

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY APRIL 11, 2012
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
 - 1. Approval of Minutes** Planning and Zoning Meeting – 3/28/2012
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve
- E. PUBLIC:**
- F. ACTION:**
 - 2. R/LC Zoning Clarification**
Exhibit: Agenda Report No. 2
Recommendation: Action
 - 3. Setbacks in Residential Zonings**
Exhibit: Agenda Report No. 3
Recommendation: Action
- G. DISCUSSION:**
 - 4. Continue Review Checklist and Permit Requirements for Decorative Water Features and Ponds**
Exhibit: Agenda Report No. 4
Recommendation: Discussion
 - 5. Define "Light Industrial" Zoning**
Exhibit: Agenda Report No. 5
Recommendation: Discussion
 - 6. Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No. 6
Recommendation: Discussion
- H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
 - 7. Discuss Procedures for P&Z Excused Absence Policies**
- I. PUBLIC:**
- J. OLD BUSINESS/NEW BUSINESS:**
- K. ADJOURN**

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.
If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service in compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: April 11, 2012

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of April 11, 2012

ACTION OPTIONS:

Secretary requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
MARCH 28, 2012 7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PAT REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDEL ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES:

Ryan asked to make a statement. He has had to endure several physical challenges and may have to miss the next two meetings and would like to have them excused without prejudice. He has faith in Wayne Abare to vote in his absence. He asked to continue to get the meeting minutes. With that said he left the meeting.

D. CONSENT AGENDA:

1. Approval of Minutes Planning and Zoning Meeting – 3/14/12

MOTION: Reilly / Ritter to approve 3/14/12 minutes as corrected.

Corrections: pg 2, Reilly would question, 3rd line down – did not trip the requirement for their permit. Pg 5, ¾ way down, also change to "do". Pg 6/44 Abare, last sentence, if you want to, you have to have a bigger piece of land. 3rd para below that, selected or sb if. Last para, 2nd line missing letter, ask what instead of hat.

Pg 9/44 4th para, the 48 hours is for parking in the ROW. Ritter said they would not have said that. Franklin said she will listen to tape. Krieger said that is what they were talking about. Wilbur said that is problem we are having. Listen to tape.

That sb than Palm Bay. Last para, first line, if its sb if it is on your property.

Pg 10/44 Krieger mentioned about the 1000 sf – doesn't match with the previous statement. He was saying you shouldn't have to go through whole site plan. Add shouldn't to that sentence.

Krieger said the minutes there said to make this a discussion item, referring to the excused absence procedure and yet it wasn't made an item on the agenda for tonight.

VOTE: all Ayes

E. PUBLIC HEARING: none

F. PUBLIC: none

G. ACTION: none

H. DISCUSSION:

2. R/LC Zoning Clarification

Exhibit:	Agenda Report No. 2
Recommendation:	Discussion

Chair Wilbur would like to set a goal that we identify two items for action at next meeting. Krieger said they should be Items 2 and item 6. Wilbur said they are in the order for moving to action. People are waiting and they are in order that they have been on their list. Some of these we were on before Cindy left. Abare said he thought the setbacks were done. Denine, check out setbacks in residential zoning. Reilly said the Mayor wanted them to look at other residential zones and Board did not feel the need to change those.

Ritter said regarding the R/LC, they need to clarify the bullets by adding a maximum of 4 residential and a maximum of 4 commercial. Zindel said that would mean 8, more than they intended to allow. Ritter said they took the ratio out of their earlier draft. Reilly said that is not what it means and referred to 3rd paragraph, with 1 commercial you could have 2 residential. If it is mixed, it is then limited to 3 units. The bullets are clear to Reilly. Ritter said regarding the residential units or use; it should be one or the other.

Ritter said to go with units instead of uses. Abare asked Ritter if she created a paragraph. Ritter said she did but it was changed to the 2 bullets. Ritter wants to add the language with a maximum density of up to 4 units.

Reilly asked if the Code uses the word "use" elsewhere and we change it here it could change other areas they didn't intend to change. A unit is building. A use is a use. Board consensus to change the language back to unit. Wilbur said someone building new structure could have a business downstairs and a residence upstairs. Krieger posed the question of a landlord upstairs renting to two units downstairs. The landlord would be a business.

Wilbur is asking the difference of home businesses. So you could have 4 commercial businesses. They discussed the vacation homes and possible involvement by the state. Abare said it is the density issue. Wilbur said we have to try it and see how it works. Wilbur said there are a million different scenarios they could consider but they need to start somewhere.

Ritter added the maximum to the paragraph above the bullets then you don't need to add it to the bullets. She read it to Board.

Ritter questioned footnote 6. Franklin said it is in Institutional and refers to park development. Krieger said for the record, we didn't have to make any of these changes.

Consensus of Board to move this to action at next meeting with changes showing so Council will know what they changed.

VOTE: All Ayes

3. Continue Review of Checklist and Requirements for Decorative Water Features and Ponds

Exhibit: Agenda Report No. 3
Recommendation: Discussion

Under 1000 is decorative water feature and over 1000 is a pond. Reilly hasn't worked on this anymore. Reilly noted that when they cleaned up the formatting the diagram is missing showing the slope on the ponds. Krieger said the requirements are too complex.

Wilbur said we are not talking about a small kiddie pool or an above ground pool that is partially submerged in ground.

Reilly said the code came straight from our existing code. He kept it redundant intentionally to address both DWF and ponds. There is a 1.A and a 1.B, 2.A and a 2.B, etc.

Krieger stated he doesn't want a person to have to get a permit for a pond if they are doing this at the same time of building a home. Abare said that is handled within the building permit process.

Zindel asked for history of why they are dealing with this. Wilbur gave example of the person who wanted to build a pond on a vacant lot adjacent to their home. And it involved an adjacent wetland. The Board decided a ¼ acre pond was too large to allow without a permit and also conflicted with Art VII for disturbing 1000 sf of land that requires a site plan process. They would have to do topo, demonstrate other permitting had been applied for and received. What was being allowed with the current code was not in best interest of Town or environment. The Board decided to use the 1000 sf as the separation point. Less than that would not have to have an elaborate topo and engineering but would still have a permit process and show DWF on a sketch and they would get a different permit.

Zindel asked about the retention and detention ponds in Town's subdivisions. Wilbur said they are all engineered and permitted by St. Johns. If you want to do a large pond that is fine, but you have to demonstrate you have met the requirements of our code and any other jurisdictional agencies.

Reilly went over the outline for the code and how each dealt with both the DWF and a pond. Subsection as follows:

1.0 is Definitions and defines both as well as other terms. Reilly added I and J. When the ordinance is sent for codification, they can be changed and put in alphabetical order. That is how they did it with fence ordinance.

2.1 is Permits for DWF

2.2 is Permits for Ponds

3. is Review Process

3.1 is Review process for DWF

3.2 is Review process for Ponds (fix formatting for 3.2; it should not be a bullet in ordinance)

4. is Appeal Process – deals with both DWF and Ponds

5. is Performance Standards and deals with both DWF and Ponds

6. is Failure to Compete deals with both DWF and Ponds

7. is Standards for Fill activities and deals with both DWF and Ponds

Reilly separated them so there would be two processes; one for DWF and one for Ponds.

Ritter said if they are basically the same then make it simpler and eliminate some pages.

Staff to do a separate checklist and permit application for each; a DWF and a Pond.

Consensus of Board to put on for Discussion for one more meeting.

4. Define "Light Industrial" Zoning

Exhibit: Agenda Report No. 4

Recommendation: Discussion

Wilbur explained the change to LI for along the west side of RR and also the triangle made by Babcock/I-95 and Booth Road. The Board looked at other towns and county and came up with their definition that fit this area. Krieger wanted to combine the two, LI and CL and he was concerned and thought there should be two separate uses.

Wilbur said we need to get more tax revenue. What about passenger service.

This will be on next agenda for further discussion. Ritter said there was some information missing on the page submitted by Wilbur. Staff will get definition from IHB.

Chair said they should stop here. They have done well in getting things ready to go forward to Council. He stated again that Board should try and move these discussion items up to action and then on to Council at each meeting.

Krieger said that Board should move the order for Board consideration by putting #5 after the setbacks issue (#6). Staff will do research on setbacks. Did recommendation go to Council and then get sent back to PZ? If the Board has dealt with this then it does not need to be on any future agenda.

- 5. Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No. 5
Recommendation: Discussion

I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

- 6. Setbacks in Residential Zonings**
7. Discuss Procedures for P&Z Excused Absence Policies

J. PUBLIC:

Tom Eschenberg, Beran Lane, told Board about recent Teen Council meeting. He gave Board his scenario he presented to Teen Council. There was a person that wanted to mine 15 acres. And donate land 5 acres to town. Teen voted 3/2 to pass it and bring it back to set conditions.

Other issue given to Teen Council was tractor trailer parking, meaning 18 wheelers. If you can fit it in back yard, you could keep it on property. That was their vote.

When he was on council he would ask: Does this give more freedom. If yes, he would vote yes. He would recommend Board give rationale to council on why you want to change density on R/LC from 6 to 4. Bob said it was to allow more green space and open space for landscaping.

Abare stated he liked Tom's comment that we should give explanation of why it was brought here and share that and he would love to get that background if he were on Council. When they take action and at that Council meeting someone from Board should attend and give that background.

Reilly and Wilbur stated that in the past that is exactly what they did. They have not had an item go to Council in a long while.

OLD BUSINESS/NEW BUSINESS:

Old – Cindy asked about ALF place, wanted to know. It did not pass. Cindy was under the impression that FLUM is the best use of land on into the future. Didn't realize designations would be zoning changes. They could be zoning changes if they are requested. If existing residential you can stay there and use that as long as you want. Burden on land owner to come in a pay for the zoning change. Burden of buyer. You don't have to do that? Then the zoning map would change.

Abare said how are you going to keep track of the changes. Is that the default. Bob said they were changed administratively. Franklin explained the problem. What about the landowner. The state

was reserving ROW on Glatter. That is where a lot of that came from. Much was changed to CG and now can't get a loan to remodel their house. That is how they came up with RLC.

Cindy said the demand for the road. When they did the first FLU map to figure out some way a core center of the town rural and allow some downtown area without wrecking. Had a clean slate but it did not happen that way. We are dealing with the unintended consequences of the way it was developed.

Abare said if Council changes a RM6 to a RM4 then it can be harmed and make land owners nervous.

New: Denine stated that the lady that came in tonight and is interested in old school house for women and possibly a school. She wanted to see how the Board meeting works. That could be something that could be coming. Also got a call from a realtor for the same property to use for a Korean children home with a new structure in back for an ALF for Koreans.

L. ADJOURN

There being no further business to discuss, **MOTION: Reilly / Abare to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 9:30 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Denine Sherear, P&Z Board Secretary

Date Approved

Wayne said he will not be at next meeting, April 11, 2012; he will be in Amsterdam.

DRAFT

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: April 11, 2012

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Residential / Limited Commercial Zoning & Density Clarification

BACKGROUND/HISTORY:

The Board established the criteria for R/LC so an ordinance can be drafted to amend Malabar Land Development Code to provide for R/LC for properties along Malabar Road, Babcock Street and Highway 1.

The Board will recommend Council approve the changes to Article III regarding (R/LC) Section "O." by deleting the words after "RLC" as follows:

"Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "RLC", ~~which are situated along the west side of the US1 corridor as delineated on the FLUM.~~

The Board directed that staff insert the word "maximum" in the next sentence in front of density. They also directed that staff change the maximum density from six (6) units to four (4) units under the same section "O".

The Board directed in the same section staff add the following two bullets:

- residential use shall not exceed commercial use by more than one
- commercial use shall not exceed residential use by more than one

The Board directed staff to reduce the maximum density for R/LC from 6 units per acre to 4 units per acre under the same section, on the following page of the code.

In Table 1-3.3(A) carry down the size and dimension regulations into the multiple family field; increase the required sf for 1 bedroom from 500 to 900 and delete the 2 and 3 bedroom reference. Reduce the units per acre from 6 to 4.

(NOTE: fix scrivener's error in Table 1-3.3(A) - MBC for OI should be 0.20.- staff has corrected)

Regarding Article XX, Definitions, the Board directed staff should change *dwelling* to add the word "residential" before the word. Krieger said to add "residential" in front of Human habitation in the definition to dwelling as well. BOARD AGREED

- Tri-plex should be changed to residential building (take out dwelling). Change for consistency.

ATTACHMENTS:

- Marked up Code Article III, Table 1-3.3(A) and Article XX encompassing all Board recommendations
- Portion of DRAFT P&Z minutes of 3/28/12

ACTION OPTIONS:

Recommend Council approve the changes to Article III and Article XX

Portion of Malabar LDC District Provisions Article III

O. *R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a maximum density up to four (4) six (6) units per acre. Commercial activities shall generally cater to the following markets:

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.
- Residential use shall not exceed commercial use by more than one
- Commercial use shall not exceed residential use by more than one

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities with a floor area in excess of four thousand (4,000) square feet, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops since the former would usually require a floor area larger than four thousand (4,000) square feet; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

Single family or multiple family residential uses with a density no greater than four (4) six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code.

(Ord. No. 94-4, § 2, 4-3-95; Ord. No. 07-02, §§ 1-4, 4-2-07)

Section 1-3.2. - Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article X-VII.

Cross reference—Alcoholic beverages, et. al.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS AND PRINCIPAL STRUCTURES See (numbered) Notes below

Zoning District	Minimum Lot (1)			Setback (ft.) from property line (2)			MISR Maximum Impervious Surface Ratio (%)	MBC Maximum Building Coverage (%)	MOS Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater	
	Size (sq. ft.)	Width (ft.)	Depth (ft.)	Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Front					Rear
Rural Residential Development											
RR-65	65,340	150	250	35/3	Single Family 1,500	40	30 (7)	30	N/A	80	1
Traditional Single Family Residential Development											
RS-21	21,780	120	150	35/3	1,800	35	20	15	N/A	65	2
RS-15	15,000	100	120	35/3	1,500	30	20	15	N/A	55	3
RS-10	10,000	75	100	35/3	1,200	25	20	10	N/A	50	4
Multiple Family Residential Development											
RM-4	5-acre min Site	200	200	35/3	Single Family 1,200	60	40	40	N/A	50	4
RM-4	5-acre min Site	200	200	35/3	Multiple Family 1-bedroom 900 ea. additional Bedroom 120 2-BR+1100 3-BR+1300	60	40	40	N/A	50	4
RM-6	5-acre min Site	200	200	35/3	Single Family 1,200	25	20	10	N/A	50	6
RM-6	5-acre min Site	200	200	35/3	Multifamily Family 1-200 1-BR+500 2-BR+700 3-BR+900 1-Bedroom 900 ea. additional Bedroom 120	60	40	40	N/A	50	6

Note 1 Minimum size sites and lots include plus one-half of adjacent public right-of-way.
 Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above-cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is more restrictive.
 Note 3 Setbacks where rear lot line abuts alley.
 Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.
 Note 5 Where any yard of Industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.
 Note 6 Recreation activities Maximum Building Coverage shall be 20% FAR shall be 10%.
 Note 7: In RR-65 sides and rear may be reduced to 1.5' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, i.e. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS I PRINCIPAL STRUCTURES See (numbered) Notes below

Minimum Lot (1)				Setback (ft) from property line (2)					MOS (%)	Max Density Unit/ac			
Zoning District	Size (Sq. ft)	Width (ft)	Depth (ft)	Max Height (Ft/stories)	Min Living Area (sq ft)	Front	Rear	Side (Int)			Side (corner)	MBC (%)	
Mobile Home Residential Development													
R-MH	Site: 5 acres Lot: 7000					10	8	8	10	N/A	50	6	
Mixed Use Development													
R/LC	20,000	100	150	35/3	Single Family: 1200	25	20	10	20	N/A	50	4	
R/LC	20,000	100	150	35/3	Multiple Family: 1 Bedroom: 900 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10(4) ¹	20	N/A	65	6 4	
R/LC	20,000	100	150	35/3	Commercial Min. Area: 900 Max. Area: 4,000	50	25	10(4) ¹	20	0-20 20	65	35	
Office Development													
OI	20,000	100	150	35/3	Minimum Floor Area: 10000	35/60	25	20	25	65	20	35	N/A

Note 1 Minimum size sites and lots include plus one-half of adjacent public right-of-way.
 Note 2 Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.
 Note 3 Setbacks where rear lot line abuts alley.
 Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.
 Note 5 Where any yard of Industrial zone property abuts a residential district, the building setback for such yard shall be 100 feet.
 Note 6 Recreation activities Maximum Building coverage shall be 20% FAR shall be 10%.
 Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, i.e. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS I : PRINCIPAL STRUCTURES See (numbered) Notes below

Zoning District	Minimum Lot (1)		Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.) from property line (2)			Maximum Impervious Surface Ratio (%)	Maximum Density (units per acre) with Central Water and Wastewater				
	Size (sq. ft.)	Width (ft.)			Depth (ft.)	Front	Rear			Side (interior)	Side (corner)	Maximum Building Coverage (%)	Minimum Open Space (%)
Commercial Development													
CL	20,000	100	150	35/3	Min Floor Area: 900 Max Floor Area: 4000	50	25	10 (4) 15 (3)	20	65	20 20	35	N/A
CG	20,000	100	150	35/3	Min Floor Area: 1200 Minimum Hotel/Motel Area: 300 ea unit	50	25	20 (4) 15 (3)	30	65	20 20	35	N/A
Industrial Development													
IND	20,000	100	150	35/3	Min Floor Area: 1200	50 100(5)	25 100(5)	20 100(5)	30 100(5)	70	42 42	30	N/A
Institutional Development													
INS	20,000	100	150	35/3	Min floor Area: 1200	50	25	20	30	60	20 10(6)	40	N/A
Coastal Preservation													
CP	No Size and Dimension Standards Regulated Adopted												

Note 1 Minimum size sites and lots include plus one half of adjacent public right-of-way.
 Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is more restrictive.
 Note 3 Setbacks where rear lot line abuts alley.
 Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.
 Note 5 Where any yard of Industrial zoned property abuts residential district, the building setback for such yard shall be 100 feet.
 Note 6 Recreation activities Maximum Building Coverage shall be 20% FAR shall be 10%.
 Note 7. In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure. i.e. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

Portion from Malabar LDC Article XX, Language and Definitions

Dwelling. A structure or portion thereof which is used expressly for human residential habitation.

Dwelling, Attached. A one-family dwelling attached to two or more one family dwellings by common vertical walls.

Dwelling, Detached. A residential dwelling which is not attached to any other dwelling by any structural means.

Dwelling, Multiple Family. A residential building designed for or occupied by two or more families living independently of each other.

Dwelling, Single Family. A residential building containing only one (1) dwelling unit and occupied exclusively by one (1) family as a single housekeeping unit.

Dwelling, Triplex. A residential building dwelling containing three (3) dwelling units, each of which has direct access to the outdoors or to a common hall.

Dwelling, Two Family. A residential building containing only two (2) dwelling units and not occupied by more than two (2) families.

Dwelling Unit. One room or rooms connected together, constituting a separate, independent residential housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be the same structure, and containing independent cooking, sleeping, and toilet facilities.

Dwelling Unit, Single-Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family.

Dwelling Unit, Two Family. A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

Dwelling Unit, Mobile Home. A detached residential dwelling unit designed for transportation after fabrication, on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling unit completed and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like.

Dwelling Unit, Multiple-Family. A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

2. R/LC Zoning Clarification

Exhibit: Agenda Report No. 2
Recommendation: Discussion

Wilbur would like to set a goal that we identify two items for action at next meeting. Don said item 2 and item 6. Wilbur said people are waiting and they are in order that they have been on their list. Some of these we were on before Cindi left. Abare said he thought the setbacks were done.

Denine, check out setbacks in residential zoning. Pat said the Mayor wanted to them to look at other and board did not want to .

On RLC, liz said they need to clarify the bullets, max of 4 residential and max of commercial. Cindy said that means 8. Liz said at they took ratio out of their. 3rd para, 1 commercial you could have 2 residential. If it mixed, it is then limited to 3 units. It is clear to Pat. Residential units or use. One or the other.

Go with units instead of uses. Wayne didn't she create a para, it was changed to the 2 bullets. Liz wants a maximum. Add the language with a maximum density of up to 4 units.

Cindy, asked where it is going to

Pat, does it say use elsewhere. A unit is building. A use is a use. Change it back. Bob said someone building new would build business and residence upstairs. Don posed the question of landlord upstairs and renting to to units downstairs. He is a business. He is asking the question. Bob is asking the difference of home business . So you could have 4 commercial businesses. They discussed the vacation homes and possible involvement by the state. Abare said it is the density issue, Bob said we have to try it and see how it works. Bob said there are a million different scenarios.

Adding it to para then you don't need to add it to the bullets. Liz read. Then you don't need up to. Put up in place.

Questioned note 6. In institutional.

Don, for the record, we didn't have to make any of these changes.

Abare, last week, the thrift store. And rlc.

Don, made a big deal of retail.

Consensus of Board to move this to action at next meeting for action with changes showing.

VOTE: All Ayes

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: April 11, 2012

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Setbacks in All Residential Zoning Classifications

BACKGROUND/HISTORY:

The Board agreed to the following at the January 11, 2012 meeting.

- Change title on Table 1-3.3(A) to add "FOR PRINCIPAL STRUCTURES"
- Add Footnote #7 to Table 1-3.3(A) to provide lesser setbacks for accessory structures in RR-65 zoning only.
- Board did not want to reduce setbacks for other residential zonings, commercial or mobile home zonings.
- Delete Article V, Section 1-5.10 as it is redundant and confusing – conflicts with Article III Table 1-3.3(A) and (E).

The Motion was made to put on the next P&Z agenda for Action. It did not appear on the subsequent P&Z agenda.

ATTACHMENTS:

Revised Table 1-3.3(A) with change in title and REVISED wording for Footnote 7
Section 1-5.10 – redundant and confusing
Table 1-3.3(E)
Portion of Minutes from P&Z Meeting of January 11, 2012

ACTION OPTIONS:

Recommend Council approve the recommended changes to Table 1-3.3(A) and deletion of Section 1-5.10.

All the land use recommendations made by P&Z Board and approved by Council can be incorporated into one ordinance amending the land development regulations. Staff will wait until the work on the ponds and zoning classifications is complete before compiling into ordinance form.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS (PRINCIPAL STRUCTURES See (numbered) Notes below)

Zoning District	Minimum Lot (1)		Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.) from property line (2)				MISR Maximum Impervious Surface Ratio (%)	MBC Maximum Building Coverage (%)	MOS Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater	
	Size (sq. ft.)	Width (ft.)			Depth (ft.)	Front	Rear	Side (interior)					Side (corner)
Rural Residential Development													
RR-65	65,340	150	250	35/3	Single Family: 1500	40	30 (7)	30	30	20	N/A	80	1
Traditional Single Family Residential Development													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	30	N/A	65	2
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	3
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4
Multiple Family Residential Development													
RM-4	5-acre min Site	200	200	35/3	Single Family 1,200	60	40	40	40	50	N/A	50	4
RM-4	5-acre min Site	200	200	35/3	Multiple Family 1-bedroom 900 ea. additional Bedroom 120 2-BR+1100 3-BR+1300	60	40	40	40	50	N/A	50	4
RM-6	5-acre min Site	200	200	35/3	Single Family 1,200	25	20	10	10	50	N/A	50	6
RM-6	5-acre min Site	200	200	35/3	Multiple Family 1-bedroom 900 2-BR+500 3-BR+700 3-BR+900 1-bedroom 900 ea. additional Bedroom 120	60	40	40	40	50	N/A	50	6

Note 1 Minimum size sites and lots include plus one-half of adjacent public right-of-way.
 Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above-cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is more restrictive.
 Note 3 Setbacks where rear lot line abuts alley.
 Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.
 Note 5 Where any yard of Industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.
 Note 6 Recreation activities Maximum Building Coverage shall be 20%. FAR shall be 10%.
 Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, i.e. if the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS PRINCIPAL STRUCTURES See (numbered) Notes below

Zoning District	Minimum Lot (1)				Setback (ft) from property line (2)					MOS (%)	Max Density Unit/ac		
	Size (Sq. ft)	Width (ft)	Depth (ft)	Max Height (ft/stories)	Min Living Area (sq ft)	Front	Rear	Side (Int)	Side (corner)			MBC (%)	
Mobile Home Residential Development													
R-MH	Site: 5 acres Lot: 7000					10	8	8	10	N/A	50	50	6
Mixed Use Development													
R/LC	20,000	100	150	35/3	Single Family: 1200	25	20	10	20	N/A	50	50	4
R/LC	20,000	100	150	35/3	Multiple Family: 1 Bedroom: 900 2 Bedrooms: 700 3 Bedrooms: 900 Each Additional Bedroom: 120	50	25	10(4) ⁴	20	N/A	65	35	6 4
R/LC	20,000	100	150	35/3	Commercial Min. Area: 500 Max. Area: 4,000	50	25	10(4) ⁴	20	0.20 20	65	35	
Office Development													
OI	20,000	100	150	35/3	Minimum Floor Area: 3000	35/60	25	20	25	20	65	35	N/A

Note 1 Minimum size sites and lots include plus one-half of adjacent public right-of-way.
 Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above-cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.
 Editor's note: 3-Setbacks where rear lot line abuts alley.
 Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback, on the abutting yard. In such cases the more restrictive abutting setback shall apply.
 Note 5 Where any yard of Industrial zone abuts a residential district, the building setback for such yard shall be 100 feet.
 Note 6 Recreation activities Maximum Building coverage shall be 20% FAR shall be 10%.
 Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, i.e. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS I : PRINCIPAL STRUCTURES See (numbered) Notes below

Zoning District	Minimum Lot (1)			Setback (ft.) from property line (2)			Maximum Impervious Surface Ratio (%)	Maximum Building Coverage (%)	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater			
	Size (sq. ft.)	Width (ft.)	Depth (ft.)	Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Front					Rear	Side (interior)	Side (corner)
Commercial Development													
CL	20,000	100	150	35/3	Min Floor Area: 900 Max Floor Area: 4000	50	25	10 (4) 15 (3)	20	65	20 20	35	N/A
CG	20,000	100	150	35/3	Min Floor Area: 1200 Minimum Hotel/Motel Area: 300 ea unit	50	25	20 (4) 15 (3)	30	65	20 20	35	N/A
Industrial Development													
IND	20,000	100	150	35/3	Min Floor Area: 1200	50 100(5)	25 100(5)	20 100(5)	30 100(5)	70	42 42 Check Comp Plan	30	N/A
Institutional Development													
INS	20,000	100	150	35/3	Min Floor Area: 1200	50	25	20	30	60	20 10(6)	40	N/A
Coastal Preservation													
CP	No Size and Dimension Standards-Regulation Adopted												

Note 1 Minimum size sites and lots include plus one half of adjacent public right-of-way.
 Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above-cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.
 Note 3 Setbacks where rear lot line abuts alley.
 Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.
 Note 5 Where any yard of Industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.
 Note 6 Recreation activities Maximum Building coverage shall be 20% PAR shall be 10%.
 Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, i.e. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

Portion of Malabar LDC District Provisions, Article III, Section E.

Section E.

Building Principal Structures Setbacks. Table 1-3.3(A) provides building setbacks for all the zoning districts, conventional single family lots as well as for multiple family residential and nonresidential sites.

In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The the required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way.

as in Table 1-3.3 (E). The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E)-ADDITIONAL BUILDING PRINCIPAL STRUCTURES SETBACKS FROM THOROUGHFARES STREETS AND ROADS FROM CENTERLINE

Transportation Facility	Building Setback (feet)
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65
Minor Collector Streets* (80 feet R/W)	75
Atz Blvd.	
Hall Road	
Old Mission Road	
Benjamin (Reese) Road	

Section 1-5.10. - Building Setbacks from center line of rights-of-way.

~~For the purpose of promoting health, safety and general welfare of the community, and to lessen congestion in the streets; to secure safety from fire, panic, storm, hurricane or other causes; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to provide adequate facilities for transportation, parking, water and sewage; and to conserve the value of buildings and encourage the most appropriate use of land, all properties within the Town limits shall maintain these minimum building setback lines as measured from the center line of the road.~~

In determining the setback requirement for any building proposed to be located, the setback requirements in this section shall be construed as a minimum setback and if a greater setback is required under any of the zoning districts then such greater setback requirement shall be enforced. Ref Art III-Table 1-3.3 (A) & (E)

~~In the event of the recording of any proposed street or road in the office of the Town Clerk, or in the event of the designation or establishment by the Town Council of any proposed public street or road, the same shall thereupon immediately be used as the reference point for the purpose of determining setbacks for new construction under the terms of this Ordinance. This provision shall not prevent the reconstruction of a fully or partially damaged or destroyed legally nonconforming structure so long as the rebuilt structure is consistent with the Building Code. The measurement shall be from the center line of the road.~~

2. Recommendation to Council re: Setbacks in All Residential Zones**Exhibit:** Agenda Report No. 2**Recommendation:** Action

Speaker card, Tom Eschenberg, 2835 Beran Lane, he was scanning 1-3.3A and he questions their not thinking of other residential zones. If RS-10 gets a ten foot setback why don't the others get ten feet? On the other hand why not give the other the benefit of the 15? That is all that would mean. Eschenberg said he is always for giving people more freedom instead of more government restrictions. Eschenberg stated he gets a P&Z package and has reviewed it and saw the part about deleting Section 1-5.10

He questions why we even need Table 1-3.3.(E) at all. He doesn't know why they have two tables. Wilbur said if a sidewalk was ever added you have that extra setback. Franklin explained that the two tables are used depending on whether the additional right of way has been dedicated to the Town. If a property owner simply does setback from property line and has not dedicated the additional right of way and his neighbor has, the setbacks do not match.

The Board has discussed this and consensus to keep both tables. Mayor suggested Board look at it again and make it clearer. If they don't look at it, Mayor will have to bring it to Council and they will be confused and it will help if they can read PZ minutes. The footnote for Table 1-3.3(A) of Code directs applicant to whichever setback is more restrictive.

Mayor said if they look at Table A and it is more restrictive then just do away with Table E. Wilbur thinks we should then increase the setback on arterial roads. Reilly tried to explain what Franklin had said about the reason for the two tables and the setbacks.

Abare said instead of footnote, put it in the table title. In foot note 2 eliminate the first part and just leave the last part. Ritter is using table on pg 16. Abare asked why we can't add words instead of footnotes.

Reilly said let's talk about changing side setbacks to 10 in all zoning. Ritter doesn't like it. It is not enough to get a fire truck. Smaller lots have smaller setbacks because the lots are smaller. Krieger doesn't think we should have rules on what a person can do on their property but if you are going to keep 7 that way it should be for all residential zonings.

Krieger said if the wind knocks it over it would not go to next property. Wilbur said what about a fire and a 30 foot clear zone. Fire codes have a lot to do with that. Most smaller lots have water available.

Abare said Mayor came to them with a request and P&Z gave a reasonable compromise. He doesn't think they should change the setbacks in the other residential zonings unless people in those zonings come in and ask.

Ritter said to use footnote 7 on all of them. Or go with zones that are already at 15 feet. Krieger said that would increase the ones that are smaller. Krieger said people don't go out to do things impractical. If you have a fence and swale that is a lot to put in on 10-foot setback.

Wilbur is ok with reduced setbacks in RR-65 for accessory structures.

Ritter said leave Footnote #7 across the board for all zonings. Krieger said to reduce it to 10 feet. Wilbur said it is ludicrous. Ritter asked if they wanted to reduce setback in RM6.

Wilbur said they need to be consistent and keep it in RR-65. Krieger said we all agreed to 15 feet.

Krieger gave example of fence in his neighborhood that was allowed to be built as a 8-foot high cinder block wall. If a neighbor wanted to put a shed next to the wall, he would have to setback 15 feet?

Reilly supports 15 feet.
Wilbur supports 15 feet.
Ritter supports 15 feet.

Good for Footnote #7 in all zonings? Reilly said no, just in RR65, RS 15 and RS 21.
Wilbur said in RR65 only.
Ryan agrees with Wilbur. Ritter RR65 and RM 4 – not the smaller one.
Abare would go with only RR65.

Wilbur works in Pt Malabar all the time and you would be surprised what could put on those lots.

Reilly is thinking only the RR65 and RS21. The others are smaller lots. The Board looked at where RS 21 was and that area is covered under their own covenants.

Keep with wording at beginning of meeting.

Merge the footnote 2 on the next table.

Reilly said keep paragraph E. Ritter said don't delete E.

Reilly asked if Section 1-5.10 should be deleted.

Ritter said delete the paragraph before the Table E.
Krieger said it should provide setbacks for all zonings depicted in the table.
Discussion - 3rd line of para

Discussed the widths of roads.

Franklin explained how the right of way dedication can affect the setback and how they use the two tables.

Ritter read how the paragraph E should read. Krieger agreed. She reread the suggested language.

Abare is talking about 60 ROW that has had some ROW dedicated and some not. Both Table A and E would require the same distance setback. Neither is more restrictive. They try the property on Highway 1 and then on north Corey. Abare wants to find example where E is more restrictive. Found it in MH Zoning.

Ryan got call and had to leave at 9:20PM

MOTION: Reilly / Abare to take all editing and combine into one document for Table 1-3.3.A. They will have for Action at next meeting. New language will be underscored.

VOTE: All Ayes (Abare voted for Ryan)

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4

Meeting Date: April 11, 2012

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Decorative Water Features and Ponds

BACKGROUND/HISTORY:

The Board's discussion at the last meeting directed that there be a checklist and permit application for both the DWF and the Pond. Staff has used the proposed changes to the pond Code (Reilly) and revised the checklist and application for each.

ATTACHMENTS:

Revised Code, Art. V, Section 1-5.27, Ponds by Pat Reilly
Permit Application and Checklist for DWF (Decorative Water Feature)
Permit Application and Checklist for Pond Permit

ACTION OPTIONS:

Recommend Council approve the changes. This will be included in the ordinance amending the Land Use Code.

Section 1-5.27. Decorative Water Features and Ponds.

General provisions. It shall be a violation of this ordinance for any person to construct, or permit to be constructed, or to fill a decorative water feature or pond within the Town of Malabar without first obtaining a decorative water feature or pond permit from the Town of Malabar.

1.0 Definitions.

A. *Allowable material.* Shall mean uncontaminated sand, soil or dirt or other items approved by the Town Engineer. Construction debris and yard waste shall not be considered allowable material.

B. *Conservation elevation (also control elevation).* Shall mean the lowest elevation at which water can be released through the control device and/or the designed normal water level of the decorative water feature or pond.

C. *Construction debris.* Shall mean material generally considered no to be water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pip, gypsum wallboard and lumber, metal, asphalt paving material, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure.

D. *Decorative Water Feature.* Shall mean any excavation for the purpose of retaining water wherein the surface area is 1,000 square feet or smaller in size. Notwithstanding this definition of decorative water feature, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town.

E. *To fill.* Shall mean the adding of allowable material to alter the existing topography or characteristics of a decorative water feature or pond.

