~(27)~~(28) “Twenty-four-hour nursing supervision” means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services shall be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident’s condition or the disease state or stage.

Section 2. 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 licensure under 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 facility licensed as an adult family-care home under part VII.

(d) Any person who provides housing, meals, and one or more personal services on a 24-hour basis in the person’s own home to not more than two adults who do not receive optional state supplementation. The person who provides the housing, meals, and personal services must own or rent the home and reside therein.

~~(e)~~(e) 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.

~~(f)~~(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.

~~(g)~~(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.

Section 3. Subsection (1) of section 400.407, Florida Statutes, is amended to read:

400.407 License required; fee, display.—

(1)(a) A license issued by the agency is required for an assisted living facility operating in this state. It is unlawful to operate or maintain a facility without first obtaining from the agency a license authorizing such operation.

~~(b)1.— Any person found guilty of violating paragraph (a) who, upon notification by the agency, fails, within 10 working days after receiving such notification, to apply for a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~2.— Any person found to be in violation of paragraph (a) due to a change in s. 400.402(3), (18), (24), or (25) or a modification in department policy pertaining to personal services as provided for in s. 400.402 and who, upon notification by the agency, fails, within 10 working days after receiving such notification, to apply for a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~3.— Except as provided for in subparagraph 2., any person who violates paragraph (a) who previously operated a licensed facility or concurrently operates a licensed facility and an unlicensed facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~4.— Any person who fails to obtain a license after agency notification may be fined for each day of noncompliance pursuant to s. 400.419(1)(b).~~

~~5.— When an owner has an interest in more than one facility, and fails to license any one of these facilities, the agency may revoke the license or impose a moratorium on any or all of the licensed facilities until such time as the delinquent facility is licensed.~~

~~6.— If the agency determines that an owner is operating or maintaining a facility without obtaining a license authorizing such operation and determines that a condition exists in the facility that poses a threat to the health,~~

~~safety, or welfare of a resident of the facility, the owner commits neglect as defined in s. 415.102 and is subject to the same actions and penalties specified in ss. 400.414 and 400.419 for a negligent act seriously affecting the health, safety, or welfare of a resident of the facility.~~

Section 4. Effective January 1, 1999, subsection (1) of section 400.4075, Florida Statutes, is amended to read:

400.4075 Limited mental health license.—An assisted living facility that serves three or more mental health residents must obtain a limited mental health license.

(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility, must not have any current uncorrected deficiencies or violations, and must ensure that, within 6 months after receiving a limited mental health license, the facility administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. This training will be provided by or approved by the Department of Children and Family Services.

Section 5. Section 400.408, Florida Statutes, is amended to read:

400.408 Unlicensed facilities; referral of person for residency to unlicensed facility; ~~penalties~~ penalty; verification of licensure status.—

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

(b) Except as provided under paragraph (d), any person who owns, operates, or maintains an unlicensed assisted living facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Application for licensure within 10 working days after notification shall be an affirmative defense to this felony violation.

(c) Any person found guilty of violating paragraph (a) a second or subsequent time, commits a felony of the second degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084.

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

(e) Pursuant to this subsection, any facility that fails to apply for a license or cease operation after agency notification may be fined for each day of noncompliance pursuant to s. 400.419.

(f) When a licensee has an interest in more than one assisted living facility, and fails to license any one of these facilities, the agency may revoke the license or impose a moratorium on any or all of the licensed facilities



until such time as the unlicensed facility applies for licensure or ceases operation.

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

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

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

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

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

(c)(2) The agency shall provide the department and the Department of Children and Family Health and Rehabilitative Services with a list of licensed facilities within each county and shall update the list at least quarterly monthly.

(d)(3) At least annually, the agency shall notify, in appropriate trade publications as defined by rule, physicians licensed under chapter 458 or chapter 459 pursuant to chapter 458, osteopathic physicians licensed pursuant to chapter 459, hospitals licensed under pursuant to part I of chapter 395, and nursing home facilities licensed under pursuant to part II of this chapter, and employees of the agency or the department, or the Department of Children and Family Health and Rehabilitative Services, who are responsible having a responsibility for referring persons for residency, that it is

unlawful to knowingly refer a person for residency to an unlicensed assisted living facility and shall notify them of the penalty for violating such prohibition. The department and the Department of Children and Family Services shall, in turn, notify service providers under contract to the respective departments who have responsibility for resident referrals to facilities. Further, the notice must direct each noticed facility and individual to contact the appropriate agency office in order to verify the licensure status of any facility prior to referring any person for residency. Each notice must include the name, telephone number, and mailing address of the appropriate office to contact.

Section 6. Section 400.411, Florida Statutes, is amended to read:

400.411 Initial application for license; provisional license.—

(1) Application for license shall be made to the agency on forms furnished by it and shall be accompanied by the appropriate license fee. ~~The application shall contain sufficient information, as required by rules of the department, to establish that the applicant can provide adequate care.~~

(2) The applicant may be an individual owner, corporation, partnership, firm, association, or governmental entity.