F. *Littoral zone.* Shall mean that portion of the decorative water feature or pond which is less than three (3) feet deep as measured from the conservation elevation.

G. *Pond.* Shall mean any excavation for the purpose of retaining water wherein the surface area is greater than 1,000 square feet in size. Notwithstanding this definition of pond, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town.

H. *Project site.* Shall mean the area where the decorative water feature or pond shall be located and all other affected areas of the property.

I. *Side slopes.* Shall mean the ratio between the horizontal and vertical distance of the decorative water feature or pond as measured from any point in the decorative water feature or pond to the property line or finished floor of any improvement. (See Diagram "A")

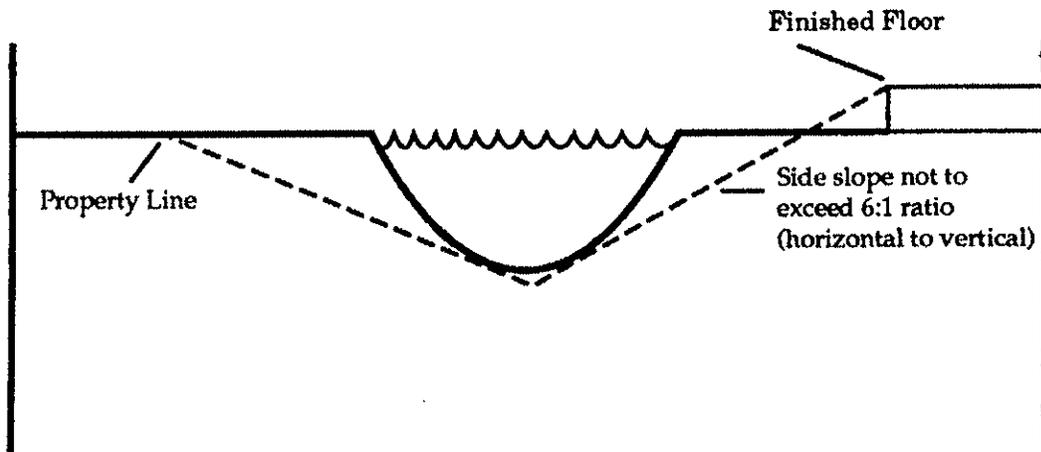


Diagram A

J. *Wet season water table.* Shall mean the elevation of the ground water table during normal wet season conditions as determined by SCS (Soil Conservation Service) or competent engineering studies (referenced to National Geodetic Vertical Datum).

2.0 Permits for decorative water features and ponds.

1. *Decorative Water Feature.* Any person wishing to construct or permit to be constructed or fill a decorative water feature within the Town of Malabar must, as a precondition, obtain a decorative water feature permit. A decorative water feature must meet setback requirements. In order to obtain a decorative water feature permit, an applicant must:
 - A. Pay the designated decorative water feature permit application fee prior to the Town accepting any application for a decorative water feature permit. The decorative water feature permit application fee shall be set by a Resolution of the Town Council;
 - B. If the applicant desires to construct a decorative water feature, the applicant shall provide the following documentation to the Town Clerk as part of the decorative water feature permit application;
 1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed decorative water feature, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.
 2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this section.
 3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the

performance standards of section 1-5.27.5.A—F and completing a conclusive review of the proposed site.

- C. If an applicant desires to fill a decorative water feature, the applicant shall submit the following:
1. A decorative water feature permit application containing, at a minimum the following:
 - a. A site plan of the existing decorative water feature including total area of the surface covered by water; depth of decorative water feature; and its proximity to structure;
 - b. The estimated amount of fill to be used, as well as, the type of fill to be used;
 - c. Name of contractor performing the fill activity;
 - d. Any and all other information required by the Town Engineer.
- D. The Town Clerk shall not accept an application for a decorative water feature permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.
- E. In addition to a decorative water feature permit fee required herein the applicant must, apply for and obtain a land clearing permit required by the Town's Code of Ordinances.
2. *Ponds.* Any person wishing to construct or permit to be constructed or fill a pond within the Town of Malabar must, as a precondition, obtain a decorative water feature permit. A pond must meet setback requirements. In order to obtain a pond permit, an applicant must:
- A. Pay the designated pond permit application fee prior to the Town accepting any application for a pond permit. The pond permit application fee shall be set by a Resolution of the Town Council;
 - B. If the applicant desires to construct a pond, the applicant shall provide the following documentation to the Town Clerk as part of the pond permit application:
 1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed pond, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.
 2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this section.
 3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the performance standards of section 1-5.27.5.A—F and completing a conclusive review of the proposed site.

- C. If an applicant desires to fill a pond, the applicant shall submit the following:
1. A pond permit application containing, at a minimum the following:
 - a. A site plan of the existing pond including total area of the surface covered by water; depth of pond; and its proximity to structure;
 - b. The estimated amount of fill to be used, as well as, the type of fill to be used;
 - c. Name of contractor performing the fill activity;
 - d. Any and all other information required by the Town Engineer.
- D. The Town Clerk shall not accept an application for a pond permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.
- E. In addition to a pond permit fee required herein the applicant must, apply for and obtain a land clearing permit required by the Town's Code of Ordinances.

3.0 Review process for decorative water features or ponds.

1. *Decorative Water Feature.* The following process for review shall apply to all decorative water feature permit applications presented to the Town of Malabar for consideration.
 - A. The review process shall begin when the applicant has submitted to the Town Clerk all required documents as set forth in paragraph 1, where applicable, of this section and all applicable application fees have been paid.
 - B. Within five (5) working days of the receipt of a completed application and application fee, the Town Clerk shall forward one copy each of the application and the required documentation to the Town Building Official and the Town Engineer. The Town Building Official shall review the application to insure the completeness and accuracy of the submitted information, and shall notify the Town Engineer of any inaccuracies or incompleteness.
 - C. The Town Engineer shall review the application and, within two weeks of receipt of the application by the Town Engineer, the Town Engineer shall recommend that the application for a decorative water permit be;
 1. Approved;
 2. Approved, subject to certain conditions, or
 3. Denied.

- D. If the Town Engineer recommends approval of the decorative water feature permit application, the application shall be forwarded to the Planning and Zoning Board for their consideration and action on the next available Planning and Zoning Board Agenda. The review procedures in sections 1-7.1 through 1-7.6 to the extent not inconsistent with this section shall apply. The Town Engineer and the Town's Planning and Zoning Board may impose reasonable conditions upon the applicant for a decorative water feature permit. Upon consideration and action by the Planning and Zoning Board the matter shall be forwarded to the Town Council for consideration and action. Upon approval by the Town Council of the decorative water feature permit application, the Building Official shall issue a decorative water feature permit to the applicant. The decorative water feature permit, however, shall contain the statement of the conditions which must be met by the applicant as set forth by the Town Engineer, the Planning and Zoning Board, and approved by the Council. Upon acceptance of a decorative water feature permit which has stated condition, the applicant agrees to perform all conditions set forth in the decorative water feature permit.
 - E. A decorative water feature permit shall not be issued if the Town Engineer recommends denial of the permit.
2. Ponds. The following process for review shall apply to all pond permit applications presented to the Town of Malabar for consideration.
- A. The review process shall begin when the applicant has submitted to the Town Clerk all required documents as set forth in paragraph 1, where applicable, of this section and all applicable application fees have been paid.
 - B. Within five (5) working days of the receipt of a completed application and application fee, the Town Clerk shall forward one copy each of the application and the required documentation to the Town Building Official and the Town Engineer. The Town Building Official shall review the application to insure the completeness and accuracy of the submitted information, and shall notify the Town Engineer of any inaccuracies or incompleteness.
 - C. The Town Engineer shall review the application and, within two weeks of receipt of the application by the Town Engineer, the Town Engineer shall recommend that the application for a decorative water permit be;
 - 1. Approved;
 - 2. Approved, subject to certain conditions, or
 - 3. Denied.

- D. If the Town Engineer recommends approval of the pond permit application, the application shall be forwarded to the Planning and Zoning Board for their consideration and action on the next available Planning and Zoning Board Agenda. The review procedures in sections 1-7.1 through 1-7.6 to the extent not inconsistent with this section shall apply. The Town Engineer and the Town's Planning and Zoning Board may impose reasonable conditions upon the applicant for a pond permit. Upon consideration and action by the Planning and Zoning Board the matter shall be forwarded to the Town Council for consideration and action. Upon approval by the Town Council of the pond permit application, the Building Official shall issue a decorative water feature permit to the applicant. The pond permit, however, shall contain the statement of the conditions which must be met by the applicant as set forth by the Town Engineer, the Planning and Zoning Board, and approved by the Council. Upon acceptance of a pond permit which has stated condition, the applicant agrees to perform all conditions set forth in the pond permit.
- E. A pond permit shall not be issued if the Town Engineer recommends denial of the permit.

4.0 Appeal process for decorative water features and ponds.

If an applicant's permit is denied, or approved with conditions, the applicant shall have the right to appeal such a denial or conditions to the Town Council under the following procedure:

- A. An appeal of a decision not to issue a decorative water feature or pond permit, or to issue a decorative water feature or pond permit upon conditions, may be appealed to Town Council, by the applicant, within ten days of the applicant receiving notice of the denial of his permit or approval with conditions.
- B. To appeal a decision to Town Council, the applicant must submit, in writing, a notice to the Town Council of the intention to appeal the decision of the Town Building Official and request the matter to be placed on the Council's agenda. The Notice of Appeal shall contain the basis upon which the appeal is being made.
- C. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter on the Town Council's agenda, said appeal to be heard by Council, within thirty (30) days of the date of notice of appeal. The Town Clerk shall submit all documentation relating to the application and permit to Council for review.
- D. The Town Council shall review the issue and determine whether the decision of the Building Official shall be upheld, modified or reversed. All decisions of the Town Council are final.
- E. Appeals of decisions of the Town Council may be taken to a court of competent jurisdiction.

5.0 Performance standards for the construction of a decorative water feature and ponds.

- A. Setbacks. Setbacks shall be measured from the conservation elevation and shall be set based on the following criteria:
1. Side slopes shall not exceed 6:1 (horizontal to vertical) as measured from existing grade at property lines or finished floor elevation at buildings or structures.
 2. The setback from any right-of-way shall comply with the setback requirements of Table 1.3.3(E) of Article III of this Code. The setback in this subsection shall apply to all decorative water features and ponds, whether or not a permit is required for construction of such decorative water feature or pond.
 3. The setback from any abutting residentially zoned property line shall be forty (40) feet from such abutting property line otherwise setbacks shall be thirty (30) feet from abutting property line. The setback in this subsection shall apply to all decorative water features and ponds,
 4. The decorative water feature or pond and any related site grading shall not adversely affect off-site drainage patterns.
- B. Conservation elevation. The proposed design or conservation elevation shall be set at or near the wet season water table. Wells shall not be used to maintain a water level elevation above the seasonal water table and must have float control device installed when there is an outfall. The decorative water feature or pond and discharge structure shall not draw the water table below its wet seasonal elevation.
- C. No decorative water feature or pond, regardless of size shall be greater than twelve (12) feet in depth as measured from the conservation elevation to the deepest point.
- D. Littoral zone. A minimum of thirty (30) percent of the decorative water feature or pond area shall be littoral zone and shall be planted with suitable wetland vegetation.
- E. Disposal of excavated material. All excavated topsoil shall be disposed of on-site. All other excavated material, unless otherwise provided for herein, shall be disposed of on-site. Off-site disposal of excavated material, except topsoil, shall be permitted under the following conditions:
1. The pond has a total surface acreage of less than one-quarter ($\frac{1}{4}$) acre;
 2. For any decorative water feature or pond for which a permit is required the excavated material may be disposed of off-site if a certification is presented to the Town by a Florida licensed professional engineer stating that the excavated material, except

topsoil, can not be utilized on-site. In submitting the certification the engineer shall take the following into consideration:

- a. The size of the site.
 - b. Available on-site retention.
 - c. The impact of on-site disposal will have on adjoining properties.
 - d. No excavated material from a pond which one-quarter acre or larger in size may be sold, offered for sale or trade or bargained for anything of value.
3. Excavated material which is unsuitable for use on the site because of high organic content (muck) may be disposed of off-site if approved by the Town Engineer.
- F. Discharge structures shall be designed to limit the maximum discharge rate to the pre-development discharge rate. The discharge velocity shall be controlled so as to not erode or cause scouring of existing or proposed facilities. Structures shall only discharge to a point of legal positive out-fall.

6.0 Completion of decorative water features and ponds.

- A. Decorative water feature or pond permits issued pursuant to this section shall be effective for a period of six (6) months from the date of issue.
- B. An extension may only be granted once upon good cause after review and approval by the Town Building Official.
- C. Refusal by the Town Building Official to issue a decorative water feature or pond permit extension may be appealed to Town Council in the same manner set forth in paragraph 3 of the section.

7.0 Failure to complete decorative water features and ponds.

- A. A fine up to two hundred fifty dollars (\$250.00) per day may be assessed against any applicant who fails to complete a decorative water feature or pond within the six-month period of the permit.
- B. Further, the Town, at its discretion, may require the applicant to restore the land to the condition prior to obtaining a decorative water feature or pond permit if it's not completed within the allotted time.
- C. It shall be the obligation of the applicant to notify the Town of completion. The decorative water feature or pond shall be complete only after a final inspection by the Town Building Official.

8.0 Standards for fill activities.

- A. No decorative water feature or pond shall be filled if, in the opinion of the Town Engineer, the filling of the decorative water feature or pond will adversely affect on and off-site drainage; promotes soil erosion on or off-site; or adversely affects the natural environment.
- B. Before any decorative water feature or pond shall be filled, approval from outside governmental agencies having jurisdiction over filling of water bodies must be submitted to the Town.

(Ord. No. 91-1, 3-19-91; Ord. No. 03-12, § 1, 12-1-03 revised 10/26/2011)



TOWN OF MALABAR

2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 Ext. 14 Fax # (321) 727-9997

PERMIT APPLICATION & CHECKLIST FOR DECORATIVE WATER FEATURE (DWF)

This permit application is intended for those applicants desiring to construct OR to fill a decorative water feature for the purpose of retaining water wherein the surface area is 1,000 square feet or smaller in size. Any fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity has been issued.

Project: Construct a DWF: _____ or Fill a DWF: _____ Date: _____
Street Address: _____ Zoning Designation: _____
Legal Description (Parcel ID) of Property Covered by Application:
Township: _____ Range: _____ Section: _____ Lot/Block: _____ Parcel: _____
Subdivision: _____ Tax Acct No.: _____
Name of Property Owner(s): _____ Telephone: _____
E- Mail Address: _____
Mailing Address: _____ Fax: _____
City, State, Zip: _____ Cell: _____
Gross acreage: _____ Setbacks: Front: _____, Rear: _____; Side: _____; Side corner: _____
Flood Zone: _____ Per FEMA Flood Insurance Rate Map
Wetlands Present: _____ Mitigation required? _____ Permit required? _____

The applicant is required to submit an original and two (2) Detailed Drawings with the following information shown:

- Boundary of property shown by a heavy line
Drawing to show size, dimension and depth of DWF to be constructed OR filled
Existing structures shown on drawing (including setbacks from all property lines)
Identification of trees in DWF area with a dbh (dimension at breast height) of 8" or greater
Location of well and drain field
Evidence that DWF area is not in a wetland
Plan for use of excavated material or written statement on method of disposal OR type of material to be used to filling the DWF
Stormwater drainage/retainage and overflow plan

Signature of Applicant: _____ Date: _____

Signature of Town's Personnel Reviewing Application

Approved / Denied

Comments: _____



TOWN OF MALABAR

2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 Ext. 14 Fax # (321) 727-9997

PERMIT APPLICATION & CHECKLIST FOR POND

This application is intended for those applicants desiring to construct OR fill a pond for the purpose of retaining water wherein the surface area is greater than 1,000 square feet. Any fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity has been issued.

Project: Construct a Pond: _____ or Fill a Pond: _____ Date: _____
Street Address: _____ Zoning Designation: _____

Legal Description (Parcel ID) of Property Covered by Application:

Township: _____ Range: _____ Section: _____ Lot/Block: _____, Parcel: _____

Subdivision: _____ Tax Acct No.: _____

Name of Property Owner(s): _____ Telephone: _____

E- Mail Address: _____

Mailing Address: _____ Fax: _____

City, State, Zip: _____ Cell: _____

Gross acreage: _____ Setbacks: Front: _____, Rear: _____; Side: _____; Side corner: _____

Flood Zone: _____ Per FEMA Flood Insurance Rate Map

Wetlands Present: _____ Mitigation required? _____ Permit required? _____

(If yes to any of the above, attach Agency permit and mitigation requirements)

The applicant is required to submit an original and two (2) sign/sealed engineered Site Plans with the following information shown:

- ___ Boundary of property
- ___ Show on Site Plan the Proposed dimensions and depth of Pond to be constructed OR filled showing setbacks from property lines
- ___ Dimensions to show the side slope elevations and wet season water table
- ___ Existing structures shown on Site Plan (including setbacks from all property lines)
- ___ Identification of trees in Pond area with a dbh (dimension at breast height) of 8" or greater
- ___ Location of well and drain field
- ___ Evidence from jurisdictional Agency that Pond area is not in a wetland
- ___ Site Plan to show use of excavated material OR provide a written statement on method of disposal
- ___ If filling a Pond, provide written evidence of type of material to be used and method of compaction.
- ___ Stormwater drainage / retainage and overflow plan
- ___ Application Fee of \$100.00 for Engineering Review by Town

Signature of Applicant: _____ Date: _____

Signature of Town's Engineer

Approved / Denied

Conditions: _____

**TOWN OF MALABAR
Disclosure of Ownership**

Where the **property is not owned by the applicant**, a notarized letter/letters must be attached from the owner giving consent to the applicant to request a Permit Application for Pond.

Please complete only one of the following:

I/we, _____, being first duly sworn, depose and say that I/we, am/are the **legal representative(s)** of the Owners or lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said are to be honest and true to the best of my/our knowledge and belief.

Applicant(s)

Date

Sworn and subscribed before me this _____ day of _____, 20____

Notary public, State of Florida
Commission No. _____ My Commission Expires _____.

.....

I/we, _____, being first duly sworn depose and say that I/we, am/are **the Owner(s) of the property** described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my/our knowledge and belief.

Applicant(s)

Date

Sworn and subscribed before me this day _____ day of _____, 20____

Notary Public, State of Florida
Commission No. _____ My Commission Expires _____.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: April 11, 2012

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Light Industrial Zoning

BACKGROUND/HISTORY:

At the last meeting on March 28, 2012, the Board directed that we include the source document from Chair Bob Wilbur's recommended changes to show the missing line of data. Chair Wilbur's corrected document is attached with the source document.

ATTACHMENTS:

Submittal from Krieger
Corrected submittal from Wilbur

ACTION OPTIONS:

Discussion

Submitted by: Don Krieger 8/10/2011 P & Z Meeting

Limited Commercial Light Industrial

CL-LI "Limited Commercial- Light Industrial" The CL-LI district is established to implement comprehensive plan policies for managing such development accessible to major transport facilities as well as accommodate the needs of adjacent or local residential neighborhoods. Such development is intended to provide local services as well as to provide more intensive commercial uses as well as limited light manufacturing, warehousing, distribution and other light industrial functions applicable to the region.

Areas designated for *CL-LI* development are intended to accommodate businesses such as neighborhood shops, light industrial services, limited metal or material fabrication facilities including welding services, electric services, light assembly, limited mechanical repair including but not limited to auto repair, plumbing services, health, environmental, and septic services, as well as the supply of other goods and services compatible to a specialized market with customized market demands. Uses, which are not compatible include but are not limited to large scale discount stores, supermarkets, department stores, large scale wholesale, commercial amusements, and fast food establishments. No residential uses shall be located in this district.

District and intent "Light Industrial District" (Suggestions from Indian Harbour Beach Code) with additions from Bob Wilbur.

The uses in this district are intended to be located in close proximity to transportation facilities and serving as the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the town. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

- (1) *Principal uses and structures:*
 - (A) Warehousing and wholesaling carried on solely within an enclosed structure, including refrigerated storage.
 - (B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops, bakeries, fruit packing, and similar uses.
 - (C) Light manufacturing processing and assembly, such as precision manufacturing of electrical machinery and instrumentation.
 - (D) Building materials supply and storage; contractor's storage yard, except scrap materials. Outside storage areas shall be walled or screened on all sides to avoid any deleterious effects on adjacent properties.
 - (E) Marine sales, storage and repair establishments, and automotive repair, paint and body shops, transportation terminals, and freight handling.
 - (F) Vocational and trade schools, veterinary hospital and clinics.
- (2) *Accessory uses:*
 - (A) Retail sales of products manufactured, processed or stored on the premises.
 - (B) Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use in keeping with the industrial character of the district.
- (3) *Conditional land uses permissible by Town Council: None*
- (4) *Special exceptions permissible by the zoning board of appeals: None*
- (5) *Prohibited uses and structures: All uses not specifically or provisionally permitted herein, and not in keeping with the industrial character of the district.*
- (6) *Minimum lot dimensions and floor area and maximum height:*

Minimum Lot Area	Minimum Lot Width	Minimum Lot Depth	Minimum Floor Area	Maximum Height
9,000 sq. ft	90 ft.	100 ft.	600 sq. ft.	35 ft.

- (7) *Minimum yard requirements:*
 - Front 25 feet
 - Rear 20 feet; 15 feet when abutting an alley
 - Side, interior None, except where use borders a zoning district requiring setbacks, in which case said required setbacks, shall also apply in this district
 - Side, corner 20 feet

Corrections From 3/28/12 P+Z Meeting

IHB 10/1

Side, corner 20 feet.

(Ord. No. 83-1, §§ 1, 2, 8-23-83; Ord. No. 86-6, § 2, 4-8-86; Ord. No. 89-4, § 1, 6-27-89; Ord. No. 94-6, § 1, 1-10-95; Ord. No. 96-7, § 1, 1-14-97; Ord. No. 99-5, § 1, 6-8-99)

Sec. 8. District and intent: M-1, Light Industrial District.

The uses in this district are intended to be located in close proximity to transportation facilities and serving as the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(1) Principal uses and structures:

- (A) Warehousing and wholesaling carried on solely within an enclosed structure.
- (B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops.
- (C) Light manufacturing processing and assembly, such as precision manufacturing of electrical machinery and instrumentation.
- (D) Building materials supply and storage; contractor's storage yard, except scrap materials. Outside storage areas shall be walled or screened on all sides to avoid any deleterious effects on adjacent properties.
- (E) Marine sales, storage and repair establishments, and automotive repair, paint and body shops.
- (F) Vocational and trade schools.

(2) Accessory uses:

- (A) Retail sales of products manufactured, processed or stored on the premises.
- (B) Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use in keeping with the industrial character of the district.

- (3) Conditional land uses permissible by city council: None.
- (4) Special exceptions permissible by the zoning board of appeals: None.
- (5) Prohibited uses and structures: All uses not specifically or provisionally permitted herein, and not in keeping with the industrial character of the district.

(6) Minimum lot dimensions and floor area and maximum height:

Minimum Lot Area	Minimum Lot Width	Minimum Lot Depth	Minimum Floor Area	Maximum Height
9,000 sq. ft.	90 ft.	100 ft.	600 sq. ft.	35 ft.

(7) Minimum yard requirements:

- Front 25 feet.
- Rear 20 feet; 15 feet when abutting an alley.
- Side, interior None, except where use borders a zoning district requiring setbacks, in which case said required setbacks shall also apply in this district.

Side, corner 20 feet.

Sec. 9A. District and intent: P-1 Institutional.

The provisions of this district are intended to apply to an area which can serve the needs of the community for public utility facilities, correctional facilities and in-patient mental health facilities, which facilities by their nature require substantial security and aesthetic buffers in order to protect the health and welfare of the city. Since the site and building requirements for such uses vary with the size and type of use, a review and approval of a site plan shall be a prerequisite for approval of any change of zoning to the P-1 Institutional classification.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: April 11, 2012

Prepared By: Denine M. Sherear Planning & Zoning Secretary

SUBJECT: Material for P&Z Research into Requirements for Assisted Living

BACKGROUND/HISTORY:

At the July 10, 2011 P&Z meeting the Board asked that staff provide the Florida Statutes that deal with groups homes and assisted living. Those documents were provided in the packet for July 27, 2011. They included the 2010 Chapters:

F.S. 400, Parts I, VI

F.S. 408.032(8)

F.S. 419

F.S. 429, Parts I, II, and III

These sections have now been updated with the 2011 Florida Statutes. We left out the sections on nursing homes, but have it available if you want to review it.

I previously printed sections from the 2007 Florida Building Code. They have also been updated with 2010 Code.

ATTACHMENTS:

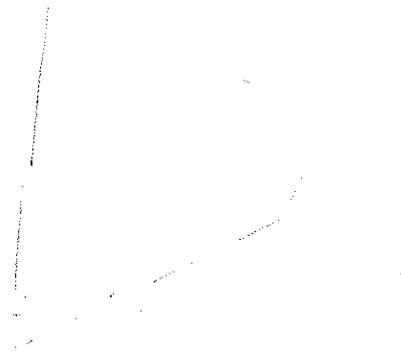
- Brevard County Code (1 page)
- Cocoa Beach Code (8 pages)
- Florida Building Code, 2011 Edition
 - Section 308, Institutional Group I
 - Section 310, Residential Group R
 - Section 313, Daycare, Group D
 - Section 433, Adult Day Care
 - Section 434, Assisted Living Facilities
 - Section 436, Day Care Occupancies
- Florida Statutes, 2011 Edition
 - Chapter 400, Parts I and V
 - Chapter 419
 - Chapter 429, Part I only

ACTION OPTIONS:

Board Discussion.

Brevard County Code

1 page



From 7/27/11

BREWARD City Code

Sec. 62-1826. - Assisted living facilities and treatment and recovery facilities.

1 page

Assisted living facilities and treatment and recovery facilities. Assisted living facilities and treatment and recovery facilities shall comply with the following requirements, where applicable:

(1)

Dispersal of facilities. The minimum distance between facilities, measured from the property line, shall be 1,000 feet.

(2)

Neighborhood compatibility. In the institutional zoning classification, the external appearance of the assisted living facility's or treatment and recovery facility's structures and building sites shall maintain the general character of the area. Exterior building materials, bulk, landscaping, fences and walls and general design shall be compatible with those of surrounding dwellings.

(3)

Facility standards.

a.

Prior to the granting of any permit for assisted living facilities or treatment and recovery facilities, the state department of health and rehabilitative services shall verify compliance with the following standards:

1.

There shall be not less than 250 square feet of floor space per assigned resident.

2.

There shall be one bathroom per two bedrooms. The bedroom square footage shall be not less than 75 square feet per assigned resident.

3.

Centralized cooking and dining facilities shall equal 30 square feet per assigned resident.

b.

If the request for a permit for assisted living facilities or treatment and recovery facilities is for a structure to be built, floor plans of the structure shall be submitted and approved prior to issuance of the permit.

(4)

Reserved.

(5)

Off-street parking. There shall be two parking spaces, plus two additional parking spaces for every five occupants for which the facility is permitted.

(6)

Compliance with state regulations. Violations of applicable statutes and regulations of the state shall be deemed violations of this division.

(Ord. No. 04-29, § 38, 8-5-04)

Editor's note— Ord. No. 04-29, § 38, adopted August 5, 2004, amended § 62-1903 in its entirety, and redesignated the provisions as § 62-1826. Formerly, § 62-1903 pertained to adult congregate living facilities and treatment and recovery facilities, and derived from the Code of 1979, § 14-20.16.2(B)(2); Ord. No. 97-49, § 12, adopted December 9, 1997, and Ord. No. 2003-03, § 32, adopted January 14, 2003.

Cocoa Beach Code

8 pages

COCOA BEACH (CB)

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I. *Sidewalks*. This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density*.

1. Transient lodging facilities: Twenty-eight (28) units per acre.
2. Multifamily dwellings: Ten (10) dwelling units per acre.
3. Once a lot, tract, parcel of land, or portion thereof has been utilized for the purposes of computing density for residential, transient lodging facility occupancy and said residential, transient lodging facility project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no subdivision or use of that land or construction of any type will be permitted thereon, except the permitted accessory uses for the residential or transient lodging development on said land.
4. Non-residential uses: Building coverage not to exceed thirty-five (35) percent and floor area ratio (FAR) not to exceed 2.5. Non-residential uses that are accessory to residential uses must meet the accessory use requirements set forth above. A reduction in residential density may be credited to non-residential uses as follows: One (1) residential dwelling unit per acre may be converted to an equivalent non-residential FAR of 0.15.

K. *Pervious surface*. See Table 4-01 of these regulations for design standards.

(Ord. No. 1349, § 2, 2-20-2003; Ord. No. 1381, § 3, 4-15-2004; Ord. No. 1395, §§ 2--4, 4-21-2005; Ord. No. 1500, § 7, 8-20-2009)

Section 3-10. CN neighborhood commercial district.

A. *Scope*. The regulations contained within this section shall apply in the CN district.

B. *Purpose*. To meet the wide spectrum of retail and service needs of the total community, this district allows certain office business, retail and personal services, while specifically prohibiting any transient lodging facility and time-share related uses. These districts are located near the transportation hubs of the city to make them easily accessible to the resident and traveling population of the city. This zoning district shall only be allowed within a commercial land use classification as identified on the city's future land use map.

C. *Permitted principal uses and structures*. This shall be:

1. Retail (excluding retail fish markets).
2. Personal service shops and stores, such as beauty and barbershops, laundry/dry-cleaning.
3. Commercial recreational facilities within a soundproof building.
4. Professional offices and clinics.
5. Financial institutions.
6. Business offices.
7. Restaurants which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
8. Nightclubs and bar and lounges within a soundproof building which are located

C.B.

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greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.

9. Pet shops within a soundproof, air-conditioned building.
10. Communication media facilities and offices.
11. Commercial parking lots or parking garages.
12. Enclosed car wash.
13. Art studios and galleries.
14. Animal hospitals and kennels within a soundproof, air conditioned building.
15. Each principal use in a phased development must be allocated to an individual site which meets all of the requirements set forth in these regulations.
16. Major and minor public utility structures owned, operated, franchised or supervised by the city.
17. Adult entertainment establishments located in accordance with provisions of section 4-80 of these regulations, and operated in accordance with the City of Cocoa Beach Sexually Oriented Business and Adult Entertainment Establishment Ordinance (the Code of Ordinances of the City of Cocoa Beach, Florida Chapter 2.5).

D. *Permitted accessory uses and structures.*

1. This shall be the uses and structures which:
 - a. Are customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures (i.e., sheds, docks, and garages).
 - b. Are located on the same lot as the permitted or permissible use of structure, or on a contiguous lot in the same ownership.
 - c. Do not involve operations or structures not in keeping with the character of the district.
2. Any freestanding accessory structure will be included in the calculation of maximum lot coverage, intensity of uses, and other zoning regulations related to structures in this district.
3. Yard requirements for accessory structures shall be the same as for principal structures. Side setbacks for accessory structures shall be the same as for the tallest principal structure on the parcel.

E. *Special exceptions.* If determined to be appropriate and compatible with adjacent land uses, and after public notice and hearing and subject to appropriate conditions and safeguards, the board of adjustment may permit the following as special exceptions:

1. Churches and similar places of worship with their attendant educational buildings and recreational facilities, if located on a major street or thoroughfare.
2. Existing residential units, hotels, motels, or transient lodging establishments and uses, including all customary accessory buildings in existence as of May 4, 2000, which would otherwise be considered a nonconforming use shall be deemed a special exception following validation of same by resolution of city commission. If such use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period, the special exception shall be deemed to have expired and such use shall not thereafter be allowed to exist.

C.B.

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3. Mini warehouses and storage facilities provided that:
 - a. No single compartment shall have a floor area exceeding one thousand five hundred (1,500) square feet.
 - b. Each compartment shall have an exterior independent entrance under exclusive control of the tenant thereof.
 - c. Use of compartment shall be limited to storage of personal property.
 - d. There shall be no outside storage of goods or materials of any type on the site of facility the storage area is located in a side or rear yards and fenced as authorized by section 4-67, Chapter IV of these regulations and the fence shall be constructed of opaque material.
4. Indoor auction sales.
5. Filling (service) station without major vehicle repairs, providing it shall not be located within a fifteen hundred (1,500) foot radius of an existing station. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitably screened storage area.
6. Commercial marinas, provided all structures are located within the bulkhead lines and not adjacent to a residential district.
7. Mechanical garage with all activities conducted within fully enclosed buildings. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitable screened storage area.
8. Nightclubs and cocktail lounges within a soundproof building and restaurants which are within one hundred (100) feet of any residentially zoned property (RS-1, RM-1 and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
9. Outdoor seating that is in conjunction with and clearly accessory to any permitted or special exception restaurant, nightclub, or cocktail lounge use. When considering an application for outdoor seating, the board must consider the special exception criteria listed below, in addition to that criteria listed in section 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:
 - a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
 - b. Whether or not outdoor lighting will create additional nuisance impacts to existing or planned adjacent land uses.
 - c. Whether or not outdoor entertainment will create additional nuisance impacts, including but not limited to noise impacts, to existing or planned adjacent land uses.
 - d. Whether or not additional parking must be provided.
 - e. Whether or not it is necessary to restrict the hours of operation for the outdoor seating.
 - f. Any other issue that is reasonably related to the nature of the request.
10. Any legitimate commercial use not prohibited in this zone but not falling within the specific permitted uses and which, by a preponderance of evidence, is shown to further the interests of the citizens of Cocoa Beach in the establishment of a low-density family

C.B.

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oriented residential and resort community with paramount consideration given to the health, comfort, well being, and quality of life for the citizens.

11. Public and private schools offering a general education curriculum.
12. Free-standing retail fish markets.
13. Major public utility structures owned, operated, franchised or supervised by the city.
14. All residential uses in existence at the date of adoption of these regulations.
15. Hospice, assisted living facility, short-term respite care center, geriatric care center, or adult day care center.
16. *Tattoo studios and body-piercing salons.* When considering an application for tattoo studios and body-piercing salons, the board must consider the special exception criteria listed below, in addition to that criteria listed in subsection 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:
 - a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
 - b. No new or relocated tattoo studio or body-piercing salon should be placed within two thousand (2,000) feet of any lawfully existing tattoo studio or body-piercing salon establishment. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line of the existing establishment. The board may consider establishments be located closer than the two thousand-foot standard, if by the preponderance of evidence such new or relocated establishment promotes the welfare of the community and serves to promote the preamble to the city charter.
 - c. Any other issue that is reasonably related to the nature of the request.
 - d. If the owner of a currently existing tattoo studio or body-piercing salon, as of August 20, 2009, loses his lease or use of his building or building location through no fault of his own and is unable to find a comparable replacement site two thousand (2,000) feet from another tattoo studio or body-piercing salon, then, in such circumstances if properly established, the board shall allow such an owner to relocate to another site that may be within two thousand (2,000) feet of an existing tattoo studio or body-piercing salon. This provision is not applicable to owners subsequent to August 20, 2009 to include those who may acquire a corporately owned tattoo studio or body-piercing salon.

F. *Prohibited uses and structures.* This shall be any uses not listed as permitted or allowed by special exception and specifically:

1. Single, duplex, triplex and multifamily structures, except those in existence on the date (May 4, 2000) and considered and regulated as specified above.
2. Hotels, motels, or transient lodging establishments and uses, including time shares, except those in existence of the date of adoption of this ordinance (May 4, 2000) and considered and regulated as a special exception as specified above.
3. Storage and transfer facilities.
4. Industrial activities.
5. Commercial activities in dwelling units of apartments, motels and hotels.
6. Outside automobile sales.

C.B.

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7. Junkyards.
8. Any other use incompatible with the exclusive commercial character of the district and its permitted uses.
9. Parking or display of any vehicle for sale.
10. Facilities and services which create through objectionable noise, air pollution, obnoxious odors, or other annoyances are considered incompatible and not in keeping with the residential and family-oriented tourist-amenity intent of the district.
11. Wholesale and retail sale of fireworks.

G. *Minimum off-street parking requirements.* See Chapter IV, Article III of these regulations.

H. *Limitations on signs.* See Chapter VI of these regulations.

I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Existing residential or transient lodging units and corresponding calculated density in existence as of May 4, 2000. Once a lot, tract, parcel of land, or portion thereof has been utilized for the purposes of computing density for residential (ten (10) dwelling units per acre), transient lodging facility occupancy (twenty-eight (28) rooms per acre) and said residential, transient lodging facility project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no subdivision or use of that land or construction of any type will be permitted thereon, except the permitted accessory uses for the residential or transient lodging development on said land.

2. Non-residential uses: Building coverage not to exceed thirty-five (35) percent and floor area ratio (FAR) not to exceed 2.5. Non residential uses that are accessory to existing residential uses shall not exceed twenty (20) percent of the gross floor area of the residential structure. A reduction in residential density may be credited to non-residential uses at an equivalent of one (1) residential dwelling unit per acre equals a non-residential FAR of 0.15, or one (1) transient lodging unit per acre equals a non-residential FAR of 0.05.

K. *Pervious surface.* See Table 4-01 of these regulations for design standards.

(Ord. No. 1349, § 2, 2-20-2003; Ord. No. 1381, § 4, 4-15-2004; Ord. No. 1388, § 3, 7-1-2004; Ord. No. 1397, §§ 2, 3, 6-16-2005; Ord. No. 1500, § 8, 8-20-2009)

Section 3-11. CG general commercial district.

A. *Scope.* The regulations contained within this section shall apply in the CG district and may be permitted in the future land use designation of general commercial.

B. *Purpose.* This district is intended for general business and services to meet the wide spectrum of retail and service needs of the total community. These districts are located near the transportation hubs of the city to make them easily accessible to the resident and traveling population of the city.

C. *Permitted principal uses and structures.* This shall be:

1. Retail (excluding retail fish markets).
2. Commercial recreational facilities within a soundproof building.

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3. Professional offices and clinics.
4. Financial institutions.
5. Business offices.
6. Transient lodging facilities.
7. Restaurants which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
8. Nightclubs and bar and lounges within a soundproof building which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
9. Pet shops within a soundproof, air-conditioned building.
10. Communication media facilities and offices.
11. Commercial parking lots or parking garages.
12. Personal service shops and stores including but not limited to beauty and health salons, astrology and palm readers, tattoo parlors, clothing, gifts, small appliances, and art studios.
13. Enclosed car wash.
14. Animal hospitals and kennels within a soundproof, air conditioned building.
15. Public utility structures owned, operated, franchised or supervised by the city.
16. Health clubs and gyms.
17. Adult entertainment establishments located in accordance with provisions of section 4-80 of these regulations, and operated in accordance with the City of Cocoa Beach Sexually Oriented Business and Adult Entertainment Establishment Ordinance (the Code of Ordinances of the City of Cocoa Beach, Florida Chapter 2.5).

D. *Permitted accessory structures and uses.* This shall be those uses and structures which:

1. Are customarily accessory and clearly incidental and subordinate to permitted principal uses and structures (i.e., sheds, docks and garages). To be considered accessory use which does not count towards lot coverage, the proposed use must be located within the primary structure.
2. Nonresidential uses that are accessory to residential or transient lodging uses shall not exceed twenty (20) percent of the gross floor area of the residential structure. A reduction in residential or transient lodging density may be credited to non-residential uses at an equivalent of one (1) residential dwelling unit per acre equals a non-residential FAR of 0.15, or one (1) transient lodging unit per acre equals a non-residential FAR of 0.05.
3. Are located on the same parcel as the principal use or structure.

E. *Special exceptions.* After public notice and hearing and subject to appropriate conditions and safeguards, the board of adjustment may permit the following as special exceptions:

1. Indoor auction sales.
2. Filling (service) station without major vehicle repairs, providing it shall not be located within a fifteen hundred (1,500) foot radius of an existing station. Vehicles stored on the

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premises longer than forty-eight (48) hours shall be placed within a suitably screened storage area.

3. Churches and similar places of worship with their attendant educational buildings and recreational facilities, if located on a major street or thoroughfare.

4. Nightclubs and cocktail lounges within a soundproof building and restaurants which are within one hundred (100) feet of any residentially zoned property (RS-1, RM-1 and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.

5. Outdoor seating that is in conjunction with and clearly accessory to any permitted or special exception restaurant, nightclub, or cocktail lounge use. When considering an application for outdoor seating, the board must consider the special exception criteria listed below, in addition to that criteria listed in section 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:

- a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- b. Whether or not outdoor lighting will create additional nuisance impacts to existing or planned adjacent land uses.
- c. Whether or not outdoor entertainment will create additional nuisance impacts, including but not limited to noise impacts, to existing or planned adjacent land uses.
- d. Whether or not additional parking must be provided.
- e. Whether or not it is necessary to restrict the hours of operation for the outdoor seating.
- f. Any other issue that is reasonably related to the nature of the request.

6. Commercial marinas, provided all structures are located within the bulkhead lines and not adjacent to a residential district.

7. Mechanical garage with all activities conducted within fully enclosed buildings. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitable screened storage area.

8. Mini-storage with suitable screening compatible with the architecture of the project. On-site parking shall be provided on the basis of one (1) space per five hundred sixty (560) square feet of gross floor area. One-half (1/2) of the parking sites may be sodded or landscaped. The individual mini-storage; however, it shall not preclude the use of the facility as a depot for such purposes as franchised distribution. If motor vehicles or vessels are stored in an individual facility, there shall be not mechanical work performed on the premises.

9. Any legitimate commercial use not prohibited in this zone but not falling within the specific permitted uses and which, by a preponderance of evidence, is shown to further the interests of the citizens of Cocoa Beach in the establishment of a low-density family oriented residential and resort community with paramount consideration given to the health, comfort, well being, and quality of life for the citizens.

10. Public and private schools offering a general education curriculum.

11. Free-standing retail fish markets.

12. Major public utility structures owned, operated, franchised or supervised by the city.

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13. Hospice, assisted living facility, short-term respite care center, geriatric care center, or adult day care center.

14. *Tattoo studios and body-piercing salons.* When considering an application for tattoo studios and body-piercing salons, the board must consider the special exception criteria listed below, in addition to that criteria listed in subsection 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:

a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.

b. No new or relocated tattoo studio or body-piercing salon should be placed within two thousand (2,000) feet of any lawfully existing tattoo studio or body-piercing salon establishment. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line of the existing establishment. The board may consider establishments be located closer than the two thousand-foot standard, if by the preponderance of evidence such new or relocated establishment promotes the welfare of the community and serves to promote the preamble to the city charter.

c. Any other issue that is reasonably related to the nature of the request.

d. If the owner of a currently existing tattoo studio or body-piercing salon, as of August 20, 2009, loses his lease or use of his building or building location through no fault of his own and is unable to find a comparable replacement site two thousand (2,000) feet from another tattoo studio or body-piercing salon, then, in such circumstances if properly established, the board shall allow such an owner to relocate to another site that may be within two thousand (2,000) feet of an existing tattoo studio or body-piercing salon. This provision is not applicable to owners subsequent to August 20, 2009 to include those who may acquire a corporately owned tattoo studio or body-piercing salon.

F. *Prohibited uses and structures.* This shall be any uses not listed as permitted or allowed by special exception and specifically:

1. Industrial uses and structures.

2. Facilities and services which create through objectionable noise, air pollution, obnoxious odors, or other annoyances are considered incompatible and not in keeping with the residential and family-oriented tourist-amenity intent of the district.

3. Wholesale and retail sale of fireworks.

4. Any other use incompatible with the exclusive commercial character of the district and its permitted uses.

G. *Minimum off-street parking requirements.* See Chapter IV, Article III of these regulations.

H. *Limitations on signs.* See Chapter VI of these regulations.

I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Transient lodging facility: Twenty-eight (28) units per acre.

2. Once a lot, tract or parcel of land, has been used to compute density for transient lodging occupancy and said transient lodging project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no

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- Section 308, Institutional Group I
- Section 310, Residential Group R
- Section 313, Daycare, Group D
- Section 433, Adult Day Care
- Section 434, Assisted Living Facilities
- Section 436, Day Care Occupancies

13 pages

Division 1.5
Division 1.6

Organic peroxides, unclassified detonable
Oxidizers, Class 4
Unstable (reactive) materials, Class 3 detonable and Class 4

[F] 307.4 High-hazard Group H-2. Buildings and structures containing materials that pose a deflagration hazard or a hazard from accelerated burning shall be classified as Group H-2. Such materials shall include, but not be limited to, the following:

Class I, II or IIIA flammable or combustible liquids which are used or stored in normally open containers or systems, or in closed containers or systems pressurized at more than 15 psi (103.4 kPa) gage.
Combustible dusts
Cryogenic fluids, flammable
Flammable gases
Organic peroxides, Class I
Oxidizers, Class 3, that are used or stored in normally open containers or systems, or in closed containers or systems pressurized at more than 15 psi (103 kPa) gage
Pyrophoric liquids, solids and gases, nondetonable
Unstable (reactive) materials, Class 3, nondetonable
Water-reactive materials, Class 3

[F] 307.5 High-hazard Group H-3. Buildings and structures containing materials that readily support combustion or that pose a physical hazard shall be classified as Group H-3. Such materials shall include, but not be limited to, the following:

Class I, II or IIIA flammable or combustible liquids that are used or stored in normally closed containers or systems pressurized at 15 pounds per square inch gauge (103.4 kPa) or less
Combustible fibers, other than densely packed baled cotton
Consumer fireworks, 1.4G (Class C, Common)
Cryogenic fluids, oxidizing
Flammable solids
Organic peroxides, Class II and III
Oxidizers, Class 2
Oxidizers, Class 3, that are used or stored in normally closed containers or systems pressurized at 15 pounds per square inch gauge (103 kPa) or less
Oxidizing gases
Unstable (reactive) materials, Class 2
Water-reactive materials, Class 2

[F] 307.6 High-hazard Group H-4. Buildings and structures which contain materials that are health hazards shall be classified as Group H-4. Such materials shall include, but not be limited to, the following:

Corrosives
Highly toxic materials
Toxic materials

[F] 307.7 High-hazard Group H-5 structures. Semiconductor fabrication facilities and comparable research and development areas in which hazardous production materials (HPM) are used and the aggregate quantity of materials is in excess of those listed in Tables 307.1(1) and 307.1(2) shall be classified

as Group H-5. Such facilities and areas shall be designed and constructed in accordance with Section 415.8.

[F] 307.8 Multiple hazards. Buildings and structures containing a material or materials representing hazards that are classified in one or more of Groups H-1, H-2, H-3 and H-4 shall conform to the code requirements for each of the occupancies so classified.

**SECTION 308
INSTITUTIONAL GROUP I**

308.1 Institutional Group I. Institutional Group I occupancy includes, among others, the use of a building or structure, or a portion thereof, in which people are cared for or live in a supervised environment, having physical limitations because of health or age are harbored for medical treatment or other care or treatment, or in which people are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2 or I-3.

308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides *personal care services*. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Alcohol and drug centers
Assisted living facilities
Congregate care facilities
Convalescent facilities
Group homes
Halfway houses
Residential board and care facilities
Social rehabilitation facilities

A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the *Florida Building Code, Residential* in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4.

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care for persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

Child care facilities
Detoxification facilities
Hospitals
Mental hospitals
Nursing homes

308.3.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

CHILD CARE FACILITIES. Facilities that provide care on a 24-hour basis to more than five children, 2½ years of age or less.

DETOXIFICATION FACILITIES. Facilities that serve patients who are provided treatment for substance abuse on a 24-hour basis and who are incapable of self-preservation or who are harmful to themselves or others.

HOSPITALS AND MENTAL HOSPITALS. Buildings or portions thereof used on a 24-hour basis for the medical, psychiatric, obstetrical or surgical treatment of inpatients who are incapable of self-preservation.

NURSING HOMES. Nursing homes are long-term care facilities on a 24-hour basis, including both intermediate care facilities and skilled nursing facilities, serving more than five persons and any of the persons are incapable of self-preservation.

308.4 Group I-3. This occupancy shall include buildings and structures that are inhabited by more than five persons who are under restraint or security. An I-3 facility is occupied by persons who are generally incapable of self-preservation due to security measures not under the occupants' control. This group shall include, but not be limited to, the following:

- Correctional centers
- Detention centers
- Jails
- Prerelease centers
- Prisons
- Reformatories

Buildings of Group I-3 shall be classified as one of the occupancy conditions indicated in Sections 308.4.1 through 308.4.5 (see Section 408.1).

308.4.1 Condition 1. This occupancy condition shall include buildings in which free movement is allowed from sleeping areas, and other spaces where access or occupancy is permitted, to the exterior via *means of egress* without restraint. A Condition 1 facility is permitted to be constructed as Group R.

308.4.2 Condition 2. This occupancy condition shall include buildings in which free movement is allowed from sleeping areas and any other occupied smoke compartment to one or more other smoke compartments. Egress to the exterior is impeded by locked *exits*.

308.4.3 Condition 3. This occupancy condition shall include buildings in which free movement is allowed within individual smoke compartments, such as within a residential unit comprised of individual *sleeping units* and group activity spaces, where egress is impeded by remote-controlled release of *means of egress* from such a smoke compartment to another smoke compartment.

308.4.4 Condition 4. This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Remote-controlled release is provided to permit movement from *sleeping units*, activity spaces and other occupied areas within the smoke compartment to other smoke compartments.

308.4.5 Condition 5. This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Staff-controlled manual release is provided to permit movement from *sleeping units*, activity spaces and other occupied areas within the smoke compartment to other smoke compartments.

308.5 Group I-4, day care facilities. Reserved.

308.5.1 Adult care facility. Reserved.

308.5.2 Child care facility. Reserved.

**SECTION 309
MERCANTILE GROUP M**

309.1 Mercantile Group M. Mercantile Group M occupancy includes, among others, the use of a building or structure or a portion thereof, for the display and sale of merchandise and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public. Mercantile occupancies shall include, but not be limited to, the following:

- Department stores
- Drug stores
- Markets
- Motor fuel-dispensing facilities
- Retail or wholesale stores
- Restaurants and drinking establishments with an occupant load of less than 50 persons
- Sales rooms

309.2 Quantity of hazardous materials. The aggregate quantity of nonflammable solid and nonflammable or noncombustible liquid hazardous materials stored or displayed in a single *control area* of a Group M occupancy shall not exceed the quantities in Table 414.2.5(1).

**SECTION 310
RESIDENTIAL GROUP R**

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *Florida Building Code, Residential* in accordance with Section 101.2. Residential occupancies shall include the following:

R-1. Residential occupancies containing *sleeping units* where the occupants are primarily transient in nature, including:

- Boarding houses* (transient)
- Hotels (transient)
- Motels (transient)

Congregate living facilities (transient) with 10 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-2. Residential occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses (nontransient)
- Convents
- Dormitories
- Fraternities and sororities
- Hotels (nontransient)
- Live/work units
- Monasteries
- Motels (nontransient)
- Vacation timeshare properties

Congregate living facilities with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-3. Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

- Buildings that do not contain more than two *dwelling units*.
- Adult care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.
- Child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.
- Congregate living facilities with 16 or fewer persons.

Adult care and child care facilities that are within a single-family home are permitted to comply with the *Florida Building Code, Residential*.

R-4. Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code or shall comply with the *Florida Building Code, Residential* provided the building is protected by an automatic sprinkler system installed in accordance with Section 903.2.8.

310.2 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

BOARDING HOUSE. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

CONGREGATE LIVING FACILITIES. A building or part thereof that contains sleeping units where residents share bathroom and/or kitchen facilities.

DORMITORY. A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident while inside the building.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides *personal care services*. The occupants are capable of responding to an emergency situation without physical assistance from staff. This classification shall include, but not be limited to, the following: residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.

TRANSIENT. Occupancy of a *dwelling unit* or *sleeping unit* for not more than 30 days.

**SECTION 311
STORAGE GROUP S**

311.1 Storage Group S. Storage Group S occupancy includes, among others, the use of a building or structure, or a portion thereof, for storage that is not classified as a hazardous occupancy.

311.2 Moderate-hazard storage, Group S-1. Buildings occupied for storage uses that are not classified as Group S-2, including, but not limited to, storage of the following:

- Aerosols, Levels 2 and 3
- Aircraft hangar (storage and repair)
- Bags: cloth, burlap and paper
- Bamboos and rattan
- Baskets
- Belting: canvas and leather
- Books and paper in rolls or packs
- Boots and shoes
- Buttons, including cloth covered, pearl or bone
- Cardboard and cardboard boxes
- Clothing, woolen wearing apparel
- Cordage
- Dry boat storage (indoor)
- Furniture
- Furs
- Glues, mucilage, pastes and size
- Grains
- Horns and combs, other than celluloid
- Leather
- Linoleum
- Lumber
- Motor vehicle repair garages complying with the maximum allowable quantities of hazardous materials listed in Table 307.1(1) (see Section 406.6)
- Photo engravings
- Resilient flooring
- Silks
- Soaps
- Sugar
- Tires, bulk storage of
- Tobacco, cigars, cigarettes and snuff
- Upholstery and mattresses
- Wax candles

~~311.3 Low-hazard storage, Group S-2.~~ Includes, among others, buildings used for the storage of noncombustible materials such as products on wood pallets or in paper cartons with or without single thickness divisions; or in paper wrappings. Such products are permitted to have a negligible amount of plastic trim, such as knobs, handles or film wrapping. Group S-2 storage uses shall include, but not be limited to, storage of the following:

- ~~Asbestos~~
- ~~Beverages up to and including 16-percent alcohol in metal, glass or ceramic containers~~
- ~~Cement in bags~~
- ~~Chalk and crayons~~
- ~~Dairy products in nonwaxed coated paper containers~~
- ~~Dry cell batteries~~
- ~~Electrical coils~~
- ~~Electrical motors~~
- ~~Empty cans~~
- ~~Food products~~
- ~~Foods in noncombustible containers~~
- ~~Fresh fruits and vegetables in nonplastic trays or containers~~
- ~~Frozen foods~~
- ~~Glass~~
- ~~Glass bottles, empty or filled with noncombustible liquids~~
- ~~Gypsum board~~
- ~~Inert pigments~~
- ~~Ivory~~
- ~~Meats~~
- ~~Metal cabinets~~
- ~~Metal desks with plastic tops and trim~~
- ~~Metal parts~~
- ~~Metals~~
- ~~Mirrors~~
- ~~Oil-filled and other types of distribution transformers~~
- ~~Parking garages, open or enclosed~~
- ~~Porcelain and pottery~~
- ~~Stoves~~
- ~~Talc and soapstones~~
- ~~Washers and dryers~~

- ~~Retaining walls~~
- ~~Sheds~~
- ~~Stables~~
- ~~Tanks~~
- ~~Towers~~

**SECTION 313
DAY CARE OCCUPANCY GROUP D**

313.1 Scope. Group D occupancy is the use of a building or structure, or any portion thereof, in which three or more clients receive care, maintenance and supervision, by other than their relative(s) or legal guardian(s), for less than 24 hours per day. Occupancies that include part-day preschools, kindergartens and other schools whose purpose is primarily educational even though the children are of preschool age shall comply with the provisions for Group E occupancies.

313.2 Subclassifications. Day care occupancies in which more than 12 clients receive care, maintenance and supervision, by other than their relative(s) or legal guardian(s), for less than 24 hours per day shall be classified as day care occupancies. Day care occupancies of 12 or fewer clients shall be classified as day care homes and shall be divided into classifications as set forth in this section.

313.2.1 Family day care home. A family day care home is a day care home in which more than three but fewer than seven clients receive care, maintenance and supervision by other than their relative(s) or legal guardian(s) for less than 24 hours per day with no more than two clients incapable of self-preservation.

313.2.2 Group day care home. A group day care home is a day-care home in which at least seven but not more than 12 clients receive care, maintenance, and supervision by other than their relative(s) or legal guardian(s) for less than 24 hours per day with no more than three clients incapable of self-preservation.

313.2.3 Adult day care. Adult day care shall include any building or portion thereof used for less than 24 hours per day to house more than three adults requiring care, maintenance and supervision by other than their relative(s). Clients shall be ambulatory or semiambulatory and shall not be bedridden. They shall not exhibit behavior that is harmful to themselves or others.

313.2.4 Group D occupancies. Group D occupancies shall include, among others, the following:

- Child day care occupancies
- Adult day care occupancies, except where part of a health care occupancy
- Nursery schools
- Day care homes
- Kindergarten classes that are incidental to a child day care occupancy

In cases where care is incidental to some other occupancy, the section of this code governing such other occupancy shall apply.

**SECTION 312
UTILITY AND MISCELLANEOUS GROUP U**

312.1 General. Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:

- Agricultural buildings
- Aircraft hangars, accessory to a one- or two-family residence (See Section 412.5)
- Barns
- Carports
- Fences more than 6 feet (1829 mm) high
- Grain silos, accessory to a residential occupancy
- Greenhouses
- Livestock shelters
- Private garages



SECTION 431**TRANSIENT PUBLIC LODGING ESTABLISHMENTS**

431.1 Any transient public lodging establishment, as defined in Chapter 509, *Florida Statutes*, and used primarily for transient occupancy as defined in Section 83.43(10), *Florida Statutes*, or any timeshare unit of a timeshare plan as defined in Chapters 718 and 721, *Florida Statutes*, which is of three stories or more and for which the construction contract has been let after the effective date of this code, with interior corridors which do not have direct access from the guest area to exterior means of egress and on buildings over 75 feet (22 860 mm) in height that have direct access from the guest area to exterior means of egress and for which the construction contract has been let after the effective date of this code, shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the NFPA 13, *Standards for the Installation of Sprinkler Systems*. Each guestroom and each timeshare unit shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of NFPA 74, *Standards for the installation, maintenance and Use of Household Fire Warning Equipment*, powered from the building electrical service, notwithstanding the number of stories in the structure, if the contract for construction is let after the effective date of this code. Single-station smoke detectors shall not be required when guest-rooms or timeshare units contain smoke detectors connected to a central alarm system which also alarms locally.

SECTION 432**USE OF ASBESTOS IN NEW PUBLIC BUILDINGS OR BUILDINGS NEWLY CONSTRUCTED FOR LEASE TO GOVERNMENT ENTITIES-PROHIBITION**

432.1 The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.

**SECTION 433
ADULT DAY CARE**

433.1 General. Adult day care facilities shall comply with the following design and construction standards.

Note: See Agency for Health Care Administration (AHCA) Rule 58A-6, *Florida Administrative Code*, and Chapter 400, Part V, *Florida Statutes*.

433.2 Definitions.

“Adult day care center” or “center” means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services. The following are exempt from this part:

1. Any facility, institution, or other place that is operated by the federal government or any agency thereof.

2. Any freestanding inpatient hospice facility that is licensed by the state and which provides day care services to hospice patients only.
3. A licensed assisted living facility, a licensed hospital, or a licensed nursing home facility that provides services during the day which include, but are not limited to, social, health, therapeutic, recreational, nutritional and respite services, to adults who are not residents, so long as the facility does not hold itself out as an adult day care center.

“Capacity” shall mean the number of participants for which a center has been licensed to provide care at any given time and shall be based upon required net floor space.

“Net floor space” shall mean the actual climatically controlled occupied area, not including accessory unoccupied areas such as hallways, stairs, closets, storage areas, bathrooms, kitchen or thickness of walls, set aside for the use of the day care center participants.

“Participant space” shall mean the required net floor space per participant. Maximum participant capacity shall refer to the licensed capacity.

433.3 The following minimum conditions shall be met:

433.3.1 The floor surface in kitchens, all rooms and areas in which food is stored or prepared and in which utensils are washed or stored shall be of smooth nonabsorbent material and constructed so it can be easily cleaned and shall be washable up to the highest level reached by splash or spray.

433.3.2 The walls and ceilings of all food preparation, utensil washing and hand washing rooms or areas shall have smooth, easily cleanable surfaces. Walls shall be washable up to the highest level reached by splash or spray.

433.3.3 Hot and cold running water under pressure shall be easily accessible to all rooms where food is prepared or utensils are washed.

433.3.4 Hand-washing facilities, provided with hot and cold running water, shall be located within the food preparation area in new adult day care facilities and adult day care facilities which are extensively altered.

433.3.5 Multiuse equipment and utensils shall be constructed and repaired with materials that are nontoxic, corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable and durable under conditions of normal use; and shall not impart odors, color or taste nor contribute to the contamination of food.

433.3.6 A three-compartment sink or a two-compartment sink and a dishwasher with an effective, automatic sanitizing cycle, shall be provided.

433.3.7 Refrigeration units and hot food storage units used for the storage of potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus 3°F (-16°C). The thermometer shall be located in the warmest or coldest part of the units and of such type and so situated that the temperature can be easily and readily observed.

433.4 Participant and program data, emergency procedures. Fire safety protection shall be governed in accordance with the *Florida Fire Prevention Code*.

433.5 Physical plant, sanitary conditions, housekeeping standards and maintenance.

433.5.1 The participant capacity shall be determined by the total amount of net floor space available for all of the participants. Centers shall provide not less than 45 square feet (4 m²) of net floor area per participant. Centers shall be required to provide additional floor space for special target populations to accommodate activities required by participant care plans.

433.5.2 Facilities exempt pursuant to Section 400.553, *Florida Statutes*, shall utilize separate space over and above the minimum requirement needed to meet their own licensure certification approval requirements. Only congregate space shall be included in determining minimum space. For purposes of this section, congregate space shall mean climatically controlled living room, dining room, specialized activity rooms, or other rooms to be commonly used by all participants.

433.5.3 Center facilities shall consist of, but not be limited to, the following:

1. Bathrooms.
2. Dining areas.
3. Kitchen areas.
4. Rest areas.
5. Recreation and leisure time areas.

433.5.4 A private area shall be available for the provision of first aid, special care and counseling services when provided, or as necessary for other services required by participants. This area shall be appropriately furnished and equipped.

433.5.5 Bathrooms shall be ventilated and have hot and cold running water, supplying hot water at a minimum of 105°F (41°C) and a maximum of 115°F (46°C).

433.5.6 Recreation and leisure time areas shall be provided where a participant may read, engage in socialization or other leisure time activities. The recreation areas also may be utilized for dining areas.

433.5.7 All areas used by participants shall be suitably lighted and ventilated and maintained at a minimal inside temperature of 72°F (22°C) when outside temperatures are 65°F (18°C) or below, and all areas used by participants must not exceed 90°F (32°C). Mechanical cooling devices must be provided when indoor temperatures exceed 84°F (29°C). The facility shall have a thermometer which accurately identifies the temperature.

Note: Other administrative and programmatic provisions may apply. See Agency of Health Care Administration (AHCA) Rule 58A-5, *Florida Administrative Code* and Chapter 400 Part III, *Florida Statutes*.

434.2 Definitions.

AGENCY. The Agency for Health Care Administration.

AHCA CENTRAL OFFICE. The Assisted Living Unit, Agency for Health Care Administration.

ASSISTED LIVING FACILITY. 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. The following are exempted from this definition:

1. Any facility, institution, or other place operated by the federal government or any agency of the federal government.
2. Any facility or part of a facility licensed under Chapter 393, *Florida Statutes*, or Chapter 394, *Florida Statutes*.
3. Any facility licensed as an adult family care home under Part VII Chapter 400, *Florida Statutes*.
4. 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.
5. 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.
6. 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.
7. Any facility certified under Chapter 651, *Florida Statutes*, or a retirement community, may provide services authorized under this section or Part IV of Chapter 400, *Florida Statutes* 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

SECTION 434
ASSISTED LIVING FACILITIES

4.1 Scope. Assisted living facilities shall comply with the following design and construction standards as described herein.

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 section. If a facility provides personal services to residents who do not otherwise home health agency, the buildings or distinct parts of buildings where such services are rendered must be licensed under this section. 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 section or under Part II of Chapter 400, *Florida Statutes*, and apartments designed for independent living located on the same campus.

8. Any residential unit for independent living which is located within a facility certified under Chapter 651, *Florida Statutes*, or any residential unit which is collocated with a nursing home licensed under Part II of Chapter 400, *Florida Statutes*, or collocated with a facility licensed under this section in which services are provided through an outpatient clinic or a nursing home on an outpatient basis.

CAPACITY. The number of residents for which a facility has been licensed to provide residential care.

DEPARTMENT. The Department of Elderly Affairs.

DISTINCT PART. Designated bedrooms or apartments, bathrooms and a living area; or a separately identified wing, floor or building which includes bedrooms or apartments, bathrooms and a living area. The distinct part may include a separate dining area, or meals may be served in another part of the facility.

DOEA ASSISTED LIVING PROGRAM. The Assisted Living Program, Department of Elder Affairs.

EXTENDED CONGREGATE CARE. Acts beyond those authorized in subsection (5) that may be performed pursuant to part I of Chapter 464, *Florida Statutes*, by persons licensed thereunder while carrying out their professional duties. 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.

FOOD SERVICE. The storage, preparation, serving and cleaning up of food intended for consumption in a facility or a formal agreement that meals will be regularly catered by a third party.

PERSONAL SERVICES. Direct physical assistance with or supervision of the activities of daily living and the self-administration of medication 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.

RELATIVE. 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.

RENOVATION. Additions, repairs, restorations or other improvements to the physical plant of the facility within a five-year period that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before the renovation.

RESIDENT. A person 18 years of age or older, residing in and receiving care from a facility.

RESIDENT'S REPRESENTATIVE OR DESIGNEE. 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 Section 400.424, *Florida Statutes*, 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 Section 400.429, *Florida Statutes*.

434.3 Codes and standards for the design and construction of assisted living facilities. Except as modified and required by this section of the code, Chapter 58A-5, *Florida Administrative Code* or Chapter 429 Part III, *Florida Statutes*, all new assisted living facilities and all additions, alterations, or renovations to existing assisted living facilities with more than 16 licensed beds shall also be in compliance with *The Guidelines for the Design and Construction of Health Care Facilities* (The Guidelines) Part I General, and Chapter 4.3 Assisted Living of Part 4, Other Health Care Facilities, incorporated by reference and obtainable from the American Institute of Architects, 1735 New York Ave., N.W., Washington, D.C. 20006-5292.

434.4 Additional physical plant requirements for assisted living facilities. In addition to the codes and standards referenced in Section 434.3 of the code, the following minimum essential facilities shall apply to all new assisted living facilities.

434.4.1 Indoor radon testing as mandated by Section 404.056(5), *Florida Statutes*, shall be completed by all facilities.

434.4.2 Heating and cooling.

434.4.2.1 When outside temperatures are 65°F (18°C) or below, an indoor temperature of at least 72°F (22°C) shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours when residents are asleep, an indoor temperature of at least 68°F (20°C) shall be maintained.

434.4.2.2 During hours when residents are normally awake, mechanical cooling devices, such as electric fans, must be used in those areas of buildings used by residents when inside temperatures exceed 85°F (29°C) provided outside temperatures remain below 90°F (32°C). No residents shall be in any inside area that exceeds 90°F (32°C). However, during daytime hours when outside temperatures exceed 90°F (32°C), and at night, an indoor temperature of no more than 81°F (27°C) must be maintained in all areas used by residents.

434.4.2.3 Residents who have individually controlled thermostats in their bedrooms or apartments shall be permitted to control temperatures in those areas.

434.4.3 Common areas.

434.4.3.1 A minimum of 35 square feet (3 m²) of living and dining space per resident, live-in staff and live-in family member shall be provided except in facilities comprised of apartments. This space shall include living, dining, recreational or other space designated accessible to all residents, and shall not include bathrooms, corridors, storage space or screened porches which cannot be adapted for year round use. Facilities with apartments may count the apartment's living space square footage as part of the 35 square footage (3 m²) living and dining space requirement.

Those facilities also serving as adult day care centers must provide an additional 35 square feet (3 m²) of living and dining space per adult day care client. Excess floor space in residents' bedrooms or apartments cannot be counted toward meeting the requirement of 35 square feet (3 m²) of living and dining space requirements for adult day care participants. Day care participants may not use residents' bedrooms for resting unless the room is currently vacant.

434.4.3.2 A room, separate from resident bedrooms, shall be provided where residents may read, engage in socialization or other leisure time activities. Comfortable chairs or sofas shall be provided in this communal area.

434.4.3.3 The dining area shall be furnished to accommodate communal dining.

434.4.4 Bedrooms.

434.4.4.1 Resident sleeping rooms designated for single occupancy shall provide a minimum inside measurement of 80 square feet of usable floor space. Usable floor space does not include closet space or bathrooms.

434.4.4.2 Resident bedrooms designated for multiple occupancy shall provide a minimum inside measurement of 60 square feet (6 m²) of usable floor space per room occupant.

434.4.4.3 Resident bedrooms designated for multiple occupancy in facilities newly licensed or renovated six months after October 17, 1999, shall have a maximum occupancy of two persons.

434.4.4.4 All resident bedrooms shall open directly into a corridor, common use area or to the outside. A resident must be able to exit his bedroom without having to pass

through another bedroom unless the two rooms have been licensed as one bedroom.

434.4.4.5 All resident bedrooms shall be for the exclusive use of residents. Live-in staff and their family members shall be provided with sleeping space separate from the sleeping and congregate space required for residents.

434.4.5 Bathrooms.

434.4.5.1 There shall be at least one bathroom with one toilet and sink per six persons, and one bathtub or shower per eight persons. All residents, all live-in staff and family members, and respite care participants must be included when calculating the required number of toilets, sinks, bathtubs and showers. All adult day care participants shall be included when calculating the required number of toilets and sinks.

434.4.5.2 Each bathroom shall have a door in working order to assure privacy. The entry door to bathrooms with a single toilet shall have a lock which is operable from the inside by the resident with no key needed. A nonlocking door shall be permitted if the resident's safety would otherwise be jeopardized.