~~(3)~~(2) The application shall be signed by the applicant under oath and shall contain the following:

(a) The name, address, date of birth, and social security number of the applicant and the name by which the facility is to be known. ~~Pursuant thereto:~~

1. If the applicant is a firm, partnership, or association, the application shall contain the name, address, date of birth, and social security number of every member thereof.

2. If the applicant is a corporation, the application shall contain the corporation's its name and address, the name, address, date of birth, and social security number of each of its directors and officers, and the name and address of each person having at least a 5-percent ownership ~~10-percent~~ interest in the corporation.

(b) The name and address of any professional service, firm, association, partnership, or corporation that is to provide goods, leases, or services to the facility ~~for which the application is made~~, if a 5-percent ~~10-percent~~ or greater interest in the service, firm, association, partnership, or corporation is owned by a person whose name must be listed on the application under paragraph (a).

(c) ~~Information sufficient that provides a source to establish the suitable character, financial stability, and competency of the applicant and of each person specified in the application under subparagraph (a)1. or subparagraph (a)2. who has at least a 10-percent interest in the firm, partnership, association, or corporation and, if different from the applicant, applicable, of the administrator, and financial officer, including~~

~~(d)~~ The name and address of any long-term care facility with which the applicant, ~~or administrator, or financial officer~~ has been affiliated through ownership or employment within 5 years of the date of this license the application for a license; and a signed affidavit disclosing any financial or ownership interest that the applicant, or any person listed in paragraph (a) ~~principal, partner, or shareholder thereof~~, holds or has held within the last 5 years in any ~~other~~ facility licensed under this part, or in any other entity licensed by ~~this~~ the state or another state to provide health or residential care, which facility or entity closed or ceased to operate as a result of financial problems, or has had a receiver appointed or a license denied, suspended or revoked, or was subject to a moratorium on admissions, or had an injunctive proceeding initiated against it.

~~(e)~~~~(d)~~ The names and addresses of ~~other~~ persons of whom the agency may inquire as to the character, and reputation, and financial responsibility of the owner and, if different from the applicant, the administrator and financial officer ~~applicant and, if applicable, of the administrator~~.

~~(e)~~ The names and addresses of other persons of whom the agency may inquire as to the financial responsibility of the applicant.

(f) Identification of all other homes or facilities, including the addresses and the license or licenses under which they operate, if applicable, which are currently operated by the applicant or administrator and which provide housing, meals, and personal services to residents ~~adults~~.

~~(g)~~ Such other reasonable information as may be required by the agency to evaluate the ability of the applicant to meet the responsibilities entailed under this part.

~~(g)~~~~(h)~~ The location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

~~(h)~~~~(i)~~ The name, address, date of birth, social security number, education, and experience of the administrator if different from the applicant.

~~(4)~~~~(3)~~ The applicant shall furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part. A certificate of authority, pursuant to chapter 651, may be provided as proof of financial ability. An applicant applying for an initial license shall submit a balance sheet setting forth the assets and liabilities of the owner and a statement projecting revenues, expenses, taxes, extraordinary items, and other credits or charges for the first 12 months of operation of the facility.

~~(5)~~~~(4)~~ If the applicant is a continuing care facility certified under chapter 651, a copy of the facility's certificate of authority must be provided ~~offers continuing care agreements, as defined in chapter 651, proof shall be furnished that the applicant has obtained a certificate of authority as required for operation under that chapter.~~

~~(6)~~~~(5)~~ The applicant shall provide proof of liability insurance as defined in s. 624.605.

~~(7)(6) If the applicant is a community residential home, the applicant must provide proof that it has met the requirements specified in chapter 419 shall apply to community residential homes zoned single family or multi-family.~~

~~(8)(7) The applicant must provide the agency with proof of legal right to occupy the property. This proof may include, but is not limited to, copies of recorded warranty deeds, or copies of lease or rental agreements, contracts for deeds, quitclaim deeds, or other such documentation.~~

~~(9)(8) The applicant must furnish proof that the facility has received a satisfactory firesafety inspection. The local fire marshal or other authority having jurisdiction or the State Fire Marshal must conduct the inspection within 30 days after the written request by the applicant. If an authority having jurisdiction does not have a certified firesafety inspector, the State Fire Marshal shall conduct the inspection.~~

(10) The applicant must furnish documentation of a satisfactory sanitation inspection of the facility by the county health department.