434.4.5.3 There shall be nonslip safety devices such as bath mats or peel off stickers in the showers and bathtubs of all facilities. Showers and bathtubs with a nonskid surface require a separate nonskid device only if the surface is worn. Grab bars shall be required in showers and bathtubs. Grab bars, whether portable or permanent, must be securely affixed to the floor or adjoining walls. Facilities newly licensed or renovated six months after October 17, 1999 must have grab bars next to the commode.

434.4.5.4 Sole access to a toilet or bathtub or shower shall not be through another resident's bedroom, except in apartments within a facility.

434.4.6 Security. External boundaries of a facility or a distinct part of a facility, including outside areas, may be secured using egress control or perimeter control devices if the following conditions are met.

434.4.6.1 The use of the device complies with all lifesafety requirements.

434.4.6.2 Residents residing within a secured area are able to move freely throughout the area, including the resident's bedroom or apartment, bathrooms and all common areas, and have access to outdoor areas on a regular basis and as requested by each resident.

434.4.6.3 Residents capable of entering and exiting without supervision have keys, codes or other mechanisms to exit the secured area without requiring staff assistance.

434.4.6.4 Staff who provide direct care or who have regular contact with residents residing in secured areas complete Level 1 Alzheimer's training as described in Rule 58A-5.0191.

434.4.6.5 Pursuant to Section 400.441, *Florida Statutes*, facilities with 16 or fewer residents shall not be required to maintain an accessible telephone in each building where residents reside, maintain written staff job descriptions,

have awake night staff or maintain standardized recipes as provided in Rules 58A-5.0182(6)(g), 58A-5.019(2)(e), 58A-5.019(4)(a) and 58A-5.020(2)(b), respectively.

434.5 Extended congregate care.

434.5.1 Physical site requirements. Each extended congregate care facility shall provide a homelike physical environment which promotes resident privacy and independence including:

434.5.1.1 A private room or apartment, or a semiprivate room or apartment shared with roommate of the resident's choice. The entry door to the room or apartment shall have a lock which is operable from the inside by the resident with no key needed. The resident shall be provided with a key to the entry door on request. The resident's service plan may allow for a nonlocking entry door if the resident's safety would otherwise be jeopardized.

434.5.1.2 A bathroom, with a toilet, sink and bathtub or shower, which is shared by a maximum of four residents. A centrally located hydromassage bathtub may substitute for the bathtub or shower in two of the bath rooms. The entry door to the bathroom shall have a lock which is operable from the inside by the resident with no key needed. The resident's service plan may allow for a nonlocking bathroom door if the resident's safety would otherwise be jeopardized.

SECTION 435 CONTROL OF RADIATION HAZARDS

435.1 Scope. Control of radiation hazards shall comply with the following design and construction standards as described herein.

Note: Other administrative and programmatic provisions may apply. See Department of Health (DOH) Rule 64E-5, *Florida Administrative Code*, and Chapter 404, *Florida Statutes*.

435.2 Control of access to high radiation areas.

435.2.1 Definitions.

HIGH RADIATION AREA. An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour at 30 cm from any source of radiation or from any surface that the radiation penetrates. For purposes of this section, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes are not considered high radiation areas.

VERY HIGH RADIATION AREA. An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rad (5 gray) in 1 hour at 1 m from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

435.2.2 The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

435.2.2.1 A control device that upon entry into the area causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 millisievert) in 1 hour at 30 cm from the source of radiation from any surface that the radiation penetrates;

435.2.2.2 A control device that energizes a conspicuous visible or audible signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

435.2.2.3 Entryways that are locked except during periods when access to the areas is required with positive control over each individual entry.

435.3 Caution signs.

435.3.1 Standard radiation symbol. Unless otherwise authorized by the department, the symbol prescribed in this section shall use the colors magenta or purple or black on yellow background. The symbol prescribed is the three-bladed design as follows:

435.3.1.1 Radiation symbol.

435.3.1.1.1 Cross-hatched area is to be magenta or purple or black.

435.3.1.1.2 The background is to be yellow.

435.3.2 Exception to color requirements for standard radiation symbol. In spite of the requirements of Section 435.3.1, licensees or registrants are authorized to label sources, source holders or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

435.3.3 Additional information on signs and labels. In addition to contents of signs and labels prescribed in this part, the licensee or registrant shall provide on or near the required signs and labels additional information to make individuals aware of potential radiation exposures and to minimize the exposures.

435.4 Posting requirements.

435.4.1 Posting of radiation areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

435.4.2 Posting of high radiation areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

435.4.3 Posting of very high radiation areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

435.4.4 Posting of air-borne radioactivity areas. The licensee shall post each air-borne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIR-BORNE RADIOACTIVITY AREA" or "DANGER, AIR-BORNE RADIOACTIVITY AREA."

435.4.5 Posting of areas or rooms in which licensed material is used or stored. The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in State of Florida Office of Radiation Control Radioactive Material Requiring Labeling, May 2000, which is herein incorporated by reference and which is available from the department, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

435.4.6 A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than 8 hours if each of the following conditions is met.

435.4.6.1 The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in this section, and

435.4.6.2 The area or room is subject to the licensee's or registrant's control.

435.4.7 Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs as specified in 64E-5.623 if the patient could be released from confinement as specified in 64E-5.622.

435.4.8 A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 cm from the surface of the sealed source container or housing does not exceed 0.005 rem (0.05 millisievert) per hour.

435.4.9 A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

5.5 General requirements.

435.5.1 Shielding. Each X-ray facility shall have primary and secondary protective barriers as needed to assure that an individual will not receive a radiation dose in excess of the limits specified in Part III of Chapter 64E-5, *Florida Administrative Code*.

435.5.1.1 Structural shielding in walls and other vertical barriers required for personnel protection shall extend without breach from the floor to a height of at least 7 feet (2.1 m).

435.5.1.2 Doors, door frames, windows and window frames shall have the same lead equivalent shielding as that required in the wall or other barrier in which they are installed.

435.5.1.3 Prior to construction, the floor plans and equipment arrangement of all new installations, or modifications of existing installations, utilizing X-ray energies of 200 keV and above for diagnostic or therapeutic purposes shall be submitted to the Department of Health for review and approval. In computation of protective barrier requirements, the maximum anticipated workload, use factors, occupancy factors and the potential for radiation exposure from other sources shall be taken into consideration.

435.5.1.3.1 The plans shall show, as a minimum, the following:

435.5.1.3.1.1 The normal location of the X-ray system's radiation port; the port's travel and traverse limits; general direction of the useful beam; locations of any windows and doors; the location of the operator's booth; and the location of the X-ray control panel.

435.5.1.3.1.2 The structural composition and thickness or lead equivalent of all walls, doors, partitions, floor and ceiling of the room concerned.

435.5.1.3.1.3 The dimensions of the room concerned.

435.5.1.3.1.4 The type of occupancy of all adjacent areas inclusive of space above and below the room concerned. If there is an exterior wall, the distance to the closest area where it is likely that individuals may be present.

435.5.1.3.1.5 The make and model of the X-ray equipment and the maximum technique factors.

435.5.1.3.1.6 The type of examinations or treatments which will be performed with the equipment.

435.5.1.3.2 Information shall be submitted on the anticipated maximum workload of the X-ray system.

435.5.1.3.3 If the services of a qualified person have been utilized to determine the shielding requirements, a copy of the report, including all basic assumptions used, shall be submitted with the plans.

435.5.2 X-ray film processing facilities.

435.5.2.1 Processing facilities. Each installation using a radiographic X-ray system shall provide suitable equipment for handling and processing radiographic film in accordance with the following provisions:

435.5.2.1.1 The area in which undeveloped films are handled for processing shall be devoid of light with the exception of light in the wave lengths having no significant effect on the radiographic film.

435.5.2.1.2 Film pass boxes, if provided, shall be so constructed as to exclude light when film is placed in or removed from the boxes, and shall incorporate adequate shielding to prevent exposure of undeveloped film to stray radiation.

435.5.2.1.3 Darkrooms used by more than one individual shall be provided a positive method to prevent

435.13.1.1 Shielding. The shielding walls shall be designed to meet generally accepted building code requirements for reinforced concrete and shall design the walls, wall penetrations, and entrance ways to meet the radiation shielding requirements of 64E-5.1407. If the irradiator will use more than 2×10^{17} becquerels (5 million curies) of activity, the licensee shall evaluate the effects of heating of the shielding walls by the irradiator sources.

435.13.1.2 Foundations. The foundation shall be designed with consideration given to soil characteristics to ensure it is adequate to support the weight of the facility.

435.13.1.3 Fire protection. The number, design, locations and spacing of the smoke and heat detectors and extinguishing system shall be appropriate to detect fires and that the detectors are protected from mechanical and radiation damage. The fire extinguishing system shall be designed to provide the necessary discharge patterns, densities, and flow characteristics for complete coverage of the radiation room and that the system is protected from mechanical and radiation damage.

435.13.1.4 Wiring. The electrical wiring and electrical equipment in the radiation room shall be selected to minimize failures due to prolonged exposure to radiation.

435.13.2 Pool irradiators shall meet the following design requirements.

435.13.2.1 Pool integrity. The pool shall be designed to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that all penetrations meet the requirements of Section 435.12.2, and that metal components are metallurgically compatible with other components in the pool.

435.13.2.2 Water-handling system. The water purification system shall be designed to meet the requirements of Section 435.12.5. The system must be designed so that water leaking from the system does not drain to unrestricted areas without being monitored. The licensee shall design the water chiller system so that it shall compensate adequately for the amount of heat generated by the sealed sources. The water-handling system must have remote controls capable of safely operating a contaminated system.

435.13.3 Floor penetrations. No floor penetrations, including expansion joints, floor joints and drains, shall allow the uncontrolled release of water from the radiation room that has not been analyzed for its radioactive content.

435.14 Construction control. The requirements of this section must be met before loading sources. Panoramic irradiators shall meet the following construction requirements:

435.14.1 Shielding. The construction of the shielding shall be monitored to verify that it meets design specifications and generally accepted building code requirements for reinforced concrete.

435.14.2 Foundations. The construction of the foundations shall be monitored to verify that they meet design specifications.

435.14.3 Fire protection. The ability of the heat and smoke detectors shall be verified to detect a fire, to activate alarms and to cause the source rack to become fully shielded automatically. The operability of the fire suppression or extinguishing system shall also be verified.

435.14.4 Wiring. The electrical wiring and electrical equipment that were installed shall be verified to meet the design specifications.

435.15 Pool irradiators shall meet the following construction requirements

435.15.1 Pool integrity. The integrity of the pool shall be tested to verify that the pool meets the design specifications. The penetrations and water intakes shall be verified to meet the requirements of Section 435.12.2

**SECTION 436
DAY-CARE OCCUPANCIES**

436.1 General.

436.1.1 Places of religious worship shall not be required to meet the provisions of this section in order to operate a nursery while services are being held in the building.

436.1.2 Where day care occupancies with clients 24 months or less in age or incapable of self-preservation are located one or more stories above the level of exit discharge or where day care occupancies are located two or more stories above the level of exit discharge, smoke barriers shall be provided to divide such stories into a minimum of two smoke compartments. The smoke barriers shall be constructed in accordance with Section 709 but shall not be required to have a fire-resistance rating.

436.2 Closet doors. Every closet door latch shall be such that clients can open the door from inside the closet.

436.3 Bathroom doors. Every bathroom door lock shall be designed to permit opening of the locked door from the outside in an emergency. The opening device shall be readily accessible to the staff.

436.4 Door closure. Any exit door designed to be normally closed shall be kept closed and shall comply with Section 715.3.

436.5 Location and construction types. Day care occupancies shall be limited to the locations and construction types specified in Table 436.5. Day care homes and adult day care shall be permitted to be of any type construction permitted by this code.

436.6 Protection from hazards. Rooms or spaces for the storage, processing or use of materials specified below shall be protected in accordance with the following:

436.6.1 The following rooms or spaces shall be separated from the remainder of the building by fire barriers having a fire resistance rating of not less than 1-hour or shall be protected by an approved automatic extinguishing system.

1. Boiler and furnace rooms.

Exception: Rooms enclosing only air-handling equipment.

2. Rooms or spaces used for the storage of combustible supplies in quantities deemed hazardous by the building official.
3. Rooms or spaces used for the storage of hazardous materials or flammable or combustible liquids in quantities deemed hazardous by recognized standards.
4. Janitor closets.

Exception: Doors to janitor closets shall be permitted to have ventilating louvers where the space is protected by automatic sprinklers.

436.6.2 The following rooms or spaces shall be separated from the remainder of the building by fire barriers having a fire resistance rating of not less than 1 hour and shall be protected by an approved automatic fire-extinguishing system.

1. Laundries.
2. Maintenance shops, including woodworking and painting areas.
3. Rooms or spaces used for processing or use of combustible supplies deemed hazardous by the building official.
4. Rooms or spaces used for processing or use of hazardous materials or flammable or combustible liquids in quantities deemed hazardous by recognized standards.

Exception: Food preparation facilities protected in accordance with NFPA 96 shall not be required to have openings protected between food preparation areas and dining areas. Where domestic cooking equipment is used for food warming or limited cooking, protection or segregation of food preparation facilities shall not be required if approved by the building official.

436.6.3 Where automatic extinguishing is used to meet the requirements of this section, sprinkler piping serving not more than six sprinklers for any isolated hazardous area shall be permitted to be connected directly to a domestic

water supply system having a capacity sufficient to provide 0.15 gpm/per square foot (6.1 L/min/m²) of floor area throughout the entire enclosed area. An indicating shutoff valve shall be installed in an accessible location between the sprinklers and the connection to the domestic water supply.

436.7 Detection and alarm systems. Day care occupancies shall be provided with a fire alarm system in accordance with Section 907 and this section.

Exception: Day care occupancies housed in one room.

436.7.1 Initiation of the required fire alarm system shall be by manual means and by operation of any required smoke detectors and required sprinkler systems.

436.7.1.1 Occupant notification signals shall be audible and visual signals in accordance with NFPA 72 and the *Florida Building Code, Accessibility*. The general evacuation alarm signal shall operate throughout the entire building.

Exceptions:

1. Where total evacuation of occupants is impractical because of building configuration, only the occupants in the affected zones shall be initially notified. Provisions shall be made to selectively notify occupants in other zones to afford orderly evacuation of the entire building.
2. Where occupants are incapable of evacuating themselves because of age, physical or mental disability or physical restraint, the private operating mode as described in NFPA 72 shall be permitted to be used. Only the attendants and other personnel required to evacuate occupants from a zone, area, floor, or building shall be required to be notified. This notification shall include means to readily identify the zone, area, floor or building in need of evacuation.

436.7.1.2 Fire department notification. The fire alarm system shall be arranged to transmit the alarm automatically to the fire department in accordance with NFPA 72 by means of one of the following methods as approved by the building official:

**TABLE 436.5
DAY-CARE LOCATION AND TYPE OF CONSTRUCTION**

LOCATION OF DAY CARE	TYPE OF CONSTRUCTION	
	Sprinklered Building	Construction Type
1 story below LED ¹	Yes	I, II, IIIA, IV, V-A
Level of Exit Discharge	No	Any type permitted by this code
1 story above LED ¹	Yes	Any type
	No	
2 or 3 stories above LED ¹	Yes	I, II, III-A, V-A
> 3 stories above LED ¹ but not high rise	Yes	I
High rise	Yes	I

Notes:

¹LED means Level of Exit Discharge.

1. An auxiliary alarm system, or
2. A central station connection, or
3. A proprietary system, or
4. A remote station connection.

Exception: Where none of the above means of notification is available, a plan for notification of the fire department, acceptable to the building official, shall be provided.

436.7.2 Detection. A smoke detection system shall be installed in accordance with NFPA 72, with placement of detectors in each story in front of doors to the stairways and in the corridors of all floors occupied by the day care occupancy. Detectors also shall be installed in lounges, recreation areas and sleeping rooms in the day care occupancy.

Exception: Day care occupancies housed in one room.

436.8 Corridors. Every interior corridor shall be constructed of walls having not less than a 1-hour fire-resistance rating.

Exceptions:

1. In buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with Sections 901.6 and 903.3.1.1 corridor walls shall not be required to be rated, provided that such walls form smoke partitions in accordance with Section 710.
2. Where the corridor ceiling is an assembly having an 1-hour fire-resistance rating where tested as a wall, the corridor walls shall be permitted to terminate at the corridor ceiling.
3. Lavatories in unsprinklered buildings shall not be required to be separated from corridors; provided that they are separated from all other spaces by walls having not less than a 1-hour fire-resistance rating in accordance with Section 709.
4. Lavatories shall not be required to be separated from corridors, provided the building is protected throughout by an approved, supervised automatic sprinkler system in accordance with Sections 901.6 and 903.3.1.1.

436.9 Flexible plan and open plan buildings. Flexible plan and open plan buildings shall comply with the requirements of this chapter as modified as follows:

436.9.1 Each room occupied by more than 300 persons shall have two or more means of egress entering into separate atmospheres. Where three or more means of egress are required, not more than two of them shall enter into a common atmosphere.

436.9.2 Flexible plan buildings shall be evaluated while all folding walls are extended and in use as well as when they are in the retracted position.

436.10 Day care homes.

436.10.1 This section establishes life safety requirements for day care homes in which more than three but not more than 12 clients receive care, maintenance and supervision by other than their relative(s) or legal guardian(s) for less than 24 hours per day.

Exception: Facilities that supervise clients on a temporary basis with a parent or guardian in close proximity.

436.10.2 Definitions. For definitions, see Chapter 2.

436.10.3 Places of religious worship shall not be required to meet the provisions of this section in order to operate a nursery while services are being held in the building.

436.10.4 Occupancies that include part-day preschools, kindergartens and other schools whose purpose is primarily educational even though the children are of preschool age shall comply with the provisions for Group E occupancy.

436.10.5 Smoke detection systems.

436.10.5.1 Single-station smoke alarms installed in accordance with the household fire warning equipment requirements of Chapter 2 of NFPA 72 shall be installed within day care homes.

Exception: System smoke detectors installed in accordance with NFPA 72 and arranged to function in the same manner shall be permitted.

436.10.5.2 Where the day care home is located within a building of another occupancy, any corridors serving the day care home shall be provided with a complete smoke detection system installed in accordance with NFPA 72.

436.10.5.3 Single-station smoke alarms shall be powered by the building electrical system.

436.10.5.4 Single-station smoke alarms shall be provided in all rooms used for sleeping.

436.10.5.5 Where two or more smoke alarms are required within a living unit, suite of rooms, or similar area, they shall be arranged so that operation of any smoke alarm shall cause all smoke alarms within the living unit, suite of rooms or similar area to sound.

436.10.5.5.1 The alarms shall sound only within an individual living unit, suite of rooms or similar area and shall not actuate the building fire alarm system. Remote annunciation shall be permitted.

**SECTION 437
HOSPICE INPATIENT FACILITIES AND
UNITS AND HOSPICE RESIDENCES**

437.1 Scope. All hospice inpatient facilities and units and residences shall comply with the following design and construction standards. Enforcement and interpretation of these provisions shall be by the state agency authorized by Section 553.73, *Florida Statutes*.

Note: Other administrative and programmatic provisions may apply. See Department of Elder Affairs (DOEA) Rule 58A-2, *Florida Administrative Code*, Agency for Health Care Administration (AHCA) Rule 59C-1, *Florida Administrative Code*, and Chapter 400 Part VI, *Florida Statutes*.

437.2 Physical plant requirements (inpatient facility and unit).

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CHAPTER 400
NURSING HOMES AND RELATED HEALTH CARE FACILITIES

PART I

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PART I
LONG-TERM CARE FACILITIES:
OMBUDSMAN PROGRAM

- 400.0060 Definitions.
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400.0060 Definitions.—When used in this part, unless the context clearly dictates otherwise, the term:

- (1) “Administrative assessment” means a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents.
- (2) “Agency” means the Agency for Health Care Administration.
- (3) “Department” means the Department of Elderly Affairs.
- (4) “Local council” means a local long-term care ombudsman council designated by the ombudsman pursuant to s. 400.0069. Local councils are also known as district long-term care ombudsman councils or district councils.
- (5) “Long-term care facility” means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility.
- (6) “Office” means the Office of State Long-Term Care Ombudsman created by s. 400.0063.
- (7) “Ombudsman” means the individual appointed by the Secretary of Elderly Affairs to head the

Office of State Long-Term Care Ombudsman.

(8) "Resident" means an individual 60 years of age or older who resides in a long-term care facility.

(9) "Secretary" means the Secretary of Elderly Affairs.

(10) "State council" means the State Long-Term Care Ombudsman Council created by s. 400.0067.

History.—ss. 1, 30, ch. 93-177; s. 4, ch. 95-210; s. 1, ch. 2006-121.

400.0061 Legislative findings and intent; long-term care facilities.—

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not fully ensured by rules of the Department of Elderly Affairs or the Agency for Health Care Administration or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident, a representative of a long-term care facility resident, or any other concerned citizen may make a complaint against the facility or its employees, or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of a long-term care facility resident. The Legislature finds that concerned citizens are often more effective advocates for the rights of others than governmental agencies. The Legislature further finds that in order to be eligible to receive an allotment of funds authorized and appropriated under the federal Older Americans Act, the state must establish and operate an Office of State Long-Term Care Ombudsman, to be headed by the State Long-Term Care Ombudsman, and carry out a long-term care ombudsman program.

(2) It is the intent of the Legislature, therefore, to utilize voluntary citizen ombudsman councils under the leadership of the ombudsman, and through them to operate an ombudsman program which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the ombudsman and ombudsman councils and their designated representatives not be required to obtain warrants in order to enter into or conduct investigations or onsite administrative assessments of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by ombudsman councils shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

History.—ss. 2, 30, ch. 93-177; s. 758, ch. 95-148; s. 111, ch. 99-8; s. 2, ch. 2006-121.

400.0063 Establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.—

(1) There is created an Office of State Long-Term Care Ombudsman in the Department of Elderly Affairs.

(2)(a) The Office of State Long-Term Care Ombudsman shall be headed by the State Long-Term Care Ombudsman, who shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the office in accordance with state and federal law.

(b) The ombudsman shall be appointed by and shall serve at the pleasure of the Secretary of Elderly Affairs. The secretary shall appoint a person who has expertise and experience in the fields of long-term care and advocacy to serve as ombudsman.

(3)(a) There is created in the office the position of legal advocate, who shall be selected by and serve at the pleasure of the ombudsman and shall be a member in good standing of The Florida Bar.

(b) The duties of the legal advocate shall include, but not be limited to:

1. Assisting the ombudsman in carrying out the duties of the office with respect to the abuse, neglect, or violation of rights of residents of long-term care facilities.
2. Assisting the state and local councils in carrying out their responsibilities under this part.
3. Pursuing administrative, legal, and other appropriate remedies on behalf of residents.
4. Serving as legal counsel to the state and local councils, or individual members thereof, against whom any suit or other legal action is initiated in connection with the performance of the official duties of the councils or an individual member.

History.—ss. 3, 30, ch. 93-177; s. 41, ch. 95-196; s. 121, ch. 2000-349; s. 41, ch. 2000-367; s. 20, ch. 2002-223; s. 3, ch. 2006-121; s. 20, ch. 2006-197.

400.0065 State Long-Term Care Ombudsman; duties and responsibilities.—

(1) The purpose of the Office of State Long-Term Care Ombudsman shall be to:

(a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.

(b) Provide services that assist in protecting the health, safety, welfare, and rights of residents.

(c) Inform residents, their representatives, and other citizens about obtaining the services of the State Long-Term Care Ombudsman Program and its representatives.

(d) Ensure that residents have regular and timely access to the services provided through the office and that residents and complainants receive timely responses from representatives of the office to their complaints.

(e) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(f) Administer the state and local councils.

(g) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, rules, and regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state, and recommend any changes in such laws, rules, regulations, policies, and actions as the office determines to be appropriate and necessary.

(h) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

(2) The State Long-Term Care Ombudsman shall have the duty and authority to:

(a) Establish and coordinate local councils throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of appropriated federal and state funding, employ such personnel as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and local councils in the performance of their duties. Staff positions established for the purpose of coordinating the activities of each local council and assisting its members may be filled by the ombudsman after approval by the secretary. Notwithstanding any other provision of this part, upon certification by the ombudsman that the staff member hired to fill any such position has completed the initial training required under s. 400.0091, such person shall be considered a representative of the State Long-Term Care Ombudsman Program for purposes of this part.

(d) Contract for services necessary to carry out the activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

(f) Coordinate, to the greatest extent possible, state and local ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

(g) Enter into a cooperative agreement with the Statewide Advocacy Council for the purpose of coordinating and avoiding duplication of advocacy services provided to residents.

(h) Enter into a cooperative agreement with the Medicaid Fraud Division as prescribed under s. 731 (e)(2)(B) of the Older Americans Act.

(i) Prepare an annual report describing the activities carried out by the office, the state council, and the local councils in the year for which the report is prepared. The ombudsman shall submit the report to the secretary at least 30 days before the convening of the regular session of the Legislature. The secretary shall in turn submit the report to the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Children and Family Services, and the Secretary of Health Care Administration. The report shall, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities and the disposition of such complaints.

2. Evaluate the problems experienced by residents.

3. Analyze the successes of the ombudsman program during the preceding year, including an assessment of how successfully the program has carried out its responsibilities under the Older Americans Act.

4. Provide recommendations for policy, regulatory, and statutory changes designed to solve identified problems; resolve residents' complaints; improve residents' lives and quality of care; protect residents' rights, health, safety, and welfare; and remove any barriers to the optimal operation of the State Long-Term Care Ombudsman Program.

5. Contain recommendations from the State Long-Term Care Ombudsman Council regarding program functions and activities and recommendations for policy, regulatory, and statutory changes designed to protect residents' rights, health, safety, and welfare.

6. Contain any relevant recommendations from the local councils regarding program functions and activities.

History.—ss. 4, 30, ch. 93-177; s. 112, ch. 99-8; s. 122, ch. 2000-349; s. 42, ch. 2000-367; s. 21, ch. 2002-223; s. 4, ch. 2006-121.

400.0067 State Long-Term Care Ombudsman Council; duties; membership.—

(1) There is created within the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

(a) Serve as an advisory body to assist the ombudsman in reaching a consensus among local councils on issues affecting residents and impacting the optimal operation of the program.

(b) Serve as an appellate body in receiving from the local councils complaints not resolved at the local level. Any individual member or members of the state council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0074(2).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility, and work with the adult protective services program as required in ss. 415.101-415.113.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of residents.

(e) Elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents.

(f) Assist the ombudsman in preparing the annual report described in s. 400.0065.

(3) The State Long-Term Care Ombudsman Council shall be composed of one active local council member elected by each local council plus three at-large members appointed by the Governor.

(a) Each local council shall elect by majority vote a representative from among the council members to represent the interests of the local council on the state council. A local council chair may not serve as the representative of the local council on the state council.

(b)1. The secretary, after consulting with the ombudsman, shall submit to the Governor a list of persons recommended for appointment to the at-large positions on the state council. The list shall not include the name of any person who is currently serving on a local council.

2. The Governor shall appoint three at-large members chosen from the list.

3. If the Governor does not appoint an at-large member to fill a vacant position within 60 days after the list is submitted, the secretary, after consulting with the ombudsman, shall appoint an at-large member to fill that vacant position.

(c)1. All state council members shall serve 3-year terms.

2. A member of the state council may not serve more than two consecutive terms.

3. A local council may recommend removal of its elected representative from the state council by a majority vote. If the council votes to remove its representative, the local council chair shall immediately notify the ombudsman. The secretary shall advise the Governor of the local council's vote upon receiving notice from the ombudsman.

4. The position of any member missing three state council meetings within a 1-year period without cause may be declared vacant by the ombudsman. The findings of the ombudsman regarding cause shall be final and binding.

5. Any vacancy on the state council shall be filled in the same manner as the original appointment.

(d)1. The state council shall elect a chair to serve for a term of 1 year. A chair may not serve more than two consecutive terms.

2. The chair shall select a vice chair from among the members. The vice chair shall preside over the state council in the absence of the chair.

3. The chair may create additional executive positions as necessary to carry out the duties of the state council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

4. A chair may be immediately removed from office prior to the expiration of his or her term by a vote of two-thirds of all state council members present at any meeting at which a quorum is present. If a chair is removed from office prior to the expiration of his or her term, a replacement chair shall be chosen during the same meeting in the same manner as described in this paragraph, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term and is eligible to serve two subsequent consecutive terms.

(e)1. The state council shall meet upon the call of the chair or upon the call of the ombudsman. The

council shall meet at least quarterly but may meet more frequently as needed.

2. A quorum shall be considered present if more than 50 percent of all active state council members are in attendance at the same meeting.

3. The state council may not vote on or otherwise make any decisions resulting in a recommendation that will directly impact the state council or any local council, outside of a publicly noticed meeting at which a quorum is present.

(f) Members shall receive no compensation but shall, with approval from the ombudsman, be reimbursed for per diem and travel expenses as provided in s. 112.061.

History.—ss. 5, 30, 31, ch. 93-177; s. 759, ch. 95-148; s. 113, ch. 99-8; s. 209, ch. 99-13; s. 15, ch. 2000-263; s. 11, ch. 2000-305; s. 124, ch. 2000-349; s. 44, ch. 2000-367; s. 22, ch. 2002-223; s. 6, ch. 2006-121.

400.0069 Local long-term care ombudsman councils; duties; membership.—

(1)(a) The ombudsman shall designate local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program within local communities. Each local council shall function under the direction of the ombudsman.

(b) The ombudsman shall ensure that there is at least one local council operating in each of the department's planning and service areas. The ombudsman may create additional local councils as necessary to ensure that residents throughout the state have adequate access to State Long-Term Care Ombudsman Program services. The ombudsman, after approval from the secretary, shall designate the jurisdictional boundaries of each local council.

(2) The duties of the local councils are to:

(a) Serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents.

(b) Discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable.

(c) Elicit, receive, investigate, respond to, and resolve complaints made by or on behalf of residents.

(d) Review and, if necessary, comment on all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the rights, health, safety, and welfare of residents.

(e) Review personal property and money accounts of residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint or problem.

(f) Recommend that the ombudsman and the legal advocate seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(g) Carry out other activities that the ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), a member of a local council is authorized to enter any long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. 400.0074(2).

(4) Each local council shall be composed of members whose primary residence is located within the boundaries of the local council's jurisdiction.

(a) The ombudsman shall strive to ensure that each local council include the following persons as members:

1. At least one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may practice in a long-term care facility;

2. At least one registered nurse who has geriatric experience;

3. At least one licensed pharmacist;
4. At least one registered dietitian;
5. At least six nursing home residents or representative consumer advocates for nursing home residents;
6. At least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for alternative long-term care facility residents;
7. At least one attorney; and
8. At least one professional social worker.

(b) In no case shall the medical director of a long-term care facility or an employee of the agency, the department, the Department of Children and Family Services, or the Agency for Persons with Disabilities serve as a member or as an ex officio member of a council.

(5)(a) Individuals wishing to join a local council shall submit an application to the ombudsman. The ombudsman shall review the individual's application and advise the secretary of his or her recommendation for approval or disapproval of the candidate's membership on the local council. If the secretary approves of the individual's membership, the individual shall be appointed as a member of the local council.

(b) The secretary may rescind the ombudsman's approval of a member on a local council at any time. If the secretary rescinds the approval of a member on a local council, the ombudsman shall ensure that the individual is immediately removed from the local council on which he or she serves and the individual may no longer represent the State Long-Term Care Ombudsman Program until the secretary provides his or her approval.

(c) A local council may recommend the removal of one or more of its members by submitting to the ombudsman a resolution adopted by a two-thirds vote of the members of the council stating the name of the member or members recommended for removal and the reasons for the recommendation. If such a recommendation is adopted by a local council, the local council chair or district coordinator shall immediately report the council's recommendation to the ombudsman. The ombudsman shall review the recommendation of the local council and advise the secretary of his or her recommendation regarding removal of the council member or members.

(6)(a) Each local council shall elect a chair for a term of 1 year. There shall be no limitation on the number of terms that an approved member of a local council may serve as chair.

(b) The chair shall select a vice chair from among the members of the council. The vice chair shall preside over the council in the absence of the chair.

(c) The chair may create additional executive positions as necessary to carry out the duties of the local council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

(d) A chair may be immediately removed from office prior to the expiration of his or her term by a vote of two-thirds of the members of the local council. If any chair is removed from office prior to the expiration of his or her term, a replacement chair shall be elected during the same meeting, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term of the person he or she replaced.

(7) Each local council shall meet upon the call of its chair or upon the call of the ombudsman. Each local council shall meet at least once a month but may meet more frequently if necessary.

(8) A member of a local council shall receive no compensation but shall, with approval from the ombudsman, be reimbursed for travel expenses both within and outside the jurisdiction of the local

council in accordance with the provisions of s. 112.061.

(9) The local councils are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the local councils in providing requested information and agency representation at council meetings.

History.—s. 27, ch. 75-233; s. 3, ch. 76-168; s. 136, ch. 77-104; s. 8, ch. 77-401; s. 1, ch. 77-457; s. 4, ch. 78-323; s. 2, ch. 78-393; ss. 6, 12, ch. 80-198; ss. 2, 3, 5, ch. 81-184; ss. 2, 3, ch. 81-318; ss. 1, 4, ch. 82-46; ss. 15, 19, ch. 82-148; ss. 35, 79, 80, 83, 84, ch. 83-181; s. 39, ch. 86-220; s. 2, ch. 87-396; s. 7, ch. 89-294; s. 3, ch. 91-115; s. 27, ch. 92-33; ss. 6, 29, 30, 31, ch. 93-177; s. 49, ch. 93-217; s. 760, ch. 95-148; s. 5, ch. 95-210; s. 114, ch. 99-8; s. 125, ch. 2000-349; s. 45, ch. 2000-367; s. 23, ch. 2002-223; s. 7, ch. 2006-121; s. 21, ch. 2006-197.

Note.—Former s. 400.307.

400.0070 Conflicts of interest.—

(1) The ombudsman shall not:

(a) Have a direct involvement in the licensing or certification of, or an ownership or investment interest in, a long-term care facility or a provider of a long-term care service.

(b) Be employed by, or participate in the management of, a long-term care facility.

(c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long-term care facility.

(2) Each employee of the office, each state council member, and each local council member shall certify that he or she has no conflict of interest.

(3) The department shall define by rule:

(a) Situations that constitute a person having a conflict of interest that could materially affect the objectivity or capacity of a person to serve on an ombudsman council, or as an employee of the office, while carrying out the purposes of the State Long-Term Care Ombudsman Program as specified in this part.

(b) The procedure by which a person listed in subsection (2) shall certify that he or she has no conflict of interest.

History.—s. 8, ch. 2006-121.

400.0071 State Long-Term Care Ombudsman Program complaint procedures.—The department shall adopt rules implementing state and local complaint procedures. The rules must include procedures for:

(1) Receiving complaints against a long-term care facility or an employee of a long-term care facility.

(2) Conducting investigations of a long-term care facility or an employee of a long-term care facility subsequent to receiving a complaint.

(3) Conducting onsite administrative assessments of long-term care facilities.

History.—s. 28, ch. 75-233; s. 3, ch. 76-168; s. 9, ch. 77-401; s. 1, ch. 77-457; ss. 7, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 36, 79, 83, ch. 83-181; ss. 16, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 126, ch. 2000-349; s. 46, ch. 2000-367; s. 24, ch. 2002-223; s. 9, ch. 2006-121.

Note.—Former s. 400.311.

400.0073 State and local ombudsman council investigations.—

(1) A local council shall investigate, within a reasonable time after a complaint is made, any complaint of a resident, a representative of a resident, or any other credible source based on an action or omission by an administrator, an employee, or a representative of a long-term care facility which

might be:

- (a) Contrary to law;
 - (b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;
 - (c) Based on a mistake of fact;
 - (d) Based on improper or irrelevant grounds;
 - (e) Unaccompanied by an adequate statement of reasons;
 - (f) Performed in an inefficient manner; or
 - (g) Otherwise adversely affecting the health, safety, welfare, or rights of a resident.
- (2) In an investigation, both the state and local councils have the authority to hold public hearings.
- (3) Subsequent to an appeal from a local council, the state council may investigate any complaint received by the local council involving a long-term care facility or a resident.
- (4) If the ombudsman or any state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report a facility's refusal to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

History.—s. 29, ch. 75-233; s. 3, ch. 76-168; s. 10, ch. 77-401; s. 1, ch. 77-457; ss. 8, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 16, 19, ch. 82-148; ss. 37, 79, 83, ch. 83-181; ss. 7, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 761, ch. 95-148; s. 127, ch. 2000-349; s. 47, ch. 2000-367; s. 1, ch. 2001-45; s. 10, ch. 2006-121; s. 22, ch. 2006-197; s. 76, ch. 2007-5; s. 53, ch. 2007-230.

Note.—Former s. 400.314.

400.0074 Local ombudsman council onsite administrative assessments.

- (1) In addition to any specific investigation conducted pursuant to a complaint, the local council shall conduct, at least annually, an onsite administrative assessment of each nursing home, assisted living facility, and adult family-care home within its jurisdiction. This administrative assessment shall focus on factors affecting the rights, health, safety, and welfare of the residents. Each local council is encouraged to conduct a similar onsite administrative assessment of each additional long-term care facility within its jurisdiction.
- (2) An onsite administrative assessment conducted by a local council shall be subject to the following conditions:
- (a) To the extent possible and reasonable, the administrative assessments shall not duplicate the efforts of the agency surveys and inspections conducted under part II of this chapter and parts I and II of chapter 429.
 - (b) An administrative assessment shall be conducted at a time and for a duration necessary to produce the information required to carry out the duties of the local council.
 - (c) Advance notice of an administrative assessment may not be provided to a long-term care facility, except that notice of followup assessments on specific problems may be provided.
 - (d) A local council member physically present for the administrative assessment shall identify himself or herself and cite the specific statutory authority for his or her assessment of the facility.
 - (e) An administrative assessment may not unreasonably interfere with the programs and activities of residents.

(f) A local council member may not enter a single-family residential unit within a long-term care facility during an administrative assessment without the permission of the resident or the representative of the resident.

(g) An administrative assessment must be conducted in a manner that will impose no unreasonable burden on a long-term care facility.

(3) Regardless of jurisdiction, the ombudsman may authorize a state or local council member to assist another local council to perform the administrative assessments described in this section.

(4) An onsite administrative assessment may not be accomplished by forcible entry. However, if the ombudsman or a state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report the refusal by a facility to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

History.—s. 11, ch. 2006-121; s. 77, ch. 2007-5; s. 54, ch. 2007-230.

400.0075 Complaint notification and resolution procedures.—

(1)(a) Any complaint or problem verified by an ombudsman council as a result of an investigation or onsite administrative assessment, which complaint or problem is determined to require remedial action by the local council, shall be identified and brought to the attention of the long-term care facility administrator in writing. Upon receipt of such document, the administrator, with the concurrence of the local council chair, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the local council chair may, after obtaining approval from the ombudsman and a majority of the members of the local council:

1. Extend the target date if the chair has reason to believe such action would facilitate the resolution of the complaint.
2. In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.
3. Refer the complaint to the state council.

(b) If the local council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, shall seek immediate legal or administrative remedies to protect the resident.

(c) If the ombudsman has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the ombudsman shall provide the local law enforcement agency with the relevant information to initiate an investigation of the case.

(2)(a) Upon referral from a local council, the state council shall assume the responsibility for the disposition of the complaint. If a long-term care facility fails to take action on a complaint by the state council, the state council may, after obtaining approval from the ombudsman and a majority of the state council members:

1. In accordance with s. 400.0077, publicize the complaint, the recommendations of the local or state council, and the response of the long-term care facility.
2. Recommend to the department and the agency a series of facility reviews pursuant to s. 400.19, s. 429.34, or s. 429.67 to ensure correction and nonrecurrence of conditions that give rise to complaints against a long-term care facility.

3. Recommend to the department and the agency that the long-term care facility no longer receive payments under any state assistance program, including Medicaid.

4. Recommend to the department and the agency that procedures be initiated for revocation of the long-term care facility's license in accordance with chapter 120.

(b) If the state council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, shall seek immediate legal or administrative remedies to protect the resident.

(c) If the ombudsman has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the ombudsman shall provide local law enforcement with the relevant information to initiate an investigation of the case.

History.—s. 30, ch. 75-233; s. 3, ch. 76-168; s. 244, ch. 77-147; s. 11, ch. 77-401; s. 1, ch. 77-457; s. 19, ch. 78-95; ss. 14, 18, ch. 80-186; ss. 9, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 17, 19, ch. 82-148; ss. 38, 79, 83, ch. 83-181; s. 17, ch. 90-347; ss. 8, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 762, ch. 95-148; s. 42, ch. 95-196; s. 115, ch. 99-8; s. 128, ch. 2000-349; s. 48, ch. 2000-367; s. 44, ch. 2004-5; s. 12, ch. 2006-121; s. 78, ch. 2007-5.

Note.—Former s. 400.317.

400.0077 Confidentiality.—

(1) The following are confidential and exempt from the provisions of s. 119.07(1):

(a) Resident records held by the ombudsman or by the state or a local ombudsman council.

(b) The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless:

1. The complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing;

2. The complainant or resident consents orally and the consent is documented contemporaneously in writing by the ombudsman council requesting such consent; or

3. The disclosure is required by court order.

(c) Any other information about a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless an ombudsman council determines that the information does not meet any of the criteria specified in 's. 119.14(4)(b); or unless the information is to collect data for submission to those entities specified in s. 712(c) of the federal Older Americans Act for the purpose of identifying and resolving significant problems.

(2) That portion of an ombudsman council meeting in which an ombudsman council discusses information that is confidential and exempt from the provisions of s. 119.07(1) is closed to the public and exempt from the provisions of s. 286.011.

(3) All other matters before the council shall be open to the public and subject to chapter 119 and s. 286.011.

(4) Members of any state or local ombudsman council shall not be required to testify in any court with respect to matters held to be confidential under s. 429.14 except as may be necessary to enforce the provisions of this act.

(5) Subject to the provisions of this section, the Office of State Long-Term Care Ombudsman shall adopt rules for the disclosure by the ombudsman or local ombudsman councils of files maintained by the program.

(6) This section does not limit the subpoena power of the Attorney General pursuant to s. 409.920 (10)(b).

History.—ss. 31, 32, ch. 75-233; s. 3, ch. 76-168; s. 12, ch. 77-401; s. 1, ch. 77-457; ss. 10, 12, ch. 80-198; ss. 4, 6, ch. 81-

184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 39, 79, 83, ch. 83-181; s. 18, ch. 90-347; ss. 9, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 225, ch. 96-406; s. 3, ch. 2000-163; s. 129, ch. 2000-349; s. 49, ch. 2000-367; s. 18, ch. 2004-344; s. 23, ch. 2006-197; s. 33, ch. 2009-223.

¹Note.—Repealed by s. 1, ch. 95-217.

Note.—Former s. 400.321.

400.0078 Citizen access to State Long-Term Care Ombudsman Program services.—

(1) The office shall establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents.

(2) Every resident or representative of a resident shall receive, upon admission to a long-term care facility, information regarding the purpose of the State Long-Term Care Ombudsman Program, the statewide toll-free telephone number for receiving complaints, and other relevant information regarding how to contact the program. Residents or their representatives must be furnished additional copies of this information upon request.

History.—s. 4, ch. 99-394; s. 13, ch. 2006-121.

400.0079 Immunity.—

(1) Any person making a complaint pursuant to this part who does so in good faith shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed as a direct or indirect result of making the complaint.

(2) The ombudsman or any person authorized by the ombudsman to act on behalf of the office, as well as all members of the state and local councils, shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed during the good faith performance of official duties.

History.—s. 33, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 10, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 130, ch. 2000-349; s. 50, ch. 2000-367; s. 14, ch. 2006-121.

Note.—Former s. 400.324.

400.0081 Access to facilities, residents, and records.—

(1) A long-term care facility shall provide the office, the state council and its members, and the local councils and their members access to:

(a) Any portion of the long-term care facility and any resident as necessary to investigate or resolve a complaint.

(b) Medical and social records of a resident for review as necessary to investigate or resolve a complaint, if:

1. The office has the permission of the resident or the legal representative of the resident; or
2. The resident is unable to consent to the review and has no legal representative.

(c) Medical and social records of the resident as necessary to investigate or resolve a complaint, if:

1. A legal representative or guardian of the resident refuses to give permission;
2. The office has reasonable cause to believe that the representative or guardian is not acting in the best interests of the resident; and
3. The state or local council member obtains the approval of the ombudsman.

(d) The administrative records, policies, and documents to which residents or the general public have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

(2) The department, in consultation with the ombudsman and the state council, may adopt rules to

establish procedures to ensure access to facilities, residents, and records as described in this section.
History.—ss. 11, 30, ch. 93-177; s. 131, ch. 2000-349; s. 51, ch. 2000-367; s. 15, ch. 2006-121.

400.0083 Interference; retaliation; penalties.—

(1) It shall be unlawful for any person, long-term care facility, or other entity to willfully interfere with a representative of the office, the state council, or a local council in the performance of official duties.

(2) It shall be unlawful for any person, long-term care facility, or other entity to knowingly or willfully take action or retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the office, the state council, or a local council.

(3) Any person, long-term care facility, or other entity that violates this section:

(a) Shall be liable for damages and equitable relief as determined by law.

(b) Commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—ss. 12, 30, ch. 93-177; s. 132, ch. 2000-349; s. 52, ch. 2000-367; s. 16, ch. 2006-121.

400.0087 Department oversight; funding.—

(1) The department shall meet the costs associated with the State Long-Term Care Ombudsman Program from funds appropriated to it.

(a) The department shall include the costs associated with support of the State Long-Term Care Ombudsman Program when developing its budget requests for consideration by the Governor and submittal to the Legislature.

(b) The department may divert from the federal ombudsman appropriation an amount equal to the department's administrative cost ratio to cover the costs associated with administering the program. The remaining allotment from the Older Americans Act program shall be expended on direct ombudsman activities.

(2) The department shall monitor the office, the state council, and the local councils to ensure that each is carrying out the duties delegated to it by state and federal law.

(3) The department is responsible for ensuring that the office:

(a) Has the objectivity and independence required to qualify it for funding under the federal Older Americans Act.

(b) Provides information to public and private agencies, legislators, and others.

(c) Provides appropriate training to representatives of the office or of the state or local councils.

(d) Coordinates ombudsman services with the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

(4) The department shall also:

(a) Receive and disburse state and federal funds for purposes that the ombudsman has formulated in accordance with the Older Americans Act.

(b) Whenever necessary, act as liaison between agencies and branches of the federal and state governments and the State Long-Term Care Ombudsman Program.

History.—ss. 13, 30, ch. 93-177; s. 43, ch. 95-196; s. 133, ch. 2000-349; s. 53, ch. 2000-367; s. 25, ch. 2002-223; s. 18, ch. 2006-121.

400.0089 Complaint data reports.—The office shall maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and

to residents for the purpose of identifying and resolving significant problems. The office shall publish quarterly and make readily available information pertaining to the number and types of complaints received by the State Long-Term Care Ombudsman Program and shall include such information in the annual report required under s. 400.0065.

History.—ss. 14, 30, ch. 93-177; s. 44, ch. 95-196; s. 116, ch. 99-8; s. 16, ch. 2000-263; s. 134, ch. 2000-349; s. 54, ch. 2000-367; s. 26, ch. 2002-223; s. 37, ch. 2003-1; s. 19, ch. 2006-121.

400.0091 Training.—The ombudsman shall ensure that appropriate training is provided to all employees of the office and to the members of the state and local councils.

(1) All state and local council members and employees of the office shall be given a minimum of 20 hours of training upon employment with the office or approval as a state or local council member and 10 hours of continuing education annually thereafter.

(2) The ombudsman shall approve the curriculum for the initial and continuing education training, which must, at a minimum, address:

- (a) Resident confidentiality.
- (b) Guardianships and powers of attorney.
- (c) Medication administration.
- (d) Care and medication of residents with dementia and Alzheimer's disease.
- (e) Accounting for residents' funds.
- (f) Discharge rights and responsibilities.
- (g) Cultural sensitivity.
- (h) Any other topic recommended by the secretary.

(3) No employee, officer, or representative of the office or of the state or local councils, other than the ombudsman, may hold himself or herself out as a representative of the State Long-Term Care Ombudsman Program or conduct any authorized program duty described in this part unless the person has received the training required by this section and has been certified by the ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local councils.

History.—ss. 15, 30, ch. 93-177; s. 135, ch. 2000-349; s. 55, ch. 2000-367; s. 32, ch. 2001-62; s. 27, ch. 2002-223; s. 20, ch. 2006-121.

PART II NURSING HOMES

400.011 Purpose.

400.021 Definitions.

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PART V ✓
**INTERMEDIATE, SPECIAL SERVICES, AND
 TRANSITIONAL LIVING FACILITIES**

400.701 Intermediate care facilities; intent.

400.801 Homes for special services.

400.805 Transitional living facilities.

400.701 Intermediate care facilities; intent.—The Legislature recognizes the need to develop a continuum of long-term care in this state to meet the needs of the elderly and disabled persons. The Legislature finds that there is a gap between the level of care provided in assisted living facilities and in nursing homes. The Legislature finds that exploration of intermediate-level care facilities which would fill the gap between assisted living facilities and nursing homes, where both the federal and state government share the cost of providing care, is an appropriate option to explore in the continuum of care.

History.—s. 38, ch. 89-294; s. 25, ch. 95-210.

400.801 Homes for special services.—

(1) As used in this section, the term:

(a) “Agency” means the “Agency for Health Care Administration.”

(b) “Home for special services” means a site licensed by the agency prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

(2)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and entities licensed by or applying for licensure from the agency pursuant to this section. A license issued by the agency is required in order to operate a home for special services in this state.

(b) The agency shall require level 2 background screening for personnel as required in s. 408.809(1) pursuant to chapter 435 and s. 408.809.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not be more than \$2,000 per biennium.

(4) The agency may adopt rules for implementing and enforcing this section and part II of chapter 408.

(5)(a) In addition to the requirements of part II of chapter 408, a violation of any provision of this section, part II of chapter 408, or applicable rules is punishable by payment of an administrative fine not to exceed \$5,000.

(b) A violation of s. 408.812 or rules adopted under that section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continuing violation is a separate offense.

History.—s. 35, ch. 93-217; ss. 59, 71, ch. 98-171; s. 85, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 51, ch. 2004-267; s. 6, ch. 2006-192; s. 90, ch. 2007-230; s. 10, ch. 2010-114.

400.805 Transitional living facilities.—

(1) As used in this section, the term:

(a) "Agency" means the Agency for Health Care Administration.

(b) "Department" means the Department of Health.

(c) "Transitional living facility" means a site where specialized health care services are provided, including, but not limited to, rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. This term does not include a hospital licensed under chapter 395 or any federally operated hospital or facility.

(2)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this section. A license issued by the agency is required for the operation of a transitional living facility in this state.

(b) In accordance with this section, an applicant or a licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The fee shall consist of a \$4,000 license fee and a \$78.50 per bed fee per biennium.

(c) The agency may not issue a license to an applicant until the agency receives notice from the department as provided in paragraph (3)(b).

(d) The agency shall require level 2 background screening for personnel as required in s. 408.809(1) (e) pursuant to chapter 435 and s. 408.809.

(3)(a) The agency shall adopt rules in consultation with the department governing the physical plant of transitional living facilities and the fiscal management of transitional living facilities.

(b) The department shall adopt rules in consultation with the agency governing the services provided to clients of transitional living facilities. The department shall enforce all requirements for providing services to the facility's clients. The department must notify the agency when it determines that an applicant for licensure meets the service requirements adopted by the department.

(c) The agency and the department shall enforce requirements under this section and part II of chapter 408, as such requirements relate to them respectively, and their respective adopted rules.

(4) In accordance with s. 408.811, any designated officer or employee of the agency, of the state, or of the local fire marshal may enter unannounced upon and into the premises of any facility licensed under this section in order to determine the state of compliance with this section, part II of chapter 408, and applicable rules.

(5)(a) In accordance with part II of chapter 408, a violation of any provision of this section, part II of chapter 408, or applicable rules is punishable by payment of an administrative or a civil penalty fine not to exceed \$5,000.

(b) Unlicensed activity pursuant to s. 408.812 is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation is a separate offense.

(6) The agency may adopt rules to administer the requirements of part II of chapter 408.

History.—s. 36, ch. 93-217; s. 1, ch. 98-12; ss. 60, 71, ch. 98-171; s. 16, ch. 99-240; s. 22, ch. 2000-153; s. 86, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 52, ch. 2004-267; s. 91, ch. 2007-230; s. 11, ch. 2010-114.

~~**PART VI
PRESCRIBED PEDIATRIC
EXTENDED CARE CENTERS**~~

400.901 Legislative intent.

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2011 Florida Statute 419

- Community Selection of Community Residential Homes

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419.001 Site selection of community residential homes. –

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

(a) “Community residential home” means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency for Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

(b) “Licensing entity” or “licensing entities” means the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Family Services, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents.

(c) “Local government” means a county as set forth in chapter 7 or a municipality incorporated under the provisions of chapter 165.

(d) “Planned residential community” means a local government-approved, planned unit development that is under unified control, is planned and developed as a whole, has a minimum gross lot area of 8 acres, and has amenities that are designed to serve residents with a developmental disability as defined in s. [393.063](#) but that shall also provide housing options for other individuals. The community shall provide choices with regard to housing arrangements, support providers, and activities. The residents’ freedom of movement within and outside the community may not be restricted. For the purposes of this paragraph, local government approval must be based on criteria that include, but are not limited to, compliance with appropriate land use, zoning, and building codes. A planned residential community may contain two or more community residential homes that are contiguous to one another. A planned residential community may not be located within a 10-mile radius of any other planned residential community.

(e) “Resident” means any of the following: a frail elder as defined in s. [429.65](#); a person who has a handicap as defined in s. [760.22\(7\)\(a\)](#); a person who has a developmental disability as defined in s. [393.063](#); a nondangerous person who has a mental illness as defined in s. [394.455](#); or a child who is found to be dependent as defined in s. [39.01](#) or s. [984.03](#), or a child in need of services as defined in s. [984.03](#) or s. [985.03](#).

(f) “Sponsoring agency” means an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.

(2) Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local

laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents. Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided that, prior to licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents. At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity.

(3)(a) When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily, the agency shall notify the chief executive officer of the local government in writing and include in such notice the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. Such notice shall also contain a statement from the licensing entity indicating the licensing status of the proposed community residential home and specifying how the home meets applicable licensing criteria for the safe care and supervision of the clients in the home. The sponsoring agency shall also provide to the local government the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located. The local government shall review the notification of the sponsoring agency in accordance with the zoning ordinance of the jurisdiction.

(b) Pursuant to such review, the local government may:

1. Determine that the siting of the community residential home is in accordance with local zoning and approve the siting. If the siting is approved, the sponsoring agency may establish the home at the site selected.
2. Fail to respond within 60 days. If the local government fails to respond within such time, the sponsoring agency may establish the home at the site selected.
3. Deny the siting of the home.

(c) The local government shall not deny the siting of a community residential home unless the local government establishes that the siting of the home at the site selected:

1. Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area.
2. Does not meet applicable licensing criteria established and determined by the licensing entity, including requirements that the home be located to assure the safe care and supervision of all clients in the home.
3. Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered. A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that substantially alters the nature and character of the area. A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area.

(4) Community residential homes, including homes of six or fewer residents which would otherwise

meet the definition of a community residential home, which are located within a planned residential community are not subject to the proximity requirements of this section and may be contiguous to each other. A planned residential community must comply with the applicable local government's land development code and other local ordinances. A local government may not impose proximity limitations between homes within a planned residential community if such limitations are based solely on the types of residents anticipated to be living in the community.

(5) All distance requirements in this section shall be measured from the nearest point of the existing home or area of single-family zoning to the nearest point of the proposed home.

(6) If agreed to by both the local government and the sponsoring agency, a conflict may be resolved through informal mediation. The local government shall arrange for the services of an independent mediator or may utilize the dispute resolution process established by a regional planning council pursuant to s. 186.509. Mediation shall be concluded within 45 days of a request therefor. The resolution of any issue through the mediation process shall not alter any person's right to a judicial determination of any issue if that person is entitled to such a determination under statutory or common law.

(7) The licensing entity shall not issue a license to a sponsoring agency for operation of a community residential home if the sponsoring agency does not notify the local government of its intention to establish a program, as required by subsection (3). A license issued without compliance with the provisions of this section shall be considered null and void, and continued operation of the home may be enjoined.

(8) A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.

(9) Nothing in this section shall be deemed to affect the authority of any community residential home lawfully established prior to October 1, 1989, to continue to operate.

(10) Nothing in this section shall permit persons to occupy a community residential home who would constitute a direct threat to the health and safety of other persons or whose residency would result in substantial physical damage to the property of others.

(11) The siting of community residential homes in areas zoned for single family shall be governed by local zoning ordinances. Nothing in this section prohibits a local government from authorizing the development of community residential homes in areas zoned for single family.

(12) Nothing in this section requires any local government to adopt a new ordinance if it has in place an ordinance governing the placement of community residential homes that meet the criteria of this section. State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes.

History.—s. 1, ch. 89-372; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 36, ch. 93-206; s. 6, ch. 95-152; s. 42, ch. 96-169; s. 222, ch. 97-101; s. 46, ch. 98-280; s. 14, ch. 98-338; s. 53, ch. 99-193; s. 23, ch. 99-284; s. 7, ch. 2000-135; s. 93, ch. 2004-267; s. 34, ch. 2006-86; s. 110, ch. 2006-120; s. 1, ch. 2006-177; s. 99, ch. 2007-5; s. 30, ch. 2008-245; s. 3, ch. 2010-193.

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- Part I Assisted Living Facilities

Part II and III deal with Adult Family Care and Adult Day Care and so were not copied out.

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CHAPTER 429 ASSISTED CARE COMMUNITIES

PART I ASSISTED LIVING FACILITIES (ss. 429.01-429.54)

~~PART II ADULT FAMILY-CARE HOMES (ss. 429.60-429.87)~~

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PART I ASSISTED LIVING FACILITIES

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429.01 Short title; purpose.—

(1) This act may be cited as the "Assisted Living Facilities Act."

(2) The purpose of this act is to promote the availability of appropriate services for elderly persons and adults with disabilities in the least restrictive and most homelike environment, to encourage the development of facilities that promote the dignity, individuality, privacy, and decisionmaking ability of such persons, to provide for the health, safety, and welfare of residents of assisted living facilities in the state, to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic, social, mental health, health, and leisure services are made available to residents of such facilities through the efforts of the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Children and Family Services, the Department of Health, assisted living

facilities, and other community agencies. To the maximum extent possible, appropriate community-based programs must be available to state-supported residents to augment the services provided in assisted living facilities. The Legislature recognizes that assisted living facilities are an important part of the continuum of long-term care in the state. In support of the goal of aging in place, the Legislature further recognizes that assisted living facilities should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities. The services available in these facilities, either directly or through contract or agreement, are intended to help residents remain as independent as possible. Regulations governing these facilities must be sufficiently flexible to allow facilities to adopt policies that enable residents to age in place when resources are available to meet their needs and accommodate their preferences.

(3) The principle that a license issued under this part is a public trust and a privilege and is not an entitlement should guide the finder of fact or trier of law at any administrative proceeding or in a court action initiated by the Agency for Health Care Administration to enforce this part.

History.—ss. 1, 2, ch. 75-233; ss. 12, 13, ch. 80-198; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 2, ch. 87-371; s. 2, ch. 91-263; s. 28, ch. 92-33; ss. 1, 38, 39, ch. 93-216; s. 6, ch. 95-210; s. 46, ch. 95-418; s. 122, ch. 99-8; s. 2, ch. 2006-197.

Note.—Former s. 400.401.

429.02 Definitions.—When used in this part, 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 of an assisted living facility.

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

(4) “Aging in place” or “age in place” means the process of providing increased or adjusted services to a person to compensate for the physical or mental decline that may occur with the aging process, in order to maximize 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) “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.

(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) “Community living support plan” means a written document prepared by a mental health resident and the resident’s mental health case manager in consultation with the administrator of an assisted living 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.

(8) “Cooperative agreement” means a written statement of understanding between a mental health care 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 directions for accessing emergency and after-hours care for the mental health resident. A single cooperative agreement may service all mental health residents who are clients of the same mental health care provider.

(9) "Department" means the Department of Elderly Affairs.

(10) "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.

(11) "Extended congregate care" means acts beyond those authorized in subsection (16) that may be performed pursuant to part I of 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.

(12) "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.

(13) "Limited nursing services" means acts that may be performed pursuant to part I of 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.

(14) "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.

(15) "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.

(16) "Personal services" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication 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.

(17) "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.

(18) "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.

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

facility.

(20) "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. 429.24; 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. 429.29.

(21) "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.

(22) "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.

(23) "Supervision" 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.

(24) "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.

(25) "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.

(26) "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.

History.—s. 3, ch. 75-233; ss. 12, 14, ch. 80-198; s. 2, ch. 81-318; ss. 6, 19, ch. 82-148; ss. 41, 79, 83, ch. 83-181; s. 4, ch. 85-145; s. 3, ch. 87-371; s. 10, ch. 89-294; s. 3, ch. 91-263; s. 1, ch. 93-209; ss. 2, 38, 39, ch. 93-216; s. 7, ch. 95-210; ss. 1, 22, 47, ch. 95-418; s. 2, ch. 97-82; s. 1, ch. 98-80; s. 98, ch. 2000-318; ss. 2, 29, ch. 2006-197; s. 138, ch. 2007-230.

Note.—Former s. 400.402.

429.04 Facilities to be licensed; exemptions.—

(1) For the administration of this part, facilities to be licensed by the agency shall include all assisted living facilities as defined in this part.

(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 II.

(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) 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) 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) Any facility certified under chapter 651, or a retirement community, may provide services authorized under this part or part III of chapter 400 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 of chapter 400, and apartments designed for independent living located on the same campus.

(h) Any residential unit for independent living which is located within a facility certified under chapter 651, or any residential unit which is colocated with a nursing home licensed under part II of chapter 400 or colocated with a facility licensed under this part in which services are provided through an outpatient clinic or a nursing home on an outpatient basis.

History.—ss. 4, 5, ch. 75-233; ss. 12, 15, ch. 80-198; s. 2, ch. 81-318; ss. 42, 79, 83, ch. 83-181; s. 4, ch. 87-371; s. 4, ch. 91-263; ss. 3, 38, 39, ch. 93-216; s. 19, ch. 93-268; s. 2, ch. 94-206; s. 1055, ch. 95-148; s. 8, ch. 95-210; s. 2, ch. 98-80; s. 1, ch. 98-148; ss. 2, 30, ch. 2006-197.

Note.—Former s. 400.404.

429.07 License required; fee.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require

licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate an assisted living facility in this state.

(2) Separate licenses shall be required for facilities maintained in separate premises, even though operated under the same management. A separate license shall not be required for separate buildings on the same grounds.

(3) In addition to the requirements of s. 408.806, each license granted by the agency must state the type of care for which the license is granted. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health.

(a) A standard license shall be issued to facilities providing one or more of the personal services identified in s. 429.02. Such facilities may also employ or contract with a person licensed under part I of chapter 464 to administer medications and perform other tasks as specified in s. 429.255.

(b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including services performed by persons licensed under part I of chapter 464 and supportive services, as defined by rule, to persons who would otherwise be disqualified from continued residence in a facility licensed under this part.

1. In order for extended congregate care services to be provided, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided and whether the designation applies to all or part of the facility. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part and part II of chapter 408. The notification of approval or the denial of the request shall be made in accordance with part II of chapter 408. Existing facilities qualifying to provide extended congregate care services must have maintained a standard license and may not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

- a. A class I or class II violation;
- b. Three or more repeat or recurring class III violations of identical or similar resident care standards from which a pattern of noncompliance is found by the agency;
- c. Three or more class III violations that were not corrected in accordance with the corrective action plan approved by the agency;
- d. Violation of resident care standards which results in requiring the facility to employ the services of a consultant pharmacist or consultant dietitian;
- e. Denial, suspension, or revocation of a license for another facility licensed under this part in which the applicant for an extended congregate care license has at least 25 percent ownership interest; or
- f. Imposition of a moratorium pursuant to this part or part II of chapter 408 or initiation of injunctive proceedings.

2. A facility that is licensed to provide extended congregate care services shall maintain a written progress report on each person who receives services which describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse, or appropriate designee, representing the agency shall visit the facility at least quarterly to monitor residents who are receiving extended congregate care services and to determine if the facility is in compliance with this part, part II of chapter 408, and relevant rules. One of the visits may be in conjunction with the regular survey. The monitoring visits may be provided through

contractual arrangements with appropriate community agencies. A registered nurse shall serve as part of the team that inspects the facility. The agency may waive one of the required yearly monitoring visits for a facility that has been licensed for at least 24 months to provide extended congregate care services, if, during the inspection, the registered nurse determines that extended congregate care services are being provided appropriately, and if the facility has no class I or class II violations and no uncorrected class III violations. The agency must first consult with the long-term care ombudsman council for the area in which the facility is located to determine if any complaints have been made and substantiated about the quality of services or care. The agency may not waive one of the required yearly monitoring visits if complaints have been made and substantiated.

3. A facility that is licensed to provide extended congregate care services must:
 - a. Demonstrate the capability to meet unanticipated resident service needs.
 - b. Offer a physical environment that promotes a homelike setting, provides for resident privacy, promotes resident independence, and allows sufficient congregate space as defined by rule.
 - c. Have sufficient staff available, taking into account the physical plant and firesafety features of the building, to assist with the evacuation of residents in an emergency.
 - d. Adopt and follow policies and procedures that maximize resident independence, dignity, choice, and decisionmaking to permit residents to age in place, so that moves due to changes in functional status are minimized or avoided.
 - e. Allow residents or, if applicable, a resident's representative, designee, surrogate, guardian, or attorney in fact to make a variety of personal choices, participate in developing service plans, and share responsibility in decisionmaking.
 - f. Implement the concept of managed risk.
 - g. Provide, directly or through contract, the services of a person licensed under part I of chapter 464.
 - h. In addition to the training mandated in s. 429.52, provide specialized training as defined by rule for facility staff.
4. A facility that is licensed to provide extended congregate care services is exempt from the criteria for continued residency set forth in rules adopted under s. 429.41. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour nursing supervision. A licensed facility that provides extended congregate care services must also provide each resident with a written copy of facility policies governing admission and retention.
5. The primary purpose of extended congregate care services is to allow residents, as they become more impaired, the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency. A facility licensed to provide extended congregate care services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the extended congregate care facility.
6. Before the admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 429.26(4) and the facility must develop a preliminary service plan for the individual.
7. When a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the facility shall make arrangements for relocating the person in accordance with s. 429.28(1)(k).
8. Failure to provide extended congregate care services may result in denial of extended congregate

care license renewal.

(c) A limited nursing services license shall be issued to a facility that provides services beyond those authorized in paragraph (a) and as specified in this paragraph.

1. In order for limited nursing services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with part II of chapter 408. Existing facilities qualifying to provide limited nursing services shall have maintained a standard license and may not have been subject to administrative sanctions that affect the health, safety, and welfare of residents for the previous 2 years or since initial licensure if the facility has been licensed for less than 2 years.

2. Facilities that are licensed to provide limited nursing services shall maintain a written progress report on each person who receives such nursing services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse representing the agency shall visit such facilities at least twice a year to monitor residents who are receiving limited nursing services and to determine if the facility is in compliance with applicable provisions of this part, part II of chapter 408, and related rules. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall also serve as part of the team that inspects such facility.

3. A person who receives limited nursing services under this part must meet the admission criteria established by the agency for assisted living facilities. When a resident no longer meets the admission criteria for a facility licensed under this part, arrangements for relocating the person shall be made in accordance with s. 429.28(1)(k), unless the facility is licensed to provide extended congregate care services.

(4) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule.

(a) The biennial license fee required of a facility is \$300 per license, with an additional fee of \$50 per resident based on the total licensed resident capacity of the facility, except that no additional fee will be assessed for beds designated for recipients of optional state supplementation payments provided for in s. 409.212. The total fee may not exceed \$10,000.

(b) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide extended congregate care services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be \$400 per license, with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility.

(c) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide limited nursing services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be \$250 per license, with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility.

(5) Counties or municipalities applying for licenses under this part are exempt from the payment of license fees.

History.—s. 6, ch. 75-233; s. 8, ch. 79-12; ss. 12, 16, ch. 80-198; s. 2, ch. 81-318; ss. 43, 79, 83, ch. 83-181; s. 2, ch. 86-104; s. 5, ch. 87-371; s. 11, ch. 89-294; s. 5, ch. 91-263; s. 10, ch. 91-282; s. 22, ch. 93-177; ss. 4, 38, 39, ch. 93-216; s. 20,

ch. 95-146; s. 9, ch. 95-210; ss. 2, 18, 23, ch. 95-418; s. 3, ch. 97-82; s. 18, ch. 97-96; s. 3, ch. 98-80; s. 99, ch. 2000-318; s. 33, ch. 2001-45; ss. 2, 31, ch. 2006-197; s. 101, ch. 2007-5; s. 139, ch. 2007-230; s. 141, ch. 2010-102.

Note.—Former s. 400.407.

429.075 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. Such designation may be made at the time of initial licensure or relicensure or upon request in writing by a licensee under this part and part II of chapter 408.

Notification of approval or denial of such request shall be made in accordance with this part, part II of chapter 408, and applicable rules. This training will be provided by or approved by the Department of Children and Family Services.