~~(11)(9) A provisional license may be issued to an applicant making initial application for licensure or making application for a change of ownership. A provisional license shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the agency.~~

~~(12)(10) No county or municipality shall issue an occupational license which is being obtained for the purpose of operating a facility regulated under this part without first ascertaining that the applicant has been licensed to operate such facility at the specified location or locations by the agency. The agency shall furnish to local agencies responsible for issuing occupational licenses sufficient instruction for making such the above-required determinations.~~

Section 7. Section 400.414, Florida Statutes, is amended to read:

400.414 Denial, revocation, or suspension of license; imposition of administrative fine; grounds.—

(1) The agency may deny, revoke, or suspend any a license issued under this part or impose an administrative fine in the manner provided in chapter 120. At the chapter 120 hearing, the agency shall prove by a preponderance of the evidence that its actions are warranted.

~~(2) Any of the following actions by an assisted living facility or any facility employee a facility or its employee shall be grounds for action by the agency against a licensee:~~

(a) An intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(b) The determination by the agency that the facility owner, ~~or~~ administrator, or financial officer is not of suitable character or competency, or that the owner lacks the financial ability, to provide continuing adequate care to

~~residents, pursuant to the information obtained through s. 400.411, s. 400.417, or s. 400.434.~~

(c) Misappropriation or conversion of the property of a resident of the facility.

(d) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of a facility resident.

~~(e) One or more class I, three or more class II, or five or more repeated or recurring identical or similar class III violations of this part which were identified by the agency within the last 2 years during the last biennial inspection, monitoring visit, or complaint investigation and which, in the aggregate, affect the health, safety, or welfare of the facility residents.~~

(f) A confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, which has been upheld following a chapter 120 hearing or a waiver of such proceedings where the perpetrator is an employee, volunteer, administrator, or owner, or otherwise has access to the residents of a facility, and the owner or administrator has not taken action to remove the perpetrator. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the perpetrator is granted an exemption.

(g) Violation of a moratorium.

~~(h) Failure of the license applicant, the licensee during relicensure, or failure of a licensee that holds a provisional an initial or change of ownership license, to meet the minimum license standards or the requirements of rules adopted under this part, or related rules, at the time of license application or renewal.~~

~~(i) A fraudulent statement or omission of any material fact on an application for a license or any other document required by the agency that is signed and notarized.~~

~~(j) An intentional or negligent life-threatening act in violation of the uniform firesafety standards for assisted living facilities or other firesafety standards established by the State Fire Marshal, that threatens the health, safety, or welfare of a resident of a facility, as communicated to the agency by the local State Fire Marshal, a local fire marshal, or other authority having jurisdiction or the State Fire Marshal.~~

~~(k) Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter.~~

Administrative proceedings challenging agency action under this subsection shall be reviewed on the basis of the facts and conditions that resulted in the agency action.

~~(3) Proceedings brought under paragraphs (2)(a), (c), (e), and (j) shall not be subject to de novo review.~~

~~(2)(4)~~ Upon notification by the ~~local State Fire Marshal, local fire marshal, or other authority having jurisdiction~~ or the State Fire Marshal, the agency may deny or revoke the license of an assisted living a facility that fails to correct cited fire code violations ~~issued by the State Fire Marshal, a local fire marshal, or other authority having jurisdiction,~~ that affect or threaten the health, safety, or welfare of a resident of a facility.

(3) The agency may deny a license to any applicant or to any officer or board member of an applicant who is a firm, corporation, partnership, or association or who owns 5 percent or more of the facility, if the applicant, officer, or board member has or had a 25 percent or greater financial or ownership interest in any other facility licensed under this part, or in any entity licensed by this state or another state to provide health or residential care, which facility or entity during the 5 years prior to the application for a license closed due to financial inability to operate; had a receiver appointed or a license denied, suspended, or revoked; was subject to a moratorium on admissions; had an injunctive proceeding initiated against it; or has an outstanding fine assessed under this chapter.

(4) The agency shall deny or revoke the license of an assisted living facility that has two or more class I violations that are similar or identical to violations identified by the agency during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.

~~(5) The agency may deny a license to an applicant who owns 25 percent or more of, or operates, a facility which, during the 5 years prior to the application for a license, has had a license denied, suspended, or revoked pursuant to subsection (2), or, during the 2 years prior to the application for a license, has had a moratorium imposed on admissions, has had an injunctive proceeding initiated against it, has had a receiver appointed, was closed due to financial inability to operate, or has an outstanding fine assessed under this part.~~

(5)(6) An action taken by the agency to suspend, deny, or revoke a facility's license under this part, in which the agency claims that the facility owner or an employee of the facility has threatened the health, safety, or welfare of a resident of the facility, shall, upon receipt of the facility's request for a hearing, be heard by the Division of Administrative Hearings of the Department of Management Services within 120 days after the request for a hearing, unless that time period is waived by both parties. The administrative law judge must render a decision within 30 days after the hearing after receipt of a proposed recommended order.

(6)(7) The agency shall provide to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, on a monthly basis, a list of those assisted living facilities which have had their licenses denied, suspended, or revoked or which are involved in an appellate proceeding pursuant to s. 120.60 related to the denial, suspension, or revocation of a license.

(7) Agency notification of license suspension, revocation, or denial of a license renewal shall be posted and visible to the public at the facility.