(2) Facilities licensed to provide services to mental health residents shall provide appropriate supervision and staffing to provide for the health, safety, and welfare of such residents.

(3) A facility that has a limited mental health license must:

(a) Have a copy of each mental health resident's community living support plan and the cooperative agreement with the mental health care services provider. The support plan and the agreement may be combined.

(b) Have documentation that is provided by the Department of Children and Family Services that each mental health resident has been assessed and determined to be able to live in the community in an assisted living facility with a limited mental health license.

(c) Make the community living support plan available for inspection by the resident, the resident's legal guardian, the resident's health care surrogate, and other individuals who have a lawful basis for reviewing this document.

(d) Assist the mental health resident in carrying out the activities identified in the individual's community living support plan.

(4) A facility with a limited mental health license may enter into a cooperative agreement with a private mental health provider. For purposes of the limited mental health license, the private mental health provider may act as the case manager.

History.—s. 3, ch. 95-418; s. 37, ch. 96-169; s. 4, ch. 97-82; s. 66, ch. 97-100; s. 4, ch. 98-80; s. 2, ch. 2006-197; s. 140, ch. 2007-230.

Note.—Former s. 400.4075.

429.08 Unlicensed facilities; referral of person for residency to unlicensed facility; penalties.—

(1)(a) This section applies to the unlicensed operation of an assisted living facility in addition to the requirements of part II of chapter 408.

(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. Each day of continued operation is a separate offense.

(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. Each day of

continued operation is a separate offense.

(d) Any person who owns, operates, or maintains an unlicensed assisted living facility due to a change in this part or a modification in 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. Each day of continued operation is a separate offense.

(e) The agency shall publish a list, by county, of licensed assisted living facilities. This information may be provided electronically or through the agency's Internet site.

(2) It is unlawful to knowingly refer a person for residency to an unlicensed 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 pursuant to part II of chapter 408.

(a) Any health care practitioner, as defined in s. 456.001, who is aware of the operation of an unlicensed facility shall report that facility to the agency. Failure to report a facility that the practitioner knows or has reasonable cause to suspect is unlicensed shall be reported to the practitioner's licensing board.

(b) Any provider as defined in s. 408.803 which knowingly discharges a patient or client to an unlicensed facility is subject to sanction by the agency.

(c) Any employee of the agency or department, or the Department of Children and Family 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 pursuant to part II of chapter 408 is subject to disciplinary action by the agency or department, or the Department of Children and Family Services.

(d) The employer of any person who is under contract with the agency or department, or the Department of Children and Family 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 pursuant to part II of chapter 408 shall be fined and required to prepare a corrective action plan designed to prevent such referrals.

History.—s. 17, ch. 88-350; s. 6, ch. 91-263; s. 29, ch. 92-33; ss. 5, 39, ch. 93-216; s. 10, ch. 95-210; ss. 4, 48, ch. 95-418; s. 5, ch. 98-80; s. 1, ch. 99-179; s. 1, ch. 2000-318; s. 36, ch. 2001-62; s. 2, ch. 2004-344; ss. 2, 33, ch. 2006-197; s. 141, ch. 2007-230; s. 60, ch. 2009-223.

Note.—Former s. 400.408.

429.11 Initial application for license; provisional license.—

(1) Each applicant for licensure must comply with all provisions of part II of chapter 408 and must:

(a) Identify 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.

(b) Provide 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.

(c) Provide the name, address, date of birth, social security number, education, and experience of the administrator, if different from the applicant.

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

(3) If the applicant is a community residential home, the applicant must provide proof that it has met the requirements specified in chapter 419.

(4) The applicant must furnish proof that the facility has received a satisfactory firesafety inspection. The local authority having jurisdiction or the State Fire Marshal must conduct the inspection within 30 days after written request by the applicant.

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

(6) In addition to the license categories available in s. 408.808, 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.

(7) A county or municipality may not issue an occupational license that 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 determinations.

History.—s. 7, ch. 75-233; s. 3, ch. 77-323; ss. 12, 17, ch. 80-198; s. 2, ch. 81-318; ss. 7, 19, ch. 82-148; ss. 44, 47, 79, 83, ch. 83-181; s. 5, ch. 85-145; s. 1, ch. 85-251; s. 6, ch. 87-371; s. 12, ch. 89-294; s. 7, ch. 91-263; ss. 6, 38, 39, ch. 93-216; s. 5, ch. 95-418; s. 6, ch. 98-80; s. 42, ch. 98-171; ss. 2, 34, ch. 2006-197; s. 142, ch. 2007-230.

Note.—Former s. 400.411.

429.12 Sale or transfer of ownership of a facility.—It is the intent of the Legislature to protect the rights of the residents of an assisted living facility when the facility is sold or the ownership thereof is transferred. Therefore, in addition to the requirements of part II of chapter 408, whenever a facility is sold or the ownership thereof is transferred, including leasing:

(1) The transferee shall notify the residents, in writing, of the change of ownership within 7 days after receipt of the new license.

(2) The transferor of a facility the license of which is denied pending an administrative hearing shall, as a part of the written change-of-ownership contract, advise the transferee that a plan of correction must be submitted by the transferee and approved by the agency at least 7 days before the change of ownership and that failure to correct the condition which resulted in the moratorium pursuant to part II of chapter 408 or denial of licensure is grounds for denial of the transferee's license.

History.—ss. 45, 83, ch. 83-181; s. 7, ch. 87-371; s. 8, ch. 91-263; ss. 7, 38, 39, ch. 93-216; s. 772, ch. 95-148; s. 11, ch. 95-210; s. 6, ch. 95-418; ss. 2, 35, ch. 2006-197; s. 143, ch. 2007-230.

Note.—Former s. 400.412.

429.14 Administrative penalties.—

(1) In addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under s. 408.809, or for the actions of any facility employee:

(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 owner lacks the financial ability to provide continuing adequate care to residents.

(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) A citation of any of the following deficiencies as specified in s. 429.19:

1. One or more cited class I deficiencies.
2. Three or more cited class II deficiencies.
3. Five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified.

(f) Failure to comply with the background screening standards of this part, s. 408.809(1), or chapter 435.

(g) Violation of a moratorium.

(h) Failure of the license applicant, the licensee during relicensure, or a licensee that holds a provisional license to meet the minimum license requirements of this part, or related rules, at the time of license application or renewal.

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

(j) Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter or chapter 400.

(k) Any act constituting a ground upon which application for a license may be denied.

(2) Upon notification by the local authority having jurisdiction or by the State Fire Marshal, the agency may deny or revoke the license of an assisted living facility that fails to correct cited fire code violations 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 controlling interest as defined in part II of chapter 408 which 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; or had an injunctive proceeding initiated against it.

(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) An action taken by the agency to suspend, deny, or revoke a facility's license under this part or part II of chapter 408, 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 be heard by the Division of Administrative Hearings of the Department of Management Services within 120 days after receipt of the facility's request for a hearing, unless that time limitation is waived by both parties. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order.

(6) 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 that have had their licenses denied, suspended, or revoked or that 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 a license suspension or revocation, or denial of a license renewal, shall be posted and visible to the public at the facility.

History.—s. 8, ch. 75-233; ss. 12, 18, ch. 80-198; s. 2, ch. 81-318; ss. 46, 79, 83, ch. 83-181; s. 8, ch. 87-371; s. 13, ch. 89-

294; s. 30, ch. 91-71; s. 46, ch. 92-58; ss. 8, 38, 39, ch. 93-216; s. 50, ch. 94-218; s. 39, ch. 95-228; s. 7, ch. 95-418; s. 38, ch. 96-169; s. 126, ch. 96-410; s. 7, ch. 98-80; s. 43, ch. 98-171; s. 73, ch. 2000-349; s. 34, ch. 2001-45; s. 19, ch. 2003-57; s. 13, ch. 2004-267; ss. 2, 36, ch. 2006-197; s. 144, ch. 2007-230; s. 61, ch. 2009-223; s. 28, ch. 2010-114.

¹Note.—The words “facility be heard” are as enacted by s. 43, ch. 98-171.

Note.—Former s. 400.414.

429.17 Expiration of license; renewal; conditional license.—

(1) 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.

(2) A license shall be renewed in accordance with part II of chapter 408 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 proof that the facility has received a satisfactory firesafety inspection, conducted by the local authority having jurisdiction or the State Fire Marshal, within the preceding 12 months.

(3) In addition to the requirements of part II of chapter 408, each facility must 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.

(4) In addition to the license categories available in s. 408.808, a conditional license may be issued to an applicant for license renewal if 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 plan of correction.

(5) When an extended care or limited nursing license is requested during a facility’s biennial license period, the fee shall be prorated in order to permit the additional license to expire at the end of the biennial license period. The fee shall be calculated as of the date the additional license application is received by the agency.

(6) The department may by rule establish renewal procedures, identify forms, and specify documentation necessary to administer this section. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408.

History.—s. 9, ch. 75-233; ss. 12, 19, ch. 80-198; s. 2, ch. 81-318; ss. 9, 19, ch. 82-148; ss. 47, 79, 83, ch. 83-181; s. 2, ch. 88-350; s. 14, ch. 89-294; s. 9, ch. 91-263; s. 23, ch. 93-177; ss. 10, 38, 39, ch. 93-216; s. 9, ch. 95-418; s. 9, ch. 98-80; s. 44, ch. 98-171; s. 212, ch. 99-13; s. 20, ch. 2003-57; ss. 2, 38, ch. 2006-197; s. 146, ch. 2007-230.

Note.—Former s. 400.417.

429.174 Background screening.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

History.—ss. 15, 25, ch. 89-294; ss. 11, 38, 39, ch. 93-216; s. 10, ch. 98-80; ss. 45, 71, ch. 98-171; s. 142, ch. 98-403; s. 213, ch. 99-13; s. 74, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 418, ch. 2003-261; s. 14, ch. 2004-267; ss. 2, 39, ch. 2006-197; s. 147, ch. 2007-230; s. 29, ch. 2010-114.

Note.—Former s. 400.4174.

429.176 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 days and provide documentation within 90 days that the new administrator has completed the applicable core educational requirements under s. 429.52.

History.—ss. 44, 83, ch. 83-181; s. 10, ch. 91-263; ss. 12, 38, 39, ch. 93-216; ss. 10, 24, ch. 95-418; s. 11, ch. 98-80; s. 46,

ch. 98-171; ss. 2, 40, ch. 2006-197; s. 148, ch. 2007-230.

Note.—Former s. 400.4176.

429.177 Patients with Alzheimer’s disease or other related disorders; certain disclosures.—A facility 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 facility 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 facility and must maintain a copy of all such advertisements and documents in its records. The agency shall examine all such advertisements and documents in the facility’s records as part of the license renewal procedure.

History.—s. 2, ch. 93-105; s. 2, ch. 2006-197.

Note.—Former s. 400.4177.

429.178 Special care for persons with Alzheimer’s disease or other related disorders.—

(1) A facility which advertises that it provides special care for persons with Alzheimer’s disease or other related disorders must meet the following standards of operation:

(a)1. If the facility has 17 or more residents, have an awake staff member on duty at all hours of the day and night; or

2. If the facility has fewer than 17 residents, have an awake staff member on duty at all hours of the day and night or have mechanisms in place to monitor and ensure the safety of the facility’s residents.

(b) Offer activities specifically designed for persons who are cognitively impaired.

(c) Have a physical environment that provides for the safety and welfare of the facility’s residents.

(d) Employ staff who have completed the training and continuing education required in subsection (2).

(2)(a) An individual who is employed by a facility that provides special care for residents with Alzheimer’s disease or other related disorders, and who has regular contact with such residents, must complete up to 4 hours of initial dementia-specific training developed or approved by the department. The training shall be completed within 3 months after beginning employment and shall satisfy the core training requirements of s. 429.52(2)(g).

(b) A direct caregiver who is employed by a facility that provides special care for residents with Alzheimer’s disease or other related disorders, and who provides direct care to such residents, must complete the required initial training and 4 additional hours of training developed or approved by the department. The training shall be completed within 9 months after beginning employment and shall satisfy the core training requirements of s. 429.52(2)(g).

(c) An individual who is employed by a facility that provides special care for residents with Alzheimer’s disease or other related disorders, but who only has incidental contact with such residents, must be given, at a minimum, general information on interacting with individuals with Alzheimer’s disease or other related disorders, within 3 months after beginning employment.

(3) In addition to the training required under subsection (2), a direct caregiver must participate in a minimum of 4 contact hours of continuing education each calendar year. The continuing education must include one or more topics included in the dementia-specific training developed or approved by the department, in which the caregiver has not received previous training.

(4) Upon completing any training listed in subsection (2), the employee or direct caregiver shall be

issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different facility. The employee or direct caregiver must comply with other applicable continuing education requirements.

(5) The department, or its designee, shall approve the initial and continuing education courses and providers.

(6) The department shall keep a current list of providers who are approved to provide initial and continuing education for staff of facilities that provide special care for persons with Alzheimer's disease or other related disorders.

(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 required 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.

(8) The department shall adopt rules to establish standards for trainers and training and to implement this section.

History.—s. 15, ch. 97-82; ss. 2, 41, ch. 2006-197.

Note.—Former s. 400.4178.

429.18 Disposition of fees and administrative fines.—Income from fees and fines collected under this part shall be directed to and used by the agency for the following purposes:

(1) 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. 429.22, if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.

(2) 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. 429.26 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.

(3) Any trust funds accrued each year under this part and not used for the purposes specified in subsections (1) and (2) shall be used to offset the costs of the licensure program, verifying information submitted, defraying the costs of processing the names of applicants, and conducting inspections and monitoring visits pursuant to this part and part II of chapter 408.

History.—ss. 12, 20, ch. 80-198; s. 2, ch. 81-318; ss. 8, 19, ch. 82-148; ss. 48, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 16, ch. 89-294; s. 11, ch. 91-263; s. 11, ch. 91-282; ss. 13, 38, 39, ch. 93-216; s. 19, ch. 95-418; s. 12, ch. 98-80; ss. 2, 42, ch. 2006-197; s. 149, ch. 2007-230.

Note.—Former s. 400.418.

429.19 Violations; imposition of administrative fines; grounds.—

(1) In addition to the requirements of part II of chapter 408, the agency shall impose an administrative fine in the manner provided in chapter 120 for the violation of any provision of this part, part II of chapter 408, and applicable rules by an assisted living facility, for the actions of any person

subject to level 2 background screening under s. 408.809, for the actions of any facility employee, or for an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(2) 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 on the written notice of the violation as follows:

(a) Class "I" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class I violation in an amount not less than \$5,000 and not exceeding \$10,000 for each violation.

(b) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class II violation in an amount not less than \$1,000 and not exceeding \$5,000 for each violation.

(c) Class "III" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class III violation in an amount not less than \$500 and not exceeding \$1,000 for each violation.

(d) Class "IV" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class IV violation in an amount not less than \$100 and not exceeding \$200 for each violation.

(3) For purposes of this section, 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) Any facility whose owner fails to apply for a change-of-ownership license in accordance with part II of chapter 408 and operates the facility under the new ownership is subject to a fine of \$5,000.

(7) 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. 429.28(3)(c) to verify the correction of the violations.

(8) During an inspection, the agency shall make a reasonable attempt to discuss each violation with the owner or administrator of the facility, prior to written notification.

(9) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined 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, the Department of Children and Family Services, the Agency for Persons with Disabilities, the area agencies on aging, the Florida Statewide Advocacy Council, and the state and local 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. This information may be provided electronically or through the agency's Internet site.

History.—ss. 12, 21, ch. 80-198; s. 254, ch. 81-259; s. 2, ch. 81-318; ss. 49, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 17, ch. 89-294; s. 12, ch. 91-263; ss. 14, 38, 39, ch. 93-216; s. 13, ch. 98-80; s. 2, ch. 99-179; s. 19, ch. 2000-263; s. 142, ch. 2000-349; s. 62, ch. 2000-367; s. 35, ch. 2001-45; s. 21, ch. 2003-57; ss. 2, 43, ch. 2006-197; s. 41, ch. 2006-227; s. 150, ch. 2007-230; s. 62, ch. 2009-223.

Note.—Former s. 400.419.

429.195 Rebates prohibited; penalties.—

(1) It is unlawful for any assisted living facility licensed under this part to contract or promise to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for residents referred to an assisted living facility licensed under this part. A facility may employ or contract with persons to market the facility, provided the employee or contract provider clearly indicates that he or she represents the facility. A person or agency independent of the facility may provide placement or referral services for a fee to individuals seeking assistance in finding a suitable facility; however, any fee paid for placement or referral services must be paid by the individual looking for a facility, not by the facility.

(2) A violation of this section shall be considered patient brokering and is punishable as provided in s. 817.505.

History.—ss. 18, 25, ch. 89-294; s. 13, ch. 91-263; ss. 15, 38, 39, ch. 93-216; s. 773, ch. 95-148; s. 12, ch. 95-210; s. 14, ch. 98-80; s. 2, ch. 2006-197.

Note.—Former s. 400.4195.

429.20 Certain solicitation prohibited; third-party supplementation.—

(1) A person may not, in connection with the solicitation of contributions by or on behalf of an assisted living facility or facilities, misrepresent or mislead any person, by any manner, means, practice, or device whatsoever, to believe that the receipts of such solicitation will be used for charitable purposes, if that is not the fact.

(2) Solicitation of contributions of any kind in a threatening, coercive, or unduly forceful manner by or on behalf of an assisted living facility or facilities by any agent, employee, owner, or representative of any assisted living facility or facilities is grounds for denial, suspension, or revocation of the license of the assisted living facility or facilities by or on behalf of which such contributions were solicited.

(3) The admission or maintenance of assisted living facility residents whose care is supported, in whole or in part, by state funds may not be conditioned upon the receipt of any manner of contribution or donation from any person. The solicitation or receipt of contributions in violation of this subsection is grounds for denial, suspension, or revocation of license, as provided in s. 429.14, for any assisted living facility by or on behalf of which such contributions were solicited.

(4) An assisted living facility may accept additional supplementation from third parties on behalf of residents receiving optional state supplementation in accordance with s. 409.212.

History.—ss. 50, 83, ch. 83-181; ss. 16, 38, 39, ch. 93-216; s. 13, ch. 95-210; ss. 2, 44, ch. 2006-197.

Note.—Former s. 400.42.

429.22 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. 429.07 and 429.08.
- (b) The facility is closing or has informed the agency that it intends to close and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.
- (c) The agency determines there exist in the facility conditions which present an imminent danger to the health, safety, or welfare of the residents of the facility or a substantial probability that death or serious physical harm would result therefrom.

(d) The facility cannot meet its financial obligation for providing food, shelter, care, and utilities.

(2) Petitions for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, shall have priority. A hearing shall be conducted within 5 days of the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The agency shall notify, by certified mail, the owner or administrator of the facility named in the petition and the facility resident or, if applicable, the resident's representative or designee, or the resident's surrogate, guardian, or attorney in fact, of its filing, the substance of the violation, and the date and place set for the hearing. The court shall grant the petition only upon finding that the health, safety, or welfare of facility residents would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver shall not be appointed ex parte unless the court determines that one or more of the conditions in subsection (1) exist; that the facility owner or administrator cannot be found; that all reasonable means of locating the owner or administrator and notifying him or her of the petition and hearing have been exhausted; or that the owner or administrator after notification of the hearing chooses not to attend. After such findings, the court may appoint any qualified person as a receiver, except it may not appoint any owner or affiliate of the facility which is in receivership. The receiver may be selected from a list of persons qualified to act as receivers developed by the agency and presented to the court with each petition for receivership. Under no circumstances may the agency or designated agency employee be appointed as a receiver for more than 60 days; however, the receiver may petition the court, one time only, for a 30-day extension. The court shall grant the extension upon a showing of good cause.

(3) The receiver must make provisions for the continued health, safety, and welfare of all residents of the facility and:

(a) Shall exercise those powers and perform those duties set out by the court.

(b) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.

(c) Shall take such action as is reasonably necessary to protect or conserve the assets or property of the facility for which the receiver is appointed, or the proceeds from any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(d) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of

payment charged by the owners at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court.

(e) May correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility, if the total cost of correction does not exceed \$10,000. The court may order expenditures for this purpose in excess of \$10,000 on application from the receiver after notice to the owner and a hearing.

(f) May let contracts and hire agents and employees to carry out the powers and duties of the receiver.

(g) Shall honor all leases, mortgages, and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the receivership, or which, in the case of a purchase agreement, become due during the period of the receivership.

(h) Shall have full power to direct and manage and to discharge employees of the facility, subject to any contract rights they may have. The receiver shall pay employees at the rate of compensation, including benefits, approved by the court. A receivership does not relieve the owner of any obligation to employees made prior to the appointment of a receiver and not carried out by the receiver.

(i) Shall be entitled to and take possession of all property or assets of residents which are in the possession of a facility or its owner. The receiver shall preserve all property, assets, and records of residents of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and records to the new placement of any transferred resident. An inventory list certified by the owner and receiver shall be made immediately at the time the receiver takes possession of the facility.

(4)(a) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the owner. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit accounts received in a separate account and shall use this account for all disbursements.

(b) The receiver may bring an action to enforce the liability created by paragraph (a).

(c) A payment to the receiver of any sum owing to the facility or its owner shall discharge any obligation to the facility to the extent of the payment.

(5)(a) A receiver may petition the court that he or she not be required to honor any lease, mortgage, secured transaction, or other wholly or partially executory contract entered into by the owner of the facility if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable, when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.

(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage, or security interest which the receiver has obtained a court order to avoid under paragraph (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price, or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days.

The receiver shall send notice of the application to any known persons who own the property involved at least 10 days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease, security interest, or mortgage involved by any person who received such notice, but the payment does not relieve the owner of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease, security interest, or mortgage involved.

(6) The court shall set the compensation of the receiver, which will be considered a necessary expense of a receivership.

(7) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty.

(8) The court may require a receiver to post a bond.

(9) The court may direct the agency to allocate funds from the Health Care Trust Fund to the receiver, subject to the provisions of s. 429.18.

(10) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions which gave rise to the receivership no longer exist or the agency grants the facility a new license; or

(b) All of the residents in the facility have been transferred or discharged.

(11) Within 30 days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

(12) Nothing in this section shall be deemed to relieve any owner, administrator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, administrator, or employee prior to the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, administrator, or employee for payment of taxes or other operating and maintenance expenses of the facility or of the owner, administrator, employee, or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to approval of the court which ordered the receivership.

History.—ss. 12, 22, ch. 80-198; s. 255, ch. 81-259; s. 2, ch. 81-318; ss. 51, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 14, ch. 91-263; ss. 18, 38, 39, ch. 93-216; s. 774, ch. 95-148; s. 15, ch. 98-80; ss. 2, 45, ch. 2006-197; s. 152, ch. 2007-230.

Note.—Former s. 400.422.

429.23 Internal risk management and quality assurance program; adverse incidents and reporting requirements.—

(1) Every facility licensed under this part may, as part of its administrative functions, voluntarily establish a risk management and quality assurance program, the purpose of which is to assess resident care practices, facility incident reports, deficiencies cited by the agency, adverse incident reports, and resident grievances and develop plans of action to correct and respond quickly to identify quality differences.

(2) Every facility licensed under this part is required to maintain adverse incident reports. For purposes of this section, the term, "adverse incident" means:

(a) An event over which facility personnel could exercise control rather than as a result of the resident's condition and results in:

1. Death;

2. Brain or spinal damage;
 3. Permanent disfigurement;
 4. Fracture or dislocation of bones or joints;
 5. Any condition that required medical attention to which the resident has not given his or her consent, including failure to honor advanced directives;
 6. Any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident's condition before the incident; or
 7. An event that is reported to law enforcement or its personnel for investigation; or
- (b) Resident elopement, if the elopement places the resident at risk of harm or injury.
- (3) Licensed facilities shall provide within 1 business day after the occurrence of an adverse incident, by electronic mail, facsimile, or United States mail, a preliminary report to the agency on all adverse incidents specified under this section. The report must include information regarding the identity of the affected resident, the type of adverse incident, and the status of the facility's investigation of the incident.
- (4) Licensed facilities shall provide within 15 days, by electronic mail, facsimile, or United States mail, a full report to the agency on all adverse incidents specified in this section. The report must include the results of the facility's investigation into the adverse incident.
- (5) Each facility shall report monthly to the agency any liability claim filed against it. The report must include the name of the resident, the dates of the incident leading to the claim, if applicable, and the type of injury or violation of rights alleged to have occurred. This report is not discoverable in any civil or administrative action, except in such actions brought by the agency to enforce the provisions of this part.
- (6) Abuse, neglect, or exploitation must be reported to the Department of Children and Family Services as required under chapter 415.
- (7) The information reported to the agency pursuant to subsection (3) which relates to persons licensed under chapter 458, chapter 459, chapter 461, chapter 464, or chapter 465 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 apply. The agency may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The agency shall review each incident and determine whether it potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 apply.
- (8) If the agency, through its receipt of the adverse incident reports prescribed in this part or through any investigation, has reasonable belief that conduct by a staff member or employee of a licensed facility is grounds for disciplinary action by the appropriate board, the agency shall report this fact to such regulatory board.
- (9) The adverse incident reports and preliminary adverse incident reports required under this section are confidential as provided by law and are not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or appropriate regulatory board.
- (10) The Department of Elderly Affairs may adopt rules necessary to administer this section.

History.—s. 36, ch. 2001-45; s. 2, ch. 2006-197; s. 63, ch. 2009-223.

Note.—Former s. 400.423.

429.24 Contracts.—

- (1) The presence of each resident in a facility shall be covered by a contract, executed at the time

of admission or prior thereto, between the licensee and the resident or his or her designee or legal representative. Each party to the contract shall be provided with a duplicate original thereof, and the licensee shall keep on file in the facility all such contracts. The licensee may not destroy or otherwise dispose of any such contract until 5 years after its expiration.

(2) Each contract must contain express provisions specifically setting forth the services and accommodations to be provided by the facility; the rates or charges; provision for at least 30 days' written notice of a rate increase; the rights, duties, and obligations of the residents, other than those specified in s. 429.28; and other matters that the parties deem appropriate. Whenever money is deposited or advanced by a resident in a contract as security for performance of the contract agreement or as advance rent for other than the next immediate rental period:

(a) Such funds shall be deposited in a banking institution in this state that is located, if possible, in the same community in which the facility is located; shall be kept separate from the funds and property of the facility; may not be represented as part of the assets of the facility on financial statements; and shall be used, or otherwise expended, only for the account of the resident.

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

(3)(a) The contract shall include a refund policy to be implemented at the time of a resident's transfer, discharge, or death. The refund policy shall provide that the resident or responsible party is entitled to a prorated refund based on the daily rate for any unused portion of payment beyond the termination date after all charges, including the cost of damages to the residential unit resulting from circumstances other than normal use, have been paid to the licensee. For the purpose of this paragraph, the termination date shall be the date the unit is vacated by the resident and cleared of all personal belongings. If the amount of belongings does not preclude renting the unit, the facility may clear the unit and charge the resident or his or her estate for moving and storing the items at a rate equal to the actual cost to the facility, not to exceed 20 percent of the regular rate for the unit, provided that 14 days' advance written notification is given. If the resident's possessions are not claimed within 45 days after notification, the facility may dispose of them. The contract shall also specify any other conditions under which claims will be made against the refund due the resident. Except in the case of death or a discharge due to medical reasons, the refunds shall be computed in accordance with the notice of relocation requirements specified in the contract. However, a resident may not be required to provide the licensee with more than 30 days' notice of termination. If after a contract is terminated, the facility intends to make a claim against a refund due the resident, the facility shall notify the resident or responsible party in writing of the claim and shall provide said party with a reasonable time period of no less than 14 calendar days to respond. The facility shall provide a refund to the resident or responsible party within 45 days after the transfer, discharge, or death of the resident. The agency shall impose a fine upon a facility that fails to comply with the refund provisions of the paragraph, which fine shall be equal to three times the amount due to the resident. One-half of the fine shall be remitted to the resident or his or her estate, and the other half to the Health Care Trust Fund to be used for the purpose specified in s. 429.18.

(b) If a licensee agrees to reserve a bed for a resident who is admitted to a medical facility, including, but not limited to, a nursing home, health care facility, or psychiatric facility, the resident or his or her responsible party shall notify the licensee of any change in status that would prevent the

resident from returning to the facility. Until such notice is received, the agreed-upon daily rate may be charged by the licensee.

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

(4) The contract shall state whether or not the facility is affiliated with any religious organization and, if so, which organization and its general responsibility to the facility.

(5) Neither the contract nor any provision thereof relieves any licensee of any requirement or obligation imposed upon it by this part or rules adopted under this part.

(6) In lieu of the provisions of this section, facilities certified under chapter 651 shall comply with the requirements of s. 651.055.

(7) Notwithstanding the provisions of this section, facilities which consist of 60 or more apartments may require refund policies and termination notices in accordance with the provisions of part II of chapter 83, provided that the lease is terminated automatically without financial penalty in the event of a resident's death or relocation due to psychiatric hospitalization or to medical reasons which necessitate services or care beyond which the facility is licensed to provide. The date of termination in such instances shall be the date the unit is fully vacated. A lease may be substituted for the contract if it meets the disclosure requirements of this section. For the purpose of this section, the term "apartment" means a room or set of rooms with a kitchen or kitchenette and lavatory located within one or more buildings containing other similar or like residential units.

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

History.—s. 11, ch. 75-233; ss. 12, 23, ch. 80-198; s. 2, ch. 81-318; ss. 52, 79, 83, ch. 83-181; s. 10, ch. 87-371; s. 1, ch. 88-364; s. 15, ch. 91-263; ss. 19, 38, 39, ch. 93-216; s. 775, ch. 95-148; s. 2, ch. 98-148; ss. 2, 46, ch. 2006-197.

Note.—Former s. 400.424.

429.255 Use of personnel; emergency care.—

(1)(a) Persons under contract to the facility, facility staff, or volunteers, who are licensed according to part I of chapter 464, or those persons exempt under s. 464.022(1), and others as defined by rule, may administer medications to residents, take residents' vital signs, manage individual weekly pill organizers for residents who self-administer medication, give prepackaged enemas ordered by a physician, observe residents, document observations on the appropriate resident's record, report observations to the resident's physician, and contract or allow residents or a resident's representative, designee, surrogate, guardian, or attorney in fact to contract with a third party, provided residents meet the criteria for appropriate placement as defined in s. 429.26. Nursing assistants certified pursuant to part II of chapter 464 may take residents' vital signs as directed by a licensed nurse or physician.

(b) All staff in facilities licensed under this part shall exercise their professional responsibility to observe residents, to document observations on the appropriate resident's record, and to report the observations to the resident's physician. However, the owner or administrator of the facility shall be responsible for determining that the resident receiving services is appropriate for residence in the facility.

(c) In an emergency situation, licensed personnel may carry out their professional duties pursuant to part I of chapter 464 until emergency medical personnel assume responsibility for care.

(2) In facilities licensed to provide extended congregate care, persons under contract to the facility, facility staff, or volunteers, who are licensed according to part I of chapter 464, or those persons exempt under s. 464.022(1), or those persons certified as nursing assistants pursuant to part II of

chapter 464, may also perform all duties within the scope of their license or certification, as approved by the facility administrator and pursuant to this part.

(3)(a) An assisted living facility licensed under this part with 17 or more beds shall have on the premises at all times a functioning automated external defibrillator as defined in s. 768.1325(2)(b).

(b) The facility is encouraged to register the location of each automated external defibrillator with a local emergency medical services medical director.

(c) The provisions of ss. 768.13 and 768.1325 apply to automated external defibrillators within the facility.

(4) Facility staff may withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with an order not to resuscitate executed pursuant to s. 401.45. The department shall adopt rules providing for the implementation of such orders. Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation or use of an automated external defibrillator pursuant to such an order and rules adopted by the department. The absence of an order to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation or use of an automated external defibrillator as otherwise permitted by law.

(5) The Department of Elderly Affairs may adopt rules to implement the provisions of this section relating to use of an automated external defibrillator.

History.—ss. 16, 38, ch. 91-263; ss. 20, 38, 39, ch. 93-216; s. 4, ch. 99-331; s. 3, ch. 2000-295; s. 100, ch. 2000-318; ss. 2, 47, ch. 2006-197; s. 1, ch. 2010-200.

Note.—Former s. 400.4255.

429.256 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. 429.52 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 tablet 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.

History.—s. 16, ch. 98-80; s. 214, ch. 99-13; ss. 2, 48, ch. 2006-197.

Note.—Former s. 400.4256.

429.26 Appropriateness of placements; examinations of residents.—

(1) The owner or administrator of a facility is responsible for determining the appropriateness of admission of an individual to the facility and for determining the continued appropriateness of residence of an individual in the facility. A determination shall be based upon an assessment of the strengths, needs, and preferences of the resident, the care and services offered or arranged for by the facility in accordance with facility policy, and any limitations in law or rule related to admission criteria or continued residency for the type of license held by the facility under this part. A resident may not be moved from one facility to another without consultation with and agreement from the resident or, if applicable, the resident's representative or designee or the resident's family, guardian, surrogate, or attorney in fact. In the case of a resident who has been placed by the department or the Department of Children and Family Services, the administrator must notify the appropriate contact person in the applicable department.

(2) A physician, physician assistant, or nurse practitioner who is employed by an assisted living facility to provide an initial examination for admission purposes may not have financial interest in the facility.

(3) Persons licensed under part I of chapter 464 who are employed by or under contract with a facility shall, on a routine basis or at least monthly, perform a nursing assessment of the residents for whom they are providing nursing services ordered by a physician, except administration of medication, and shall document such assessment, including any substantial changes in a resident's status which may necessitate relocation to a nursing home, hospital, or specialized health care facility. Such records shall be maintained in the facility for inspection by the agency and shall be forwarded to the resident's case manager, if applicable.

(4) If possible, each resident shall have been examined by a licensed physician, a licensed physician assistant, or a licensed nurse practitioner within 60 days before admission to the facility. The signed and completed medical examination report shall be submitted to the owner or administrator of the facility who shall use the information contained therein to assist in the determination of the appropriateness of the resident's admission and continued stay in the facility. The medical examination report shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection or upon request. An assessment that has been completed through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program fulfills the requirements for a medical examination under this subsection and s. 429.07(3)(b)6.

(5) Except as provided in s. 429.07, if a medical examination has not been completed within 60 days before the admission of the resident to the facility, a licensed physician, licensed physician assistant, or licensed nurse practitioner shall examine the resident and complete a medical examination form provided by the agency within 30 days following the admission to the facility to enable the facility owner or administrator to determine the appropriateness of the admission. The medical examination form shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection by the agency or upon request.

(6) Any resident accepted in a facility and placed by the department or the Department of Children and Family Services shall have been examined by medical personnel within 30 days before placement in the facility. The examination shall include an assessment of the appropriateness of placement in a facility. The findings of this examination shall be recorded on the examination form provided by the agency. The completed form shall accompany the resident and shall be submitted to the facility owner or administrator. Additionally, in the case of a mental health resident, the Department of Children and Family Services must provide documentation that the individual has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be in the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident providing it was completed within 90 days prior to admission to the facility. The applicable department shall provide to the facility administrator any information about the resident that would help the administrator meet his or her responsibilities under subsection (1). Further, department personnel shall explain to the facility operator any special needs of the resident and advise the operator whom to call should problems arise. The applicable department shall advise and assist the facility administrator where the special needs of residents who are recipients of optional state supplementation require such

assistance.

(7) The facility must notify a licensed physician when a resident exhibits signs of dementia or cognitive impairment or has a change of condition in order to rule out the presence of an underlying physiological condition that may be contributing to such dementia or impairment. The notification must occur within 30 days after the acknowledgment of such signs by facility staff. If an underlying condition is determined to exist, the facility shall arrange, with the appropriate health care provider, the necessary care and services to treat the condition.

(8) The Department of Children and Family Services may require an examination for supplemental security income and optional state supplementation recipients residing in facilities at any time and shall provide the examination whenever a resident's condition requires it. Any facility administrator; personnel of the agency, the department, or the Department of Children and Family Services; or long-term care ombudsman council member who believes a resident needs to be evaluated shall notify the resident's case manager, who shall take appropriate action. A report of the examination findings shall be provided to the resident's case manager and the facility administrator to help the administrator meet his or her responsibilities under subsection (1).

(9) A terminally ill resident who no longer meets the criteria for continued residency may remain in the facility if the arrangement is mutually agreeable to the resident and the facility; additional care is rendered through a licensed hospice, and the resident is under the care of a physician who agrees that the physical needs of the resident are being met.

(10) Facilities licensed to provide extended congregate care services shall promote aging in place by determining appropriateness of continued residency based on a comprehensive review of the resident's physical and functional status; the ability of the facility, family members, friends, or any other pertinent individuals or agencies to provide the care and services required; and documentation that a written service plan consistent with facility policy has been developed and implemented to ensure that the resident's needs and preferences are addressed.

(11) No resident who requires 24-hour nursing supervision, except for a resident who is an enrolled hospice patient pursuant to part IV of chapter 400, shall be retained in a facility licensed under this part.

History.—ss. 12, 30, ch. 80-198; s. 2, ch. 81-318; ss. 53, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 6, ch. 85-145; s. 11, ch. 87-371; s. 19, ch. 89-294; s. 17, ch. 91-263; ss. 21, 38, 39, ch. 93-216; s. 776, ch. 95-148; s. 15, ch. 95-210; ss. 25, 49, ch. 95-418; s. 39, ch. 96-169; s. 5, ch. 97-82; s. 215, ch. 99-13; s. 101, ch. 2000-318; s. 75, ch. 2000-349; s. 37, ch. 2001-45; s. 61, ch. 2002-1; ss. 2, 49, ch. 2006-197; s. 153, ch. 2007-230; s. 64, ch. 2009-223.

Note.—Former s. 400.426.

429.27 Property and personal affairs of residents.—

(1)(a) A resident shall be given the option of using his or her own belongings, as space permits; choosing his or her roommate; and, whenever possible, unless the resident is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(b) The admission of a resident to a facility and his or her presence therein shall not confer on the facility or its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident; nor shall such admission or presence confer on any of such persons any authority or responsibility for the personal affairs of the resident, except that which may be necessary for the safe management of the facility or for the safety of the resident.

(2) A facility, or an owner, administrator, employee, or representative thereof, may not act as the guardian, trustee, or conservator for any resident of the assisted living facility or any of such resident's

property. An owner, administrator, or staff member, or representative thereof, may not act as a competent resident's payee for social security, veteran's, or railroad benefits without the consent of the resident. Any facility whose owner, administrator, or staff, or representative thereof, serves as representative payee for any resident of the facility shall file a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to residents, or expendable for their account, which are received by a facility. Any facility whose owner, administrator, or staff, or a representative thereof, is granted power of attorney for any resident of the facility shall file a surety bond with the agency for each resident for whom such power of attorney is granted. The surety bond shall be in an amount equal to twice the average monthly income of the resident, plus the value of any resident's property under the control of the attorney in fact. The bond shall be executed by the facility as principal and a licensed surety company. The bond shall be conditioned upon the faithful compliance of the facility with this section and shall run to the agency for the benefit of any resident who suffers a financial loss as a result of the misuse or misappropriation by a facility of funds held pursuant to this subsection. Any surety company that cancels or does not renew the bond of any licensee shall notify the agency in writing not less than 30 days in advance of such action, giving the reason for the cancellation or nonrenewal. Any facility owner, administrator, or staff, or representative thereof, who is granted power of attorney for any resident of the facility shall, on a monthly basis, be required to provide the resident a written statement of any transaction made on behalf of the resident pursuant to this subsection, and a copy of such statement given to the resident shall be retained in each resident's file and available for agency inspection.

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

(4) Any funds or other property belonging to or due to a resident, or expendable for his or her account, which is received by a facility shall be trust funds which shall be kept separate from the funds and property of the facility and other residents or shall be specifically credited to such resident. Such trust funds shall be used or otherwise expended only for the account of the resident. At least once every 3 months, unless upon order of a court of competent jurisdiction, the facility shall furnish the resident and his or her guardian, trustee, or conservator, if any, a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. In any event, the facility shall furnish such statement annually and upon the discharge or transfer of a resident. Any governmental agency or private charitable agency contributing funds or other property to the account of a resident shall also be entitled to receive such statement annually and upon the discharge or transfer of the resident.

(5) Any personal funds available to facility residents may be used by residents as they choose to obtain clothing, personal items, leisure activities, and other supplies and services for their personal use. A facility may not demand, require, or contract for payment of all or any part of the personal funds in satisfaction of the facility rate for supplies and services beyond that amount agreed to in writing and may not levy an additional charge to the individual or the account for any supplies or services that the facility has agreed by contract to provide as part of the standard monthly rate. Any service or supplies provided by the facility which are charged separately to the individual or the account may be provided only with the specific written consent of the individual, who shall be furnished in advance of the

provision of the services or supplies with an itemized written statement to be attached to the contract setting forth the charges for the services or supplies.

(6)(a) In addition to any damages or civil penalties to which a person is subject, any person who:

1. Intentionally withholds a resident's personal funds, personal property, or personal needs allowance, or who demands, beneficially receives, or contracts for payment of all or any part of a resident's personal property or personal needs allowance in satisfaction of the facility rate for supplies and services; or
2. Borrows from or pledges any personal funds of a resident, other than the amount agreed to by written contract under s. 429.24,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any facility owner, administrator, or staff, or representative thereof, who is granted power of attorney for any resident of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

History.—s. 12, ch. 75-233; ss. 12, 24, ch. 80-198; s. 2, ch. 81-152; s. 2, ch. 81-318; ss. 4, 19, ch. 82-148; ss. 54, 79, 83, ch. 83-181; s. 3, ch. 86-104; s. 12, ch. 87-371; s. 72, ch. 91-224; s. 18, ch. 91-263; ss. 22, 38, 39, ch. 93-216; s. 777, ch. 95-148; s. 3, ch. 98-148; s. 216, ch. 99-13; ss. 2, 50, ch. 2006-197.

Note.—Former s. 400.427.

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

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

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

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

(4) The department may by rule clarify terms, establish requirements for financial records, accounting procedures, personnel procedures, insurance coverage, and reporting procedures, and specify documentation as necessary to implement the requirements of this section.

History.—s. 4, ch. 98-148; s. 2, ch. 2006-197.

Note.—Former s. 400.4275.

429.28 Resident bill of rights.—

(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.

(e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 429.27.

(g) Share a room with his or her spouse if both are residents of the facility.

(h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.

(j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

(k) At least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.

(l) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to

be a member of, to be active in, and to associate with advocacy or special interest groups.

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the local ombudsman council, central abuse hotline, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

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

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the planning and service area in which the facility is located to discuss residents' experiences within the facility.

(c) During any calendar year in which no survey 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.

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

(4) The facility shall not hamper or prevent residents from exercising their rights as specified in this section.

(5) No facility or employee of a facility may serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

(a) Exercises any right set forth in this section.

(b) Appears as a witness in any hearing, inside or outside the facility.

(c) Files a civil action alleging a violation of the provisions of this part or notifies a state attorney or the Attorney General of a possible violation of such provisions.

(6) Any facility which terminates the residency of an individual who participated in activities specified in subsection (5) shall show good cause in a court of competent jurisdiction.

(7) Any person who submits or reports a complaint concerning a suspected violation of the provisions of this part or concerning services and conditions in facilities, or who testifies in any administrative or judicial proceeding arising from such a complaint, shall have immunity from any civil or criminal liability therefor, unless such person has 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.

History.—ss. 12, 31, ch. 80-198; s. 2, ch. 81-318; ss. 55, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 65, ch. 91-221; s. 19, ch. 91-263; ss. 23, 38, 39, ch. 93-216; s. 778, ch. 95-148; s. 11, ch. 95-418; s. 17, ch. 98-80; s. 20, ch. 2000-263; ss. 76, 143, ch. 2000-349; s. 63, ch. 2000-367; s. 38, ch. 2001-45; ss. 2, 51, ch. 2006-197.

Note.—Former s. 400.428.

429.29 Civil actions to enforce rights.—

(1) Any person or resident whose rights as specified in this part are violated shall have a cause of

action. The action may be brought by the resident or his or her guardian, or by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death. If the action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall be required to elect either survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s. 768.21. If the action alleges a claim for the resident's rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual damages, and punitive damages for violation of the rights of a resident or negligence. Any resident who prevails in seeking injunctive relief or a claim for an administrative remedy is entitled to recover the costs of the action and a reasonable attorney's fee assessed against the defendant not to exceed \$25,000. Fees shall be awarded solely for the injunctive or administrative relief and not for any claim or action for damages whether such claim or action is brought together with a request for an injunction or administrative relief or as a separate action, except as provided under s. 768.79 or the Florida Rules of Civil Procedure. Sections 429.29-429.298 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a resident arising out of negligence or a violation of rights specified in s. 429.28. This section does not preclude theories of recovery not arising out of negligence or s. 429.28 which are available to a resident or to the agency. The provisions of chapter 766 do not apply to any cause of action brought under ss. 429.29-429.298.

(2) In any claim brought pursuant to this part alleging a violation of resident's rights or negligence causing injury to or the death of a resident, the claimant shall have the burden of proving, by a preponderance of the evidence, that:

- (a) The defendant owed a duty to the resident;
- (b) The defendant breached the duty to the resident;
- (c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- (d) The resident sustained loss, injury, death, or damage as a result of the breach.

Nothing in this part shall be interpreted to create strict liability. A violation of the rights set forth in s. 429.28 or in any other standard or guidelines specified in this part or in any applicable administrative standard or guidelines of this state or a federal regulatory agency shall be evidence of negligence but shall not be considered negligence per se.

(3) In any claim brought pursuant to this section, a licensee, person, or entity shall have a duty to exercise reasonable care. Reasonable care is that degree of care which a reasonably careful licensee, person, or entity would use under like circumstances.

(4) In any claim for resident's rights violation or negligence by a nurse licensed under part I of chapter 464, such nurse shall have the duty to exercise care consistent with the prevailing professional standard of care for a nurse. The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.

(5) Discovery of financial information for the purpose of determining the value of punitive damages may not be had unless the plaintiff shows the court by proffer or evidence in the record that a reasonable basis exists to support a claim for punitive damages.

(6) In addition to any other standards for punitive damages, any award of punitive damages must be

reasonable in light of the actual harm suffered by the resident and the egregiousness of the conduct that caused the actual harm to the resident.

(7) The resident or the resident's legal representative shall serve a copy of any complaint alleging in whole or in part a violation of any rights specified in this part to the Agency for Health Care Administration at the time of filing the initial complaint with the clerk of the court for the county in which the action is pursued. The requirement of providing a copy of the complaint to the agency does not impair the resident's legal rights or ability to seek relief for his or her claim.

History.—ss. 12, 32, ch. 80-198; s. 2, ch. 81-318; ss. 56, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; ss. 24, 38, 39, ch. 93-216; s. 779, ch. 95-148; s. 31, ch. 99-225; s. 39, ch. 2001-45; ss. 2, 52, ch. 2006-197.

Note.—Former s. 400.429.

429.293 Presuit notice; investigation; notification of violation of residents' rights or alleged negligence; claims evaluation procedure; informal discovery; review; settlement offer; mediation.—

(1) As used in this section, the term:

(a) "Claim for residents' rights violation or negligence" means a negligence claim alleging injury to or the death of a resident arising out of an asserted violation of the rights of a resident under s. 429.28 or an asserted deviation from the applicable standard of care.

(b) "Insurer" means any self-insurer authorized under s. 627.357, liability insurance carrier, joint underwriting association, or uninsured prospective defendant.

(2) Prior to filing a claim for a violation of a resident's rights or a claim for negligence, a claimant alleging injury to or the death of a resident shall notify each prospective defendant by certified mail, return receipt requested, of an asserted violation of a resident's rights provided in s. 429.28 or deviation from the standard of care. Such notification shall include an identification of the rights the prospective defendant has violated and the negligence alleged to have caused the incident or incidents and a brief description of the injuries sustained by the resident which are reasonably identifiable at the time of notice. The notice shall contain a certificate of counsel that counsel's reasonable investigation gave rise to a good faith belief that grounds exist for an action against each prospective defendant.

(3)(a) No suit may be filed for a period of 75 days after notice is mailed to any prospective defendant. During the 75-day period, the prospective defendants or their insurers shall conduct an evaluation of the claim to determine the liability of each defendant and to evaluate the damages of the claimants. Each defendant or insurer of the defendant shall have a procedure for the prompt evaluation of claims during the 75-day period. The procedure shall include one or more of the following:

1. Internal review by a duly qualified facility risk manager or claims adjuster;
2. Internal review by counsel for each prospective defendant;
3. A quality assurance committee authorized under any applicable state or federal statutes or regulations; or
4. Any other similar procedure that fairly and promptly evaluates the claims.

Each defendant or insurer of the defendant shall evaluate the claim in good faith.

(b) At or before the end of the 75 days, the defendant or insurer of the defendant shall provide the claimant with a written response:

1. Rejecting the claim; or
2. Making a settlement offer.

(c) The response shall be delivered to the claimant if not represented by counsel or to the claimant's attorney, by certified mail, return receipt requested. Failure of the prospective defendant or

insurer of the defendant to reply to the notice within 75 days after receipt shall be deemed a rejection of the claim for purposes of this section.

(4) The notification of a violation of a resident's rights or alleged negligence shall be served within the applicable statute of limitations period; however, during the 75-day period, the statute of limitations is tolled as to all prospective defendants. Upon stipulation by the parties, the 75-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving written notice by certified mail, return receipt requested, of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

(5) No statement, discussion, written document, report, or other work product generated by presuit claims evaluation procedures under this section is discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit claims evaluation procedure. Any licensed physician or registered nurse may be retained by either party to provide an opinion regarding the reasonable basis of the claim. The presuit opinions of the expert are not discoverable or admissible in any civil action for any purpose by the opposing party.

(6) Upon receipt by a prospective defendant of a notice of claim, the parties shall make discoverable information available without formal discovery as provided in subsection (7).

(7) Informal discovery may be used by a party to obtain unsworn statements and the production of documents or things, as follows:

(a) *Unsworn statements.*—Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of claims evaluation and are not discoverable or admissible in any civil action for any purpose by any party. A party seeking to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

(b) *Documents or things.*—Any party may request discovery of relevant documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce relevant and discoverable documents or things within that party's possession or control, if in good faith it can reasonably be done within the timeframe of the claims evaluation process.

(8) Each request for and notice concerning informal discovery pursuant to this section must be in writing, and a copy thereof must be sent to all parties. Such a request or notice must bear a certificate of service identifying the name and address of the person to whom the request or notice is served, the date of the request or notice, and the manner of service thereof.

(9) If a prospective defendant makes a written settlement offer, the claimant shall have 15 days from the date of receipt to accept the offer. An offer shall be deemed rejected unless accepted by delivery of a written notice of acceptance.

(10) To the extent not inconsistent with this part, the provisions of the Florida Mediation Code,

Florida Rules of Civil Procedure, shall be applicable to such proceedings.

(11) Within 30 days after the claimant's receipt of defendant's response to the claim, the parties or their designated representatives shall meet in mediation to discuss the issues of liability and damages in accordance with the mediation rules of practice and procedures adopted by the Supreme Court. Upon stipulation of the parties, this 30-day period may be extended and the statute of limitations is tolled during the mediation and any such extension. At the conclusion of mediation, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

History.—s. 40, ch. 2001-45; ss. 2, 53, ch. 2006-197.

Note.—Former s. 400.4293.

429.294 Availability of facility records for investigation of resident's rights violations and defenses; penalty.—

(1) Failure to provide complete copies of a resident's records, including, but not limited to, all medical records and the resident's chart, within the control or possession of the facility within 10 days, in accordance with the provisions of s. 400.145, shall constitute evidence of failure of that party to comply with good faith discovery requirements and shall waive the good faith certificate and presuit notice requirements under this part by the requesting party.

(2) No facility shall be held liable for any civil damages as a result of complying with this section.

History.—s. 41, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.4294.

429.295 Certain provisions not applicable to actions under this part.—An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.—s. 42, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.4295.

429.296 Statute of limitations.—

(1) Any action for damages brought under this part shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued.

(2) In those actions covered by this subsection in which it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event not more than 6 years from the date the incident giving rise to the injury occurred.

(3) This section shall apply to causes of action that have accrued prior to the effective date of this section; however, any such cause of action that would not have been barred under prior law may be brought within the time allowed by prior law or within 2 years after the effective date of this section, whichever is earlier, and will be barred thereafter. In actions where it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event more than 4 years from the effective date of this section.

Note.—Former s. 400.4296.

429.297 Punitive damages; pleading; burden of proof.—

(1) In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) “intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

(4) The plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The “greater weight of the evidence” burden of proof applies to a determination of the amount of damages.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 44, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.4297.

429.298 Punitive damages; limitation.—

(1)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$1 million.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was

actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
2. The sum of \$4 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

(e) In any case in which the findings of fact support an award of punitive damages pursuant to paragraph (b) or paragraph (c), the clerk of the court shall refer the case to the appropriate law enforcement agencies, to the state attorney in the circuit where the long-term care facility that is the subject of the underlying civil cause of action is located, and, for multijurisdictional facility owners, to the Office of the Statewide Prosecutor; and such agencies, state attorney, or Office of the Statewide Prosecutor shall initiate a criminal investigation into the conduct giving rise to the award of punitive damages. All findings by the trier of fact which support an award of punitive damages under this paragraph shall be admissible as evidence in any subsequent civil or criminal proceeding relating to the acts giving rise to the award of punitive damages under this paragraph.

(2) The claimant's attorney's fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the final judgment for punitive damages. This subsection does not limit the payment of attorney's fees based upon an award of damages other than punitive damages.

(3) The jury may neither be instructed nor informed as to the provisions of this section.

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be equally divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

(b) A settlement agreement entered into between the original parties to the action after a verdict has been returned must provide a proportionate share payable to the Quality of Long-Term Care Facility Improvement Trust Fund specified herein. For purposes of this paragraph, a proportionate share is a 50-percent share of that percentage of the settlement amount which the punitive damages portion of the verdict bore to the total of the compensatory and punitive damages in the verdict.

(c) The Department of Financial Services shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer and deposited in the appropriate fund specified in this subsection.

(d) If the full amount of punitive damages awarded cannot be collected, the claimant and the other recipient designated pursuant to this subsection are each entitled to a proportionate share of the punitive damages collected.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 45, ch. 2001-45; s. 419, ch. 2003-261; s. 2, ch. 2006-197.

Note.—Former s. 400.4298.

429.31 Closing of facility; notice; penalty.—

(1) In addition to the requirements of part II of chapter 408, the facility shall inform each resident or the next of kin, legal representative, or agency acting on each resident's behalf, of the fact and the proposed time of discontinuance of operation, following the notification requirements provided in s. 429.28(1)(k). In the event a resident has no person to represent him or her, the facility shall be responsible for referral to an appropriate social service agency for placement.

(2) Immediately upon the notice by the agency of the voluntary or involuntary termination of such operation, the agency shall monitor the transfer of residents to other facilities and ensure that residents' rights are being protected. The department, in consultation with the Department of Children and Family Services, shall specify procedures for ensuring that all residents who receive services are appropriately relocated.

(3) All charges shall be prorated as of the date on which the facility discontinues operation, and if any payments have been made in advance, the payments for services not received shall be refunded to the resident or the resident's guardian within 10 working days of voluntary or involuntary closure of the facility, whether or not such refund is requested by the resident or guardian.

(4) The agency may levy a fine in an amount no greater than \$5,000 upon each person or business entity that owns any interest in a facility that terminates operation without providing notice to the agency and the residents of the facility at least 30 days before operation ceases. This fine shall not be levied against any facility involuntarily closed at the initiation of the agency. The agency shall use the proceeds of the fines to operate the facility until all residents of the facility are relocated.

History.—s. 13, ch. 75-233; ss. 12, 25, ch. 80-198; s. 2, ch. 81-318; ss. 57, 79, 83, ch. 83-181; s. 20, ch. 91-263; ss. 25, 38, 39, ch. 93-216; s. 780, ch. 95-148; s. 50, ch. 95-418; s. 123, ch. 99-8; ss. 2, 54, ch. 2006-197; s. 154, ch. 2007-230.

Note.—Former s. 400.431.

429.34 Right of entry and inspection.—In addition to the requirements of s. 408.811, any duly designated officer or employee of the department, the Department of Children and Family Services, the Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal, or a member of the state or local long-term care ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part, part II of chapter 408, and applicable rules. Data collected by the state or local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.

History.—s. 14, ch. 75-233; s. 1, ch. 77-174; ss. 12, 26, ch. 80-198; s. 2, ch. 81-318; ss. 10, 18, 19, ch. 82-148; ss. 58, 79, 83, ch. 83-181; s. 1, ch. 88-350; s. 24, ch. 93-177; ss. 26, 38, 39, ch. 93-216; s. 51, ch. 95-418; s. 124, ch. 99-8; s. 144, ch. 2000-349; s. 64, ch. 2000-367; s. 46, ch. 2001-45; s. 3, ch. 2004-344; s. 2, ch. 2006-197; s. 155, ch. 2007-230.

Note.—Former s. 400.434.

429.35 Maintenance of records; reports.—

(1) Every facility shall maintain, as public information available for public inspection under such conditions as the agency shall prescribe, records containing copies of all inspection reports pertaining to the facility that have been issued by the agency to the facility. Copies of inspection reports shall be retained in the records for 5 years from the date the reports are filed or issued.

(2) Within 60 days after the date of the biennial inspection visit required under s. 408.811 or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ombudsman council in whose planning and service area, as defined in part II of chapter 400, the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district Adult Services and Mental Health Program Offices.

(3) Every facility shall post a copy of the last inspection report of the agency for that facility in a prominent location within the facility so as to be accessible to all residents and to the public. Upon request, the facility shall also provide a copy of the report to any resident of the facility or to an applicant for admission to the facility.

History.—ss. 12, 27, ch. 80-198; s. 2, ch. 81-318; ss. 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 1, ch. 88-145; s. 19, ch. 90-347; s. 21, ch. 91-263; ss. 27, 38, 39, ch. 93-216; s. 16, ch. 95-210; s. 57, ch. 2000-139; s. 145, ch. 2000-349; s. 65, ch. 2000-367; s. 2, ch. 2006-197; s. 102, ch. 2007-5; s. 156, ch. 2007-230; s. 118, ch. 2008-4.

Note.—Former s. 400.435.

429.41 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

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

1. Evacuation capability determination.—

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

assistance from the facility administrator, reevaluate the evacuation capability through timed exiting drills. Translation of timed fire exiting drills to evacuation capability may be determined:

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

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

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

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

2. Firesafety requirements.—

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

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

c. Notwithstanding any provision of s. 633.022 or of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, to the contrary, any existing facility housing eight or fewer residents is not required to install an automatic fire sprinkler system, nor to comply with any other requirement in Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety requirements of NFPA 101, 1988 edition, that applies to this size facility, unless the facility has been classified as impractical to evacuate. Any existing facility housing eight or fewer residents that is classified as impractical to evacuate must install an automatic fire sprinkler system within the timeframes granted in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Resident elopement requirements.—Facilities are required to conduct a minimum of two resident elopement prevention and response drills per year. All administrators and direct care staff must participate in the drills which shall include a review of procedures to address resident elopement. Facilities must document the implementation of the drills and ensure that the drills are conducted in a manner consistent with the facility's resident elopement policies and procedures.

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

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

(d) All sanitary conditions within the facility and its surroundings which will ensure the health and comfort of residents. The rules must clearly delineate the responsibilities of the agency's licensure and survey staff, the county health departments, and the local authority having jurisdiction over firesafety and ensure that inspections are not duplicative. The agency may collect fees for food service inspections conducted by the county health departments and transfer such fees to the Department of Health.

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

(f) Inspections, complaint investigations, moratoriums, classification of deficiencies, levying and

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

(g) The enforcement of the resident bill of rights specified in s. 429.28.

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

1. The supervision of residents;
2. The provision of personal services;
3. The provision of, or arrangement for, social and leisure activities;
4. The arrangement for appointments and transportation to appropriate medical, dental, nursing, or mental health services, as needed by residents;
5. The management of medication;
6. The nutritional needs of residents;
7. Resident records; and
8. Internal risk management and quality assurance.

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

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

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

1. The continued need for the medication.
2. The level of the medication in the resident's blood.
3. The need for adjustments in the prescription.

(l) The establishment of specific policies and procedures on resident elopement. Facilities shall conduct a minimum of two resident elopement drills each year. All administrators and direct care staff shall participate in the drills. Facilities shall document the drills.

(2) In adopting any rules pursuant to this part, the department, in conjunction with the agency, shall make distinct standards for facilities based upon facility size; the types of care provided; the physical and mental capabilities and needs of residents; the type, frequency, and amount of services and care offered; and the staffing characteristics of the facility. Rules developed pursuant to this section shall not restrict the use of shared staffing and shared programming in facilities that are part of retirement communities that provide multiple levels of care and otherwise meet the requirements of law and rule. Except for uniform firesafety standards, the department shall adopt by rule separate and distinct standards for facilities with 16 or fewer beds and for facilities with 17 or more beds. The standards for facilities with 16 or fewer beds shall be appropriate for a noninstitutional residential environment, provided that the structure is no more than two stories in height and all persons who cannot exit the facility unassisted in an emergency reside on the first floor. The department, in conjunction with the agency, may make other distinctions among types of facilities as necessary to enforce the provisions of this part. Where appropriate, the agency shall offer alternate solutions for complying with established standards, based on distinctions made by the department and the agency relative to the physical characteristics of facilities and the types of care offered therein.

(3) The department shall submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to the promulgation thereof. Rules promulgated by the department shall encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decisionmaking ability of residents.

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

(5) The agency may use an abbreviated biennial standard licensure inspection that consists of a review of key quality-of-care standards in lieu of a full inspection in a facility that has a good record of past performance. However, a full inspection must be conducted in a facility that has a history of class I or class II violations, uncorrected class III violations, confirmed ombudsman council complaints, or confirmed licensure complaints, within the previous licensure period immediately preceding the inspection or if a potentially serious problem is identified during the abbreviated inspection. The agency, in consultation with the department, shall develop the key quality-of-care standards with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.

History.—s. 16, ch. 75-233; ss. 12, 29, ch. 80-198; s. 2, ch. 81-318; ss. 59, 79, 83, ch. 83-181; s. 7, ch. 85-145; s. 1, ch. 86-87; s. 13, ch. 87-371; s. 20, ch. 89-294; s. 22, ch. 91-263; s. 25, ch. 93-177; s. 26, ch. 93-211; ss. 28, 38, 39, ch. 93-216; ss. 12, 20, 52, ch. 95-418; s. 27, ch. 97-100; s. 99, ch. 97-101; s. 5, ch. 98-148; s. 15, ch. 99-332; s. 47, ch. 2001-45; s. 7, ch. 2004-298; s. 2, ch. 2004-386; ss. 2, 55, ch. 2006-197; s. 157, ch. 2007-230; s. 142, ch. 2010-102; s. 343, ch. 2011-142.

Note.—Former s. 400.441.

429.42 Pharmacy and dietary services.—

(1) 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. 429.19, be required to employ the consultant services of a licensed pharmacist, a licensed registered nurse, or a registered or licensed dietitian, as applicable. The consultant shall, 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) 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.

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

History.—s. 1, ch. 89-218; s. 1, ch. 90-192; s. 23, ch. 91-263; ss. 29, 38, 39, ch. 93-216; s. 17, ch. 95-210; s. 18, ch. 98-80; s. 6, ch. 98-148; ss. 2, 56, ch. 2006-197.

Note.—Former s. 400.442.

429.44 Construction and renovation; requirements.—

(1) The requirements for the construction and renovation of a facility shall comply with the provisions of chapter 553 which pertain to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for persons with disabilities, and the state minimum building code and with the provisions of s. 633.022, which pertain to uniform firesafety standards.

(2) Upon notification by the local authority having jurisdiction over life-threatening violations which seriously threaten the health, safety, or welfare of a resident of a facility, the agency shall take action as specified in s. 429.14.

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

History.—s. 17, ch. 75-233; s. 3, ch. 79-152; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 30, 38, 39, ch. 93-216; s. 14, ch. 95-418; s. 7, ch. 98-148; ss. 2, 57, ch. 2006-197.

Note.—Former s. 400.444.

429.445 Compliance with local zoning requirements.—No facility licensed under this part may commence any construction which will expand the size of the existing structure unless the licensee first submits to the agency proof that such construction will be in compliance with applicable local zoning requirements. Facilities with a licensed capacity of less than 15 persons shall comply with the provisions of chapter 419.

History.—s. 2, ch. 85-251; s. 24, ch. 91-263; ss. 31, 39, ch. 93-216; s. 2, ch. 2006-197.

Note.—Former s. 400.4445.

429.47 Prohibited acts; penalties for violation.—

(1) While a facility is under construction, the owner may advertise to the public prior to obtaining a license. Facilities that are certified under chapter 651 shall comply with the advertising provisions of s. 651.095 rather than those provided for in this subsection.

(2) A freestanding facility shall not advertise or imply that any part of it is a nursing home. For the purpose of this subsection, “freestanding facility” means a facility that is not operated in conjunction with a nursing home to which residents of the facility are given priority when nursing care is required. A person who violates this subsection is subject to fine as specified in s. 429.19.

(3) Any facility which is affiliated with any religious organization or which has a name implying religious affiliation shall include in its advertising whether or not it is affiliated with any religious organization and, if so, which organization.

(4) A facility licensed under this part which is not part of a facility authorized under chapter 651

shall include the facility's license number as given by the agency in all advertising. A company or person owning more than one facility shall include at least one license number per advertisement. All advertising shall include the term "assisted living facility" before the license number.

History.—s. 18, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 14, ch. 87-371; s. 25, ch. 91-263; ss. 32, 38, 39, ch. 93-216; s. 18, ch. 95-210; s. 217, ch. 99-13; ss. 2, 58, ch. 2006-197; s. 158, ch. 2007-230.

Note.—Former s. 400.447.

429.49 Resident records; penalties for alteration.—

(1) Any person who fraudulently alters, defaces, or falsifies any medical or other record of an assisted living facility, or causes or procures any such offense to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A conviction under subsection (1) is also grounds for restriction, suspension, or termination of license privileges.

History.—s. 48, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.449.

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

(1) Administrators and other assisted living facility staff must meet minimum training and education requirements established by the Department of Elderly Affairs by rule. This training and education is intended to assist facilities to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.

(2) The department shall establish a competency test and a minimum required score to indicate successful completion of the training and educational requirements. The competency test must be developed by the department in conjunction with the agency and providers. The required training and education must cover at least the following topics:

- (a) State law and rules relating to assisted living facilities.
- (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.
- (f) Firesafety requirements, including fire evacuation drill procedures and other emergency procedures.
- (g) Care of persons with Alzheimer's disease and related disorders.

(3) Effective January 1, 2004, a new facility administrator must complete the required training and education, including the competency test, within a reasonable time after being employed as an administrator, as determined by the department. Failure to do so is a violation of this part and subjects the violator to an administrative fine as prescribed in s. 429.19. Administrators licensed in accordance with part II of chapter 468 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.

(5) Staff involved with the management of medications and assisting with the self-administration of

medications under s. 429.256 must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements of this additional training.

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

(7) 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.

(8) The department shall adopt rules related to these training requirements, the competency test, necessary procedures, and competency test fees and shall adopt or contract with another entity to develop a curriculum, which shall be used as the minimum core training requirements. The department shall consult with representatives of stakeholder associations and agencies in the development of the curriculum.

(9) The training required by this section shall be conducted by persons registered with the department as having the requisite experience and credentials to conduct the training. A person seeking to register as a trainer must provide the department with proof of completion of the minimum core training education requirements, successful passage of the competency test established under this section, and proof of compliance with the continuing education requirement in subsection (4).

(10) A person seeking to register as a trainer must also:

(a) Provide proof of completion of a 4-year degree from an accredited college or university and must have worked in a management position in an assisted living facility for 3 years after being core certified;

(b) Have worked in a management position in an assisted living facility for 5 years after being core certified and have 1 year of teaching experience as an educator or staff trainer for persons who work in assisted living facilities or other long-term care settings;

(c) Have been previously employed as a core trainer for the department; or

(d) Meet other qualification criteria as defined in rule, which the department is authorized to adopt.

(11) The department shall adopt rules to establish trainer registration requirements.

History.—ss. 12, 34, ch. 80-198; s. 2, ch. 81-318; ss. 60, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 3, ch. 85-251; s. 21, ch. 89-294; s. 27, ch. 91-263; ss. 33, 38, 39, ch. 93-216; s. 19, ch. 95-210; ss. 15, 26, 53, ch. 95-418; s. 16, ch. 97-82; s. 29, ch. 97-100; s. 19, ch. 98-80; s. 25, ch. 2003-57; s. 3, ch. 2003-405; ss. 2, 59, ch. 2006-197; s. 1, ch. 2007-219.

Note.—Former s. 400.452.

429.53 Consultation by the agency.—

(1) The area offices of licensure and certification of the agency shall provide consultation to the following upon request:

(a) A licensee of a facility.

(b) A person interested in obtaining a license to operate a facility under this part.

(2) As used in this section, “consultation” includes:

(a) An explanation of the requirements of this part and rules adopted pursuant thereto;

(b) An explanation of the license application and renewal procedures;

(c) The provision of a checklist of general local and state approvals required prior to constructing or developing a facility and a listing of the types of agencies responsible for such approvals;

(d) An explanation of benefits and financial assistance available to a recipient of supplemental security income residing in a facility;

- (e) Any other information which the agency deems necessary to promote compliance with the requirements of this part; and
- (f) A preconstruction review of a facility to ensure compliance with agency rules and this part.
- (3) The agency may charge a fee commensurate with the cost of providing consultation under this section.