Section 8. Section 400.415, Florida Statutes, is amended to read:

400.415 Moratorium on admissions; notice.—The agency may impose an immediate moratorium on admissions to any assisted living facility ~~if~~ when the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility.

(1) A facility the license of which is denied, revoked, or suspended pursuant to as a result of a violation of s. 400.414 may be subject to immediate imposition of a moratorium on admissions to run concurrently with licensure denial, revocation, or suspension.

(2) When a moratorium is placed on a facility, notice of the moratorium shall be posted and visible to the public at the facility until the moratorium is lifted.

(3) The department may by rule establish conditions that constitute grounds for imposing a moratorium on a facility and procedures for imposing and lifting a moratorium, as necessary to administer this section.

Section 9. Section 400.417, Florida Statutes, is amended to read:

400.417 Expiration of license; renewal; conditional license.—

(1) ~~Biennial licenses issued for the operation of a facility, unless sooner suspended or revoked, shall expire automatically 2 years from the date of issuance. Limited nursing, extended congregate care, and limited mental health licenses shall expire at the same time as the facility's standard license, regardless of when issued. The agency shall notify the facility by certified mail at least 120 days prior to the expiration of the license that a renewal license relicensure is necessary to continue operation. Ninety days prior to the expiration date, an application for renewal shall be submitted to the agency. Fees must be pro-rated. A license shall be renewed upon the filing of an application on forms furnished by the agency if the applicant has first met the requirements established under this part and all rules promulgated under this part. The failure to file a timely renewal application shall result in a late fee charged to the facility in an amount equal to 50 percent of the current fee in effect on the last preceding regular renewal date. Late fees shall be deposited into the Health Care Trust Fund as provided in s. 400.418. The facility shall file with the application satisfactory proof of ability to operate and conduct the facility in accordance with the requirements of this part.~~

(2) A license shall be renewed within 90 days upon the timely filing of an application on forms furnished by the agency and the provision of satisfactory proof of ability to operate and conduct the facility in accordance with the requirements of this part and adopted rules, including An applicant for renewal of a license must furnish proof that the facility has received a satisfactory firesafety inspection, conducted by the local fire marshal or other authority having jurisdiction or the State Fire Marshal, within the preceding 12 months.

(3) ~~An applicant for renewal of a license who has complied on the initial license application with the provisions of s. 400.411 with respect to proof of~~

financial ability to operate shall not be required to provide further proof of financial ability on renewal applications unless the facility or any other facility owned or operated in whole or in part by the same person or business entity has demonstrated financial instability as provided under s. 400.447(2) evidenced by bad checks, delinquent accounts, or nonpayment of withholding taxes, utility expenses, or other essential services or unless the agency suspects that the facility is not financially stable as a result of the annual survey or complaints from the public or a report from the State Long-Term Care Ombudsman Council. Each facility must shall report to the agency any adverse court action concerning the facility's financial viability, within 7 days after its occurrence. The agency shall have access to books, records, and any other financial documents maintained by the facility to the extent necessary to determine the facility's financial stability ~~carry out the purpose of this section~~. A license for the operation of a facility shall not be renewed if the licensee has any outstanding fines assessed pursuant to this part which are in final order status.

(4)(2) A licensee against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the agency ~~of such proceeding~~. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional license for the duration of the judicial proceeding.

(5)(3) A conditional license may be issued to an applicant for license renewal ~~if when~~ the applicant fails to meet all standards and requirements for licensure. A conditional license issued under this subsection shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the agency, and shall be accompanied by an agency-approved approved plan of correction.

(6) The department may by rule establish renewal procedures, identify forms, and specify documentation necessary to administer this section.

Section 10. Section 400.4174, Florida Statutes, is amended to read:

400.4174 Reports of abuse in facilities.—When an employee, volunteer, administrator, or owner of a facility is the subject of ~~has~~ a confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, ~~or child abuse or neglect, as defined in s. 415.503,~~ and the protective investigator knows that the individual is an employee, volunteer, administrator, or owner of a facility, the agency shall be notified of the confirmed report.

Section 11. Section 400.4176, Florida Statutes, is amended to read:

400.4176 Notice of change of administrator.—If, during the period for which a license is issued, the owner changes administrators, the owner must notify the agency of the change within 10 45 days ~~thereof~~ and must provide documentation within 90 days that the new administrator has completed the applicable core educational requirements under s. 400.452. Background screening shall be completed on any new administrator ~~to establish that the individual is of suitable character as specified in s. 400.411 ss. 400.411(2)(c) and 400.456.~~



Section 12. Subsection (1) of section 400.418, Florida Statutes, is amended to read:

400.418 Disposition of fees and administrative fines.—

(1) Income from license fees, inspection fees, late fees, and administrative fines generated pursuant to ss. 400.407, 400.408, 400.417, 400.419, and 400.431 shall be deposited in the Health Care Trust Fund administered by the agency. Such funds shall be directed to and used by the agency for the following purposes:

(a) Up to 50 percent of the trust funds accrued each fiscal year under this part may be used to offset the expenses of receivership, pursuant to s. 400.422, if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.