History.—ss. 15, 19, ch. 87-371; s. 22, ch. 89-294; ss. 34, 38, 39, ch. 93-216; s. 2, ch. 2006-197.

Note.—Former s. 400.453.

429.54 Collection of information; local subsidy.—

(1) To enable the department to collect the information requested by the Legislature regarding the actual cost of providing room, board, and personal care in facilities, the department is authorized to conduct field visits and audits of facilities as may be necessary. The owners of randomly sampled facilities shall submit such reports, audits, and accountings of cost as the department may require by rule; provided that such reports, audits, and accountings shall be the minimum necessary to implement the provisions of this section. Any facility selected to participate in the study shall cooperate with the department by providing cost of operation information to interviewers.

(2) Local governments or organizations may contribute to the cost of care of local facility residents by further subsidizing the rate of state-authorized payment to such facilities. Implementation of local subsidy shall require departmental approval and shall not result in reductions in the state supplement.

History.—ss. 12, 35, ch. 80-198; s. 2, ch. 81-318; ss. 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; ss. 38, 39, ch. 93-216; s. 2, ch. 2006-197.

Note.—Former s. 400.454.

PART II ADULT FAMILY-CARE HOMES

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429.60 Short title.—This part may be cited as the “Adult Family-Care Home Act.”

History.—ss. 1, 2, ch. 85-195; s. 4, ch. 91-429; s. 2, ch. 93-209; s. 1, ch. 98-338; s. 3, ch. 2006-197.

Note.—Former s. 400.616.

429.63 Legislative intent; purpose.—

- (1) The Legislature encourages the provision of care for disabled adults and frail elders 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 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 available in these homes, which may be provided directly or through contract or agreement, is 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 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.

(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.

History.—ss. 1, 2, ch. 85-195; s. 4, ch. 91-429; s. 3, ch. 93-209; s. 2, ch. 98-338; s. 3, ch. 2006-197.

Note.—Former s. 400.617.

429.65 Definitions.—As used in this part, 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 who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. The following family-type living arrangements are not required to be licensed as an adult family-care home:

(a) An arrangement whereby the person who owns or rents the home provides room, board, and personal services for not more than two adults who do not receive optional state supplementation under s. 409.212. 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 personal services only to his or her relatives.

(c) An establishment that is licensed as an assisted living facility under this chapter.

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

(4) “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) "Personal services" or "personal care" includes individual assistance with or supervision of the activities of daily living and the self-administration of medication, and other similar services.

(11) "Provider" means a person who is licensed to operate an adult family-care home.

(12) "Relative" means an individual who is the father, mother, son, daughter, brother, sister, grandfather, grandmother, great-grandfather, great-grandmother, 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.

History.—ss. 1, 2, ch. 85-195; s. 4, ch. 91-429; s. 4, ch. 93-209; s. 22, ch. 95-210; s. 61, ch. 95-418; s. 21, ch. 98-80; s. 3, ch. 98-338; s. 220, ch. 99-13; ss. 3, 66, ch. 2006-197.

¹Note.—As amended by s. 3, ch. 98-338. Section 21, ch. 98-80, substituted the word "services" for the word "care."

Note.—Former s. 400.618.

429.67 Licensure.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate an adult family-care home in this state.

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

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be \$200 per biennium.

(4) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e), including the adult family-care home provider, the designated relief person, and all adult household members, pursuant to chapter 435 and s. 408.809.

(5) Unless the adult family-care home is a community residential home subject to chapter 419, the applicant must provide documentation, signed by the appropriate governmental official, that the home has met local zoning requirements for the location for which the license is sought.

(6) In addition to the requirements of s. 408.811, 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 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 local long-term care ombudsman council.

(7) 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 a disabled adult or frail elder must be included in that limitation.

(8) Each adult family-care home must designate at least one licensed space for a resident receiving optional state supplementation. The Department of Children and Family 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 requirement.

(9) In addition to the license categories available in s. 408.808, the agency may issue a conditional license to a provider for the purpose of bringing the adult family-care home into compliance with licensure requirements. A conditional license must be limited to a specific period, not exceeding 6 months. The department shall, by rule, establish criteria for issuing conditional licenses.

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

(11) The agency may adopt rules to administer the requirements of part II of chapter 408.

History.—ss. 1, 2, ch. 85-195; s. 38, ch. 87-225; s. 4, ch. 91-429; s. 5, ch. 93-209; s. 23, ch. 95-210; ss. 62, 130, ch. 95-418; s. 8, ch. 98-148; ss. 57, 71, ch. 98-171; s. 4, ch. 98-338; s. 147, ch. 2000-349; s. 67, ch. 2000-367; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 28, ch. 2003-57; s. 25, ch. 2004-267; s. 8, ch. 2004-298; s. 3, ch. 2006-197; s. 160, ch. 2007-230; s. 30, ch. 2010-114.

Note.—Former s. 400.619.

429.69 Denial, revocation, and suspension of a license.—In addition to the requirements of part II of chapter 408, the agency may deny, suspend, and revoke a license for any of the following reasons:

(1) Failure to comply with the background screening standards of this part, s. 408.809(1), or chapter 435.

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

History.—ss. 58, 71, ch. 98-171; s. 5, ch. 98-338; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 26, ch. 2004-267; s. 3, ch. 2006-197; s. 103, ch. 2007-5; s. 161, ch. 2007-230; s. 31, ch. 2010-114.

Note.—Former s. 400.6194.

429.71 Classification of deficiencies; administrative fines.—

(1) In addition to the requirements of part II of chapter 408 and in addition to any other liability or penalty provided by law, the agency may impose an administrative fine on a provider according to the following classification:

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

(b) Class II violations are those conditions or practices related to the operation and maintenance of an adult family-care home or to the care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the residents, other than class I violations. A class II violation is subject to an administrative fine in an amount not less than \$250 and not exceeding \$500 for

each violation. A citation for a class II violation must specify the time within which the violation is required to be corrected. If a class II violation is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

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

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

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

- (a) Violating any term or condition of a license.
 - (b) Violating any provision of this part, part II of chapter 408, or applicable rules.
 - (c) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of adult family-care home residents.
 - (d) Exceeding licensed capacity.
 - (e) Providing services beyond the scope of the license.
 - (f) Violating a moratorium.
- (3) Each day during which a violation occurs constitutes a separate offense.
- (4) In determining whether a penalty is to be imposed, and in fixing the amount of any penalty to be imposed, the agency must consider:

- (a) The gravity of the violation.
 - (b) Actions taken by the provider to correct a violation.
 - (c) Any previous violation by the provider.
 - (d) The financial benefit to the provider of committing or continuing the violation.
- (5) As an alternative to or in conjunction with an administrative action against a provider, the agency may request a plan of corrective action that demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(6) The department shall set forth, by rule, notice requirements and procedures for correction of deficiencies.

History.—s. 6, ch. 93-209; s. 64, ch. 95-418; s. 41, ch. 96-169; s. 9, ch. 98-148; s. 6, ch. 98-338; s. 221, ch. 99-13; s. 3, ch. 2006-197; s. 162, ch. 2007-230.

Note.—Former s. 400.6196.

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

- (1) The agency, in consultation with the department, may adopt rules to administer the

requirements of part II of chapter 408. The department, in consultation with the Department of Health, the Department of Children and Family Services, and the agency shall, by rule, establish minimum standards to ensure the health, safety, and well-being of each resident in the adult family-care home pursuant to this part. The rules must address:

- (a) Requirements for the physical site of the facility and facility maintenance.
 - (b) Services that must be provided to all residents of an adult family-care home and standards for such services, which must include, but need not be limited to:
 - 1. Room and board.
 - 2. Assistance necessary to perform the activities of daily living.
 - 3. Assistance necessary to administer medication.
 - 4. Supervision of residents.
 - 5. Health monitoring.
 - 6. Social and leisure activities.
 - (c) Standards and procedures for license application and annual license renewal, advertising, proper management of each resident's funds and personal property and personal affairs, financial ability to operate, medication management, inspections, complaint investigations, and facility, staff, and resident records.
 - (d) Qualifications, training, standards, and responsibilities for providers and staff.
 - (e) Compliance with chapter 419, relating to community residential homes.
 - (f) Criteria and procedures for determining the appropriateness of a resident's placement and continued residency in an adult family-care home. 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.
 - (g) Procedures for providing notice and assuring the least possible disruption of residents' lives when residents are relocated, an adult family-care home is closed, or the ownership of an adult family-care home is transferred.
 - (h) Procedures to protect the residents' rights as provided in s. 429.85.
 - (i) Procedures to promote the growth of adult family-care homes as a component of a long-term care system.
 - (j) Procedures to promote the goal of aging in place for residents of adult family-care homes.
- (2) The department shall by rule provide minimum standards and procedures for emergencies. Pursuant to s. 633.022, the State Fire Marshal, in consultation with the department and the agency, shall adopt uniform firesafety standards for adult family-care homes.

(3) The department shall adopt rules providing for the implementation of orders not to resuscitate. The provider may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The provider shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and applicable rules.

History.—ss. 1, 2, ch. 85-195; s. 4, ch. 91-429; s. 7, ch. 93-209; s. 24, ch. 95-210; s. 65, ch. 95-418; s. 10, ch. 98-148; s. 7, ch. 98-338; s. 3, ch. 99-179; s. 7, ch. 99-331; s. 3, ch. 2006-197; s. 104, ch. 2007-5; s. 163, ch. 2007-230.

Note.—Former s. 400.621.

429.75 Training and education programs.—

- (1) Each adult family-care home provider shall complete training and education programs.
- (2) Training and education programs must include information relating to:

- (a) State law and rules governing adult family-care homes, with emphasis on appropriateness of placement of residents in an adult family-care home.
 - (b) Identifying and reporting abuse, neglect, and exploitation.
 - (c) Identifying and meeting the special needs of disabled adults and frail elders.
 - (d) Monitoring the health of residents, including guidelines for prevention and care of pressure ulcers.
- (3) Effective January 1, 2004, 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 and subjects the provider to revocation of the license.
- (4) If the Department of Children and Family 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 may require the provider or staff to complete such training or education.
- (5) The department may adopt rules as necessary to administer this section.

History.—s. 8, ch. 93-209; s. 66, ch. 95-418; s. 11, ch. 98-148; s. 8, ch. 98-338; s. 4, ch. 2003-405; s. 3, ch. 2006-197.

Note.—Former s. 400.6211.

429.81 Residency agreements.—

- (1) Each resident must be covered by a residency agreement, executed before or at the time of admission, between the provider and the resident or the resident's designee or legal representative. Each party to the contract must be provided a duplicate copy or the original agreement, and the provider must keep the residency agreement on file for 5 years after expiration of the agreement.
- (2) Each residency agreement must specify the personal care 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.

History.—s. 11, ch. 93-209; s. 10, ch. 98-338; s. 3, ch. 2006-197.

Note.—Former s. 400.625.

429.83 Residents 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 shall examine all such advertisements and documents in the home's records as part of the license renewal procedure.

History.—s. 6, ch. 93-105; s. 31, ch. 97-100; s. 11, ch. 98-338; s. 3, ch. 2006-197.

Note.—Former s. 400.6255.

429.85 Residents' bill of rights.—

- (1) A resident of an adult family-care home may not be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the State Constitution, or the Constitution of the United States solely by reason of status as a resident of the home. Each resident has the right to:
- (a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and privacy.

(c) Keep and use the resident's own clothes and other personal property in the resident's immediate living quarters, so as to maintain individuality and personal dignity, except when the provider can demonstrate that to do so would be unsafe or an infringement upon the rights of other residents.

(d) Have unrestricted private communication, including receiving and sending unopened correspondence, having access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum.

(e) Be free to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage the resident's own financial affairs unless the resident or the resident's guardian authorizes the provider to provide safekeeping for funds in accordance with procedures equivalent to those provided in s. 429.27.

(g) Share a room with the resident's spouse if both are residents of the home.

(h) Have reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. Religious beliefs or practices and attendance at religious services may not be imposed upon a resident.

(j) Have access to adequate and appropriate health care.

(k) Be free from chemical and physical restraints.

(l) Have at least 30 days' notice of relocation or termination of residency from the home unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. If a resident has been adjudicated mentally incompetent, the resident's guardian must be given at least 30 days' notice, except in an emergency, of the relocation of a resident or of the termination of a residency. The reasons for relocating a resident must be set forth in writing.

(m) Present grievances and recommend changes to the provider, to staff, or to any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes the right to have access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(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. Residents must also be given the names, addresses, and telephone numbers of the local ombudsman council and the central abuse hotline where they may lodge complaints.

(3) The adult family-care home may not hamper or prevent residents from exercising the rights specified in this section.

(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:

(a) Exercises any right set forth in this section.

(b) Appears as a witness in any hearing, in or out of the adult family-care home.

(c) Files a civil action alleging a violation of this part or notifies a state attorney or the Attorney General of a possible violation of this part.

(5) Any adult family-care home that terminates the residency of an individual who has participated in activities specified in subsection (4) must show good cause for the termination in a court of competent

jurisdiction.

(6) Any person who reports a complaint concerning a suspected violation of this part 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.

History.—s. 12, ch. 93-209; s. 790, ch. 95-148; s. 6, ch. 97-82; s. 12, ch. 98-338; ss. 84, 148, ch. 2000-349; s. 68, ch. 2000-367; ss. 3, 67, ch. 2006-197.

Note.—Former s. 400.628.

429.87 Civil actions to enforce rights.—

(1) Any person or resident whose rights as specified in this part 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.

(2) To recover attorney's fees under this section, the following conditions precedent must be met:

(a) Within 120 days after the filing of a responsive pleading or defensive motion to a complaint brought under this section and before trial, the parties or their designated representatives shall meet in mediation to discuss the issues of liability and damages in accordance with this paragraph for the purpose of an early resolution of the matter.

1. Within 60 days after the filing of the responsive pleading or defensive motion, the parties shall:

a. Agree on a mediator. If the parties cannot agree on a mediator, the defendant shall immediately notify the court, which shall appoint a mediator within 10 days after such notice.

b. Set a date for mediation.

c. Prepare an order for the court that identifies the mediator, the scheduled date of the mediation, and other terms of the mediation. Absent any disagreement between the parties, the court may issue the order for the mediation submitted by the parties without a hearing.

2. The mediation must be concluded within 120 days after the filing of a responsive pleading or defensive motion. The date may be extended only by agreement of all parties subject to mediation under this subsection.

3. The mediation shall be conducted in the following manner:

a. Each party shall ensure that all persons necessary for complete settlement authority are present at the mediation.

b. Each party shall mediate in good faith.

4. All aspects of the mediation which are not specifically established by this subsection must be conducted according to the rules of practice and procedure adopted by the Supreme Court of this state.

(b) If the parties do not settle the case pursuant to mediation, the last offer of the defendant made

at mediation shall be recorded by the mediator in a written report that states the amount of the offer, the date the offer was made in writing, and the date the offer was rejected. If the matter subsequently proceeds to trial under this section and the plaintiff prevails but is awarded an amount in damages, exclusive of attorney's fees, which is equal to or less than the last offer made by the defendant at mediation, the plaintiff is not entitled to recover any attorney's fees.

(c) This subsection applies only to claims for liability and damages and does not apply to actions for injunctive relief.

(d) This subsection applies to all causes of action that accrue on or after October 1, 1999.

(3) Discovery of financial information for the purpose of determining the value of punitive damages may not be had unless the plaintiff shows the court by proffer or evidence in the record that a reasonable basis exists to support a claim for punitive damages.

(4) In addition to any other standards for punitive damages, any award of punitive damages must be reasonable in light of the actual harm suffered by the resident and the egregiousness of the conduct that caused the actual harm to the resident.

History.—s. 13, ch. 93-209; s. 13, ch. 98-338; s. 32, ch. 99-225; s. 3, ch. 2006-197.

Note.—Former s. 400.629.

PART III ADULT DAY CARE CENTERS

429.90 Purpose.

429.901 Definitions.

429.903 Applicability.

429.905 Exemptions; monitoring of adult day care center programs colocated with assisted living facilities or licensed nursing home facilities.

429.907 License requirement; fee; exemption; display.

429.909 Application for license.

429.911 Denial, suspension, revocation of license; emergency action; administrative fines; investigations and inspections.

429.913 Administrative fines.

429.915 Conditional license.

429.917 Patients with Alzheimer's disease or other related disorders; staff training requirements; certain disclosures.

429.919 Background screening.

429.925 Discontinuance of operation of adult day care centers.

429.927 Right of entry and inspection.

429.929 Rules establishing standards.

429.931 Construction and renovation; requirements.

429.90 Purpose.—The purpose of this part is to develop, establish, and enforce basic standards for adult day care centers in order to assure that a program of therapeutic social and health activities and services is provided to adults who have functional impairments, in a protective environment that provides as noninstitutional an atmosphere as possible.

History.—s. 1, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 1, 17, ch. 93-215; s. 4, ch. 2006-197.

Note.—Former s. 400.55.

429.901 Definitions.—As used in this part, the term:

(1) “Adult day care center” or “center” means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.

(2) “Agency” means the Agency for Health Care Administration.

(3) “Basic services” include, but are not limited to, providing a protective setting that is as noninstitutional as possible; therapeutic programs of social and health activities and services; leisure activities; self-care training; rest; nutritional services; and respite care.

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

(5) “Multiple or repeated violations” means 2 or more violations that present an imminent danger to the health, safety, or welfare of participants or 10 or more violations within a 5-year period that threaten the health, safety, or welfare of the participants.

(6) “Operator” means the licensee or person having general administrative charge of an adult day care center.

(7) “Owner” means the licensee of an adult day care center.

(8) “Participant” means a recipient of basic services or of supportive and optional services provided by an adult day care center.

(9) “Supportive and optional services” include, but are not limited to, speech, occupational, and physical therapy; direct transportation; legal consultation; consumer education; and referrals for followup services.

History.—s. 2, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 2, 17, ch. 93-215; s. 55, ch. 95-418; s. 4, ch. 2006-197; s. 165, ch. 2007-230.

Note.—Former s. 400.551.

429.903 Applicability.—Any facility that comes within the definition of an adult day care center which is not exempt under s. 429.905 must be licensed by the agency as an adult day care center.

History.—s. 3, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 3, 17, ch. 93-215; s. 4, ch. 2006-197; s. 105, ch. 2007-5.

Note.—Former s. 400.552.

429.905 Exemptions; monitoring of adult day care center programs colocated with assisted living facilities or licensed nursing home facilities.—

(1) The following are exempt from this part:

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

(b) Any freestanding inpatient hospice facility that is licensed by the state and which provides day care services to hospice patients only.

(2) A licensed assisted living facility, a licensed hospital, or a licensed nursing home facility may provide services during the day which include, but are not limited to, social, health, therapeutic, recreational, nutritional, and respite services, to adults who are not residents. Such a facility need not be licensed as an adult day care center; however, the agency must monitor the facility during the regular inspection and at least biennially to ensure adequate space and sufficient staff. If an assisted living facility, a hospital, or a nursing home holds itself out to the public as an adult day care center, it must be licensed as such and meet all standards prescribed by statute and rule.

History.—s. 4, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 6, ch. 88-235; ss. 4, 17, ch. 93-215; s. 20, ch. 95-210; s. 4, ch. 2006-197.

Note.—Former s. 400.553.

429.907 License requirement; fee; exemption; display.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate an adult day care center in this state.

(2)(a) Except as otherwise provided in this subsection, separate licenses are required for centers operated on separate premises, even though operated under the same management. Separate licenses are not required for separate buildings on the same premises.

(b) If a licensed center becomes wholly or substantially unusable due to a disaster or due to an emergency as those terms are defined in s. 252.34:

1. The licensee may continue to operate under its current license in premises separate from that authorized under the license if the licensee has:

- a. Specified the location of the premises in its comprehensive emergency management plan submitted to and approved by the applicable county emergency management authority; and
- b. Notified the agency and the county emergency management authority within 24 hours of operating in the separate premises.

2. The licensee shall operate the separate premises only while the licensed center's original location is substantially unusable and for up to 180 days. The agency may extend use of the alternate premises beyond the initial 180 days. The agency may also review the operation of the disaster premises quarterly.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part and part II of chapter 408. The amount of the fee shall be established by rule and may not exceed \$150.

(4) County-operated or municipally operated centers applying for licensure under this part are exempt from the payment of license fees.

History.—s. 5, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 5, 17, ch. 93-215; s. 4, ch. 2006-197; s. 2, ch. 2007-219; s. 166, ch. 2007-230; s. 119, ch. 2008-4; s. 344, ch. 2011-142.

Note.—Former s. 400.554.

429.909 Application for license.—In addition to all provisions of part II of chapter 408, the applicant for licensure must furnish a description of the physical and mental capabilities and needs of the participants to be served and the availability, frequency, and intensity of basic services and of supportive and optional services to be provided and proof of adequate liability insurance coverage.

History.—s. 6, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 6, 17, ch. 93-215; s. 50, ch. 98-171; s. 4, ch. 2006-197; s. 106, ch. 2007-5; s. 167, ch. 2007-230.

Note.—Former s. 400.555.

429.911 Denial, suspension, revocation of license; emergency action; administrative fines; investigations and inspections.—

(1) The agency may deny, revoke, and suspend a license under this part, impose an action under s. 408.814, and impose an administrative fine against the owner of an adult day care center or its operator or employee in the manner provided in chapter 120 for the violation of any provision of this part, part II

of chapter 408, or applicable rules.

(2) Each of the following actions by the owner of an adult day care center or by its operator or employee is a ground for action by the agency against the owner of the center or its operator or employee:

- (a) An intentional or negligent act materially affecting the health or safety of center participants.
- (b) A violation of this part or of any standard or rule under this part or part II of chapter 408.
- (c) Failure to comply with the background screening standards of this part, s. 408.809(1), or chapter 435.
- (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 center participants.
- (e) Multiple or repeated violations of this part or of any standard or rule adopted under this part or part II of chapter 408.

(3) The agency is responsible for all investigations and inspections conducted pursuant to this part and s. 408.811.

History.—s. 7, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 7, 17, ch. 93-215; s. 40, ch. 96-169; s. 51, ch. 98-171; s. 143, ch. 98-403; s. 16, ch. 2004-267; ss. 4, 63, ch. 2006-197; s. 168, ch. 2007-230; s. 32, ch. 2010-114.

Note.—Former s. 400.556.

429.913 Administrative fines.—

(1)(a) In addition to the requirements of part II of chapter 408, if the agency determines that an adult day care center is not operated in compliance with this part or with rules adopted under this part, the agency, notwithstanding any other administrative action it takes, shall make a reasonable attempt to discuss with the owner each violation and recommended corrective action prior to providing the owner with written notification. The agency may request the submission of a corrective action plan for the center which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(b) The owner of a center or its operator or employee found in violation of this part, part II of chapter 408, or applicable rules may be fined by the agency. A fine may not exceed \$500 for each violation. In no event, however, may such fines in the aggregate exceed \$5,000.

(c) The failure to correct a violation by the date set by the agency, or the failure to comply with an approved corrective action plan, is a separate violation for each day such failure continues, unless the agency approves an extension to a specific date.

(2) In determining whether to impose a fine and in fixing the amount of any 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 participant will result or has resulted, the severity of the actual 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 operator to correct violations.

(c) Any previous violations.

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

History.—ss. 64, 83, ch. 83-181; ss. 8, 17, ch. 93-215; s. 4, ch. 2006-197; s. 169, ch. 2007-230.

Note.—Former s. 400.5565.

429.915 Conditional license.—In addition to the license categories available in part II of chapter 408, the agency may issue a conditional license to an applicant for license renewal or change of

ownership if the applicant fails to meet all standards and requirements for licensure. A conditional license issued under this subsection must be limited to a specific period not exceeding 6 months, as determined by the agency, and must be accompanied by an approved plan of correction.

History.—s. 8, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 9, 17, ch. 93-215; s. 52, ch. 98-171; s. 27, ch. 2003-57; s. 4, ch. 2006-197; s. 107, ch. 2007-5; s. 170, ch. 2007-230.

Note.—Former s. 400.557.

429.917 Patients with Alzheimer's disease or other related disorders; staff training requirements; certain disclosures.—

(1) An adult day care center licensed under this part must provide the following staff training:

(a) Upon beginning employment with the facility, each employee must receive basic written information about interacting with participants who have Alzheimer's disease or dementia-related disorders.

(b) In addition to the information provided under paragraph (a), newly hired adult day care center personnel who are expected to, or whose responsibilities require them to, have direct contact with participants who have Alzheimer's disease or dementia-related disorders must complete initial training of at least 1 hour within the first 3 months after beginning employment. The training must include an overview of dementias and must provide instruction in basic skills for communicating with persons who have dementia.

(c) In addition to the requirements of paragraphs (a) and (b), an employee who will be providing direct care to a participant who has Alzheimer's disease or a dementia-related disorder must complete an additional 3 hours of training within 9 months after beginning employment. This training must include, but is not limited to, the management of problem behaviors, information about promoting the participant's independence in activities of daily living, and instruction in skills for working with families and caregivers.

(d) For certified nursing assistants, the required 4 hours of training shall be part of the total hours of training required annually.

(e) For a health care practitioner as defined in s. 456.001, continuing education hours taken as required by that practitioner's licensing board shall be counted toward the total of 4 hours.

(f) For an employee who is a licensed health care practitioner as defined in s. 456.001, training that is sanctioned by that practitioner's licensing board shall be considered to be approved by the Department of Elderly Affairs.

(g) The Department of Elderly Affairs or its designee must approve the 1-hour and 3-hour training provided to employees and direct caregivers under this section. The department must consider for approval training offered in a variety of formats. The department shall keep a list of current providers who are approved to provide the 1-hour and 3-hour training. The department shall adopt rules to establish standards for the employees who are subject to this training, for the trainers, and for the training required in this section.

(h) Upon completing any training described in this section, the employee or direct caregiver shall be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different adult day care center or to an assisted living facility, nursing home, home health agency, or hospice. The direct caregiver must comply with other applicable continuing education requirements.

(i) An employee who is hired on or after July 1, 2004, must complete the training required by this section.

(2) A center 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 center must give a copy of all such advertisements or a copy of the document to each person who requests information about the center and must maintain a copy of all such advertisements and documents in its records. The agency shall examine all such advertisements and documents in the center's records as part of the license renewal procedure.

History.—s. 4, ch. 93-105; s. 3, ch. 2003-271; s. 4, ch. 2006-197.

Note.—Former s. 400.5571.

429.919 Background screening.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

History.—ss. 53, 71, ch. 98-171; s. 83, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 49, ch. 2004-267; ss. 4, 64, ch. 2006-197; s. 108, ch. 2007-5; s. 171, ch. 2007-230; s. 33, ch. 2010-114.

Note.—Former s. 400.5572.

429.925 Discontinuance of operation of adult day care centers.—In addition to the requirements of part II of chapter 408, before operation of an adult day care center may be voluntarily discontinued, the operator must, at least 60 days before the discontinuance of operation, inform each participant of the fact and the proposed date of discontinuance of operation.

History.—s. 10, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 12, 17, ch. 93-215; s. 4, ch. 2006-197; s. 174, ch. 2007-230.

Note.—Former s. 400.559.

429.927 Right of entry and inspection.—In accordance with s. 408.811, the agency or department has the right to enter the premises of any adult day care center licensed pursuant to this part, at any reasonable time, in order to determine the state of compliance with this part, part II of chapter 408, and applicable rules.

History.—s. 11, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 13, 17, ch. 93-215; s. 4, ch. 2006-197; s. 175, ch. 2007-230.

Note.—Former s. 400.56.

429.929 Rules establishing standards.—

(1) The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. The Department of Elderly Affairs, in conjunction with the agency, shall adopt rules to implement the provisions of this part. The rules must include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county, or municipal ordinances shall be resolved in favor of those having statewide effect. Such standards must relate to:

(a) The maintenance of adult day care centers with respect to plumbing, heating, lighting, ventilation, and other building conditions, including adequate meeting space, to ensure the health, safety, and comfort of participants and protection from fire hazard. Such standards may not conflict with chapter 553 and must be based upon the size of the structure and the number of participants.

(b) The number and qualifications of all personnel employed by adult day care centers who have responsibilities for the care of participants.

(c) All sanitary conditions within adult day care centers and their surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance of sanitary conditions, to ensure the health and comfort of participants.

(d) Basic services provided by adult day care centers.

(e) Supportive and optional services provided by adult day care centers.

(f) Data and information relative to participants and programs of adult day care centers, including, but not limited to, the physical and mental capabilities and needs of the participants, the availability, frequency, and intensity of basic services and of supportive and optional services provided, the frequency of participation, the distances traveled by participants, the hours of operation, the number of referrals to other centers or elsewhere, and the incidence of illness.

(g) Components of a comprehensive emergency management plan, developed in consultation with the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management.

(2) Pursuant to this part, s. 408.811, and applicable rules, the agency may conduct an abbreviated biennial inspection of key quality-of-care standards, in lieu of a full inspection, of a center that has a record of good performance. However, the agency must conduct a full inspection of a center that has had one or more confirmed complaints within the licensure period immediately preceding the inspection or which has a serious problem identified during the abbreviated inspection. The agency shall develop the key quality-of-care standards, taking into consideration the comments and recommendations of the Department of Elderly Affairs and of provider groups. These standards shall be included in rules adopted by the Department of Elderly Affairs.

History.—ss. 13, 18, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 14, 17, ch. 93-215; s. 56, ch. 95-418; s. 61, ch. 2001-45; s. 4, ch. 2006-197; s. 176, ch. 2007-230; s. 345, ch. 2011-142.

Note.—Former s. 400.562.

429.931 Construction and renovation; requirements.—The requirements for the construction and the renovation of a center must comply with the provisions of chapter 553 which pertain to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility by physically handicapped persons, and the state minimum building codes.

History.—s. 14, ch. 78-336; s. 4, ch. 79-152; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 15, 17, ch. 93-215; s. 4, ch. 2006-197.

Note.—Former s. 400.563.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 7
Meeting Date: April 11, 2012

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Discuss Excused Absence Policy

BACKGROUND/HISTORY:

Council discussed this at March 5, 2012 meeting and left it up to each Board to create a policy to handle excused absences.

ATTACHMENTS:

Memo from Clerk 3/14/12
Recommended Procedures from the Administrator
Portion of Minutes from Council Meeting 3/5/2012

ACTION OPTIONS:

Board discussion and direction to Secretary

TOWN OF MALABAR

MEMORANDUM

Date: March 14, 2012 2012-TC/T-002
To: Denine Sherear, Secretary to Planning & Zoning Board
P&Z Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: P&Z Excused Absences

At the regular Council meeting of March 5, 2012 the method of requesting an excused absence was discussed. The Council left it to each Board to come up with a procedure and asked that the procedures the Town Administrator drafted be passed on to each Board.

Once the method is established it can be formally changed in the Code.

Recommended Procedures For Notifying Any Board About Impending Absences:

If a Board Member finds that they will not be able to attend a scheduled meeting they are use the following procedures:

- If before the close of business for Town Hall, the Board Member should contact the Secretary of the Board they are on. In the event they are not in they should speak with the Town Clerk or Deputy Town Clerk.
- If the notification occurs after the close of business hours for Town Hall, the Board Member may leave a phone message on the Town Hall phone. If they prefer to speak with a person, they may call the Town Clerk on the cell phone provided to her or the Town Administrator on her cell phone. These numbers will be provide to all Board Members upon assignment to any Board.
- The Town Clerk and the Board Secretaries are responsible prior to any scheduled meeting to check for phone messages on the Front Office phone lines for any messages of absences. They will report the message immediately to the Board Chair upon his arrival for the meeting.

8. Approval of Board Absence Procedure**Exhibit:** Agenda Report No. 8**Recommendation:** Request Action

Speaker's Card: Pat Reilly, Howell Lane, and Vice-Chair of P&Z Board.

He handed out packet to Council. The 1st page is for Mayor and Council; it doesn't say what to do, just says Council to excuse. Then Art. XII for P&Z says absences are excused and approved by the Chairman, definitely says who is the approver. This should be under a different section, not just alternate sections. Under Code for Park, it has its own stand alone section, says excuse approved by the Chairman. BOA is next; again it is in wrong place, approved by Chairman. Presently there is not a written process. One should be able to call Town Hall, Board Chair or another Board Member or Vice- Chair. Nor should it be implied that it is a sunshine violation if one does that. Solution, update Code with procedure each Board wants to use.

Reilly only calls in once in a while, and he wants it in Code and Land Dev Code. Acquaviva asked what is an excused absence, a Magic game or sick and who decides. Also what about excessive absences. Reilly said it is up to the Chairman of the Boards. Unless it is the Chairman of the Board. In his case, it is hard to come up with the dates. Reilly said as long as you call it in, it should be a good and sufficient cause. McKnight said there is no requirement to call in. It could be important, and he is excused. Don't have a process for that.

TA said she was given direction to write procedures. McKnight thought the direction was to explore the procedures, not require. Board should do their own procedures.

Chair called for a recess at 10:25 for 5 min

MOTION: McKnight / Beatty to extend for 45 minutes. VOTE: all Ayes.

Back in session at 10:30PM

Reilly continued, at renewal time and he comes before the Council, he has an excessive excused absences and would like to move him to alternate and do that in November. As Chairman of Board, they dictate what alternate member moves up.

Charter says the Council decides about excused absences. Reilly would like the Board to be able to call the Chairman or others and also should change the Code and Land Development Code.

Mayor said is that consensus of Council: have each Board set their own plan. Acquaviva did ask about that, about not being at the meeting and there could be a perception. Mayor said if she called him and there could be the perception then you could say the same thing about when they attend the Space Coast League of Cities (SCLC) monthly dinners. Acquaviva said Mayor said put away the perception of violation of sunshine. The secretary is the keeper of the minutes. Mayor said the job is to prepare for the meeting.

Beatty said the three Boards do legislative actions when they vote on them. The Chair has been given an executive power to decide on excused or not. Has nothing to do with legislative power. That is as far as it goes. McKnight said we are a small Town and we are going to talk to each other. When the Chair excuses them it is executive function, not legislative. Atty Bohne agreed with what Beatty said but if you are opening the grounds for discussion then the Board starts to entertain. If you give them the grounds for an excused absence. If the Chair says you

are excused, you are excused. You don't even have to have a reason. Acquaviva said you can excuse him but not me because you don't like me. Mayor said let each Board establish policy. Come up with something like what TA proposed policy.

Chair said he was asked by Mr. Bud Ryan to read the following into the record:
Regarding the Agenda Item 8 Report prepared by Town Clerk: in the first paragraph, sentence three states, "he stated he was listed as excused in the minutes of a meeting where he also was referenced as making comments during the meeting". This indeed did happen but was corrected by me when the draft minutes were read for approval at a subsequent meeting. That took place in 2011. A search of the official minutes should reveal that error and correction if properly recorded.

Mayor said we should also have a procedure for Council. Mayor said he will clean it up and present it at next meeting.