(b) An amount of \$5,000 of the trust funds accrued each year under this part shall be allocated to pay for inspection-related physical and mental health examinations requested by the agency pursuant to s. 400.426 for residents who are either recipients of supplemental security income or have monthly incomes not in excess of the maximum combined federal and state cash subsidies available to supplemental security income recipients, as provided for in s. 409.212. Such funds shall only be used where the resident is ineligible for Medicaid.

(c) Any trust funds accrued each year under this part and not used for the purposes specified in paragraphs (a) and (b) shall be used to offset the costs of the licensure program, including the costs of conducting background investigations, verifying information submitted, defraying the costs of processing the names of applicants, and conducting inspections and monitoring visits pursuant to this part.

Section 13. Section 400.419, Florida Statutes, is amended to read:

400.419 Violations; administrative fines penalties.—

~~(1)(a) If the agency determines that a facility is not in compliance with standards promulgated pursuant to the provisions of this part, including the failure to report evidence of the facility's financial instability or the operation of a facility without a license, the agency, as an alternative to or in conjunction with an administrative action against a facility, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner or administrator of the facility, prior to written notification thereof. The agency, instead of fixing a period within which the facility shall enter into compliance with standards, may request a plan of corrective action from the facility which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.~~

~~(b) Any facility owner or administrator found in violation of this part, including any individual operating a facility without a license, shall be subject to a fine, set and levied by the agency.~~

~~(c) Each day during which any person violates any such provision after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.~~

~~(d) Any action taken to correct a violation shall be documented in writing by the administrator of the facility and verified through followup visits by licensing personnel of the agency. The agency may impose a fine and, in the case of an owner-operated facility, revoke a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.~~

~~(e) If a facility desires to appeal any agency action under this section, it shall send a written request for a hearing to the agency within 15 days of receipt by certified mail of notice of the action of the agency. If the fine is upheld, the violator shall pay the fine, plus interest at the legal rate as specified in s. 687.01, for each day beyond the date set by the agency for payment of the fine.~~

~~(2) In determining if a penalty is to be imposed and in fixing the amount of the penalty to be imposed, if any, for a violation, the agency shall consider the following factors:~~

~~(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.~~

~~(b) Actions taken by the owner or administrator to correct violations.~~

~~(c) Any previous violations.~~

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

~~(e) The licensed capacity of the facility.~~

~~(1)(3) Each violation of this part and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The agency shall indicate the classification of each violation on the written face of the notice of the violation as follows:~~

~~(a) Class "I" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal 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 constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. A class I violation is subject to an administrative fine a civil penalty in an amount not less than \$1,000 and not exceeding \$10,000 \$5,000 for each violation. A fine may be levied notwithstanding the correction of the violation.~~

(b) Class "II" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the facility residents, other than class I violations. A class II violation is subject to ~~an administrative fine a civil penalty~~ in an amount not less than \$500 and ~~not exceeding \$5,000~~ \$1,000 for each violation. A citation for a class II violation shall specify the time within which the violation is required to be corrected. If a class II violation is corrected within the time specified, ~~no fine civil penalty~~ may be imposed, unless it is a repeated offense.

(c) Class "III" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of facility residents, other than class I or class II violations. A class III violation is subject to ~~an administrative fine a civil penalty~~ of not less than \$100 and not exceeding ~~\$1,000~~ \$500 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 fine civil penalty~~ may be imposed, unless it is a repeated offense.

(d) Class "IV" violations are those conditions or occurrences related to the operation and maintenance of a building or to required reports, forms, or documents that do not have the potential of negatively affecting residents. These violations are of a type that the agency determines do not threaten the health, safety, or security of residents of the facility. A facility that does not correct a class IV violation within the time ~~limit~~ specified in the agency-approved corrective action plan is subject to ~~an administrative fine a civil penalty~~ of not less than \$50 nor more than \$200 for each violation. Any class IV violation that is corrected during the ~~time an agency survey is being conducted~~ will be identified as an agency finding and not as a violation.

~~(2)(4)~~ The agency may set and levy a fine not to exceed ~~\$1,000~~ \$500 for each violation which cannot be classified according to subsection ~~(1) (3)~~. ~~In no event may~~ Such ~~fin~~ es ~~fine~~ in the aggregate ~~may not exceed \$10,000 per survey~~ \$5,000.

(3) In determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner or administrator to correct violations.

(c) Any previous violations.

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

(e) The licensed capacity of the facility.

(4) Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.

(5) Any action taken to correct a violation shall be documented in writing by the owner or administrator of the facility and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated facility, revoke or deny a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.

(6) For fines that are upheld following administrative or judicial review, the violator shall pay the fine, plus interest at the rate as specified in s. 55.03, for each day beyond the date set by the agency for payment of the fine.

(7) Except as provided in subsection (8), any facility that continues to operate without having applied for a license 10 days after agency notification is subject to a \$1,000 fine. Each day beyond 20 days after agency notification constitutes a separate violation and the facility is subject to a fine of \$500 per day.

(8) Unlicensed facilities whose owner or administrator concurrently operates a licensed facility, has previously operated a licensed facility, or has been employed in a licensed facility shall immediately be subject to an administrative fine of \$5,000 upon agency notification. Each day that a facility continues to operate without having applied for a license within 10 working days after agency notification constitutes a separate violation, and such facility shall be subject to a fine of \$500 per day retroactive to the date of agency notification.

(9) Any facility whose owner fails to apply for a change-of-ownership license in accordance with s. 400.412 and operates the facility under the new ownership is subject to a fine not to exceed \$5,000.

(10) In addition to any administrative fines imposed, the agency may assess a survey fee, equal to the lesser of one half of the facility's biennial license and bed fee or \$500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted under s. 400.428(3)(c) to verify the correction of the violations.

(11) The agency, as an alternative to or in conjunction with an administrative action against a facility for violations of this part and adopted rules, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner or administrator of the facility, prior to written notification. The agency, instead of fixing a period within which the facility shall enter into compliance with standards, may request a plan of corrective action from the facility which demonstrates a good-faith effort to remedy each violation by a specific date, subject to the approval of the agency.

~~(12)(5) Administrative fines Civil penalties~~ paid by any facility under this section ~~the provisions of subsection (3)~~ shall be deposited into the Health Care Trust Fund and expended as provided in s. 400.418.

~~(13)(6)~~ The agency shall develop and disseminate an annual list of all facilities sanctioned or fined ~~\$5,000 or more in excess of \$500~~ for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health and ~~Rehabilitative Services~~, the Department of Children and Family Services, the area agencies on aging, the Statewide Human Rights Advocacy Committee, and the state and district nursing home ~~and long-term care facility~~ ombudsman councils. The Department of Children and Family Services shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list.

Section 14. Subsection (2) of section 400.4195, Florida Statutes, is amended to read:

400.4195 Rebates prohibited; penalties.—

(2) A violation of this section shall be considered patient brokering and is punishable as provided in s. 817.505 ~~The department, in consultation with the agency, shall adopt rules which assess administrative penalties for acts prohibited by subsection (1).~~

Section 15. Paragraph (a) of subsection (1) of section 400.422, Florida Statutes, is amended to read:

400.422 Receivership proceedings.—

(1) As an alternative to or in conjunction with an injunctive proceeding, the agency may petition a court of competent jurisdiction for the appointment of a receiver, if suitable alternate placements are not available, when any of the following conditions exist:

(a) The facility is operating without a license and refuses to make application for a license as required by ~~ss. s.~~ 400.407 and 400.408.

Section 16. Section 400.4256, Florida Statutes, is created to read:

400.4256 Assistance with self-administration of medication.—

(1) For the purposes of this section, the term:

(a) “Informed consent” means advising the resident, or the resident’s surrogate, guardian, or attorney in fact, that an assisted living facility is not required to have a licensed nurse on staff, that the resident may be receiving assistance with self-administration of medication from an unlicensed person, and that such assistance, if provided by an unlicensed person, will or will not be overseen by a licensed nurse.

(b) "Unlicensed person" means an individual not currently licensed to practice nursing or medicine who is employed by or under contract to an assisted living facility and who has received training with respect to assisting with the self-administration of medication in an assisted living facility as provided under s. 400.452 prior to providing such assistance as described in this section.

(2) Residents who are capable of self-administering their own medications without assistance shall be encouraged and allowed to do so. However, an unlicensed person may, consistent with a dispensed prescription's label or the package directions of an over-the-counter medication, assist a resident whose condition is medically stable with the self-administration of routine, regularly scheduled medications that are intended to be self-administered. Assistance with self-medication by an unlicensed person may occur only upon a documented request by, and the written informed consent of, a resident or the resident's surrogate, guardian, or attorney in fact. For the purposes of this section, self-administered medications include both legend and over-the-counter oral dosage forms, topical dosage forms and topical ophthalmic, otic, and nasal dosage forms including solutions, suspensions, sprays, and inhalers.

(3) Assistance with self-administration of medication includes:

(a) Taking the medication, in its previously dispensed, properly labeled container, from where it is stored, and bringing it to the resident.

(b) In the presence of the resident, reading the label, opening the container, removing a prescribed amount of medication from the container, and closing the container.

(c) Placing an oral dosage in the resident's hand or placing the dosage in another container and helping the resident by lifting the container to his or her mouth.

(d) Applying topical medications.

(e) Returning the medication container to proper storage.

(f) Keeping a record of when a resident receives assistance with self-administration under this section.

(4) Assistance with self-administration does not include:

(a) Mixing, compounding, converting, or calculating medication doses, except for measuring a prescribed amount of liquid medication or breaking a scored tableted or crushing a tablet as prescribed.

(b) The preparation of syringes for injection or the administration of medications by any injectable route.

(c) Administration of medications through intermittent positive pressure breathing machines or a nebulizer.

(d) Administration of medications by way of a tube inserted in a cavity of the body.

(e) Administration of parenteral preparations.

(f) Irrigations or debriding agents used in the treatment of a skin condition.

(g) Rectal, urethral, or vaginal preparations.

(h) Medications ordered by the physician or health care professional with prescriptive authority to be given "as needed," unless the order is written with specific parameters that preclude independent judgment on the part of the unlicensed person, and at the request of a competent resident.

(i) Medications for which the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration requires judgment or discretion on the part of the unlicensed person.

(5) Assistance with the self-administration of medication by an unlicensed person as described in this section shall not be considered administration as defined in s. 465.003.

(6) The department may by rule establish facility procedures and interpret terms as necessary to implement this section.

Section 17. Subsection (3) of section 400.428, Florida Statutes, is amended to read:

400.428 Resident bill of rights.—

(3)(a) The agency shall conduct a survey ~~an inspection~~ to determine general compliance with facility standards and compliance with residents' rights as a prerequisite to initial or renewal licensure or licensure renewal.

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey ~~inspection of the facility~~ shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the planning and service area, ~~as defined in part II,~~ in which the facility is located to discuss residents' experiences within the facility ~~with respect to rights specified in this section and general compliance with standards.~~

(c) During any calendar year in which no survey ~~inspection~~ is conducted, the agency shall conduct at least one monitoring visit of each facility cited in the previous year for a class I or class II violation, or more than three uncorrected class III violations, ~~that led to a conditional license or a moratorium on admissions.~~

(d) The agency may conduct periodic followup inspections as necessary to monitor the compliance of facilities with a history of any class I, class II, or class III violations that threaten the health, safety, or security of residents.

(e)(d) The agency may conduct complaint investigations as warranted to investigate any allegations of noncompliance with requirements required under this part or rules ~~adopted promulgated~~ under this part.

Section 18. Section 400.442, Florida Statutes, is amended to read:

400.442 Pharmacy and dietary services.—

(1) ~~Notwithstanding s. 400.419,~~ Any assisted living facility in which the agency has documented a class I or class II deficiency or uncorrected class III deficiencies regarding medicinal drugs or over-the-counter preparations, including their storage, use, delivery, or administration, or dietary services, or both, during a biennial survey or a monitoring visit or an investigation in response to a complaint, shall, in addition to or as an alternative to any penalties imposed under s. 400.419, be required to employ the consultant services of a licensed pharmacist, a licensed registered nurse, or a registered or licensed dietitian, ~~or both,~~ as applicable. The consultant shall ~~provide onsite consultation and shall continue with,~~ at a minimum, provide onsite quarterly consultation until the inspection team from the agency determines that such consultation services are no longer required.

(2) A corrective-action plan for deficiencies related to assistance with the self-administration of medication or the administration of medication must be developed and implemented by the facility within 48 hours after notification of such deficiency, or sooner if the deficiency is determined by the agency to be life-threatening.

(3)(2) The agency shall employ at least two pharmacists licensed pursuant to chapter 465 among its personnel who biennially inspect assisted living facilities licensed under this part, to participate in biennial inspections or consult with the agency regarding deficiencies relating to medicinal drugs or over-the-counter preparations, ~~including, but not limited to, their storage, use, delivery, or administration.~~ A corrective action plan for deficiencies related to the administration or supervision of medication must be developed and implemented within 48 hours after notification of the deficiency, or sooner if the deficiency is determined by the agency to be life threatening.

Section 19. Section 400.452, Florida Statutes, is amended to read:

400.452 Staff training and educational programs; core educational requirement.—

(1) The department shall provide, or cause to be provided, training and educational programs for the administrators and ~~such other assisted living facility staff as are defined by the department~~ to better enable them to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.

(2) The department shall also establish a core educational requirement to be used in these programs. Successful completion of the core educational requirement must include successful completion of a competency test. Programs must be provided by the department or by a provider approved by the



department at least quarterly. The core educational requirement must cover at least the following topics:

(a) State law and rules relating to ~~on~~ assisted living facilities, ~~including lifesafety requirements and procedures.~~

(b) Resident rights and identifying and reporting abuse, neglect, and exploitation.

(c) Special needs of elderly persons, persons with mental illness, and persons with developmental disabilities and how to meet those needs.

(d) Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.

(e) Medication management, recordkeeping, and proper techniques for assisting residents with self-administered medication, ~~including record-keeping.~~

(f) Firesafety requirements, including fire evacuation drill procedures and other emergency procedures drills.

(g) Care of persons with Alzheimer's disease and ~~other~~ related disorders.

(3) Such a program must be available at least quarterly in each planning and service area district of the department of ~~Health and Rehabilitative Services~~. The competency test must be developed by the department in conjunction with the agency and providers ~~and must be available for use by January 1, 1997. Beginning July 1, 1997,~~ A new facility administrator must complete the core educational requirement including the competency test within 3 months after being employed as an administrator. Failure to complete a core educational requirement specified in this subsection is a violation of this part and subjects the violator to an administrative fine ~~a penalty~~ as prescribed in s. 400.419. Administrators licensed in accordance with chapter 468, part II, are exempt from this requirement. Other licensed professionals may be exempted, as determined by the department by rule.

(4) Administrators are required to participate in continuing education for a minimum of 12 contact hours every 2 years ~~as specified by rule of the department.~~

(5) Staff involved with the management of medications and assisting with the self-administration of medications under s. 400.4256 must complete a minimum of 4 hours of training pursuant to a curriculum developed by the department and provided by a registered nurse, licensed pharmacist, or department staff. ~~Administrators and staff of facilities more than 10 percent of whose residents are mental health residents shall participate in training in the care and supervision of such residents as specified by rule of the department.~~

(6) Other facility staff shall participate in training relevant to their job duties as specified by rule of the department.

~~(7) Any facility more than 90 percent of whose residents receive monthly optional supplementation payments is not required to pay for the training and education programs provided under this section. A facility that has one or more such residents shall pay a reduced fee that is proportional to the percentage of such residents in the facility. A facility that does not have any residents who receive monthly optional supplementation payments must pay a reasonable fee, as established by the department, for such training and education programs. A facility that has one or more such residents shall pay a reduced fee that is proportional to the percentage of such residents in the facility. Any facility more than 90 percent of whose residents receive monthly optional state supplementation payments is not required to pay for the training and continuing education programs required under this section.~~

(8) If the department or the agency determines that there are problems in a facility that could be reduced through specific staff training or education beyond that already required under this section, the department or the agency may require, and provide, or cause to be provided, the training or education of any personal care staff in the facility.

(9) The department shall adopt rules to establish training programs, standards and curriculum for training, staff training requirements, procedures for approving training programs, and training fees.

Section 20. Paragraph (c) is added to subsection (2) of section 400.474, Florida Statutes, to read:

400.474 Denial, suspension, revocation of license; injunction; grounds.—

(2) Any of the following actions by a home health agency or its employee is grounds for disciplinary action by the Agency for Health Care Administration:

(c) Knowingly providing home health services in an unlicensed assisted living facility or unlicensed adult family-care home, unless the home health agency or employee reports the unlicensed facility or home to the agency within 72 hours after providing the services.

Section 21. Subsection (2) of section 400.618, Florida Statutes, is amended to read:

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

(2) “Adult family-care home” means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides or persons provide, for profit or not for profit, room, board, and one or more personal services, on a 24-hour basis as appropriate for the level of functional impairment, for no more than five aged persons or disabled adults who are not relatives. The following family-type living arrangements establishments are not required to be licensed as an adult family-care home 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 services 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 their relatives.~~

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

Section 22. Paragraph (h) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review.—

(3) EXEMPTIONS.—Upon request, supported by such documentation as the agency requires, the agency shall grant an exemption from the provisions of subsection (1):

(h) For the establishment of a Medicare-certified home health agency by a facility certified under chapter 651; a retirement community, as defined in ~~s. 400.404(2)(g) s. 400.404(2)(e)~~; or a residential facility that serves only retired military personnel, their dependents, and the surviving dependents of deceased military personnel. Medicare-reimbursed home health services provided through such agency shall be offered exclusively to residents of the facility or retirement community or to residents of facilities or retirement communities owned, operated, or managed by the same corporate entity. Each visit made to deliver Medicare-reimbursable home health services to a home health patient who, at the time of service, is not a resident of the facility or retirement community shall be a deceptive and unfair trade practice and constitutes a violation of ss. 501.201-501.213.

A request for exemption under this subsection may be made at any time and is not subject to the batching requirements of this section.

Section 23. Subsection (3) is added to section 394.4574, Florida Statutes, to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(3) The Secretary of Children and Family Services, in consultation with the Agency for Health Care Administration, shall annually require each district administrator to develop, with community input, detailed plans that demonstrate how the district will ensure the provision of state-funded mental health and substance-abuse-treatment services to residents of assisted living facilities that hold a limited mental health license. These plans must be consistent with the alcohol, drug abuse, and mental health district plan

developed pursuant to s. 394.75 and must address case-management services; access to consumer-operated drop-in centers; access to services during evenings, weekends, and holidays; supervision of the clinical needs of the residents; and access to emergency psychiatric care.

Section 24. This act shall take effect October 1, 1998.

Approved by the Governor May 21, 1998.

Filed in Office Secretary of State May 21, 1998.