

**ADULT FAMILY-CARE HOME ACT
PART VII, CHAPTER 400
2004 Florida Statutes**

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400.616 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.

400.617 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.

400.618 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 personal¹ 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 part III.

(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.

¹Note.--As amended by s. 3, ch. 98-338. Section 21, ch. 98-80, substituted the word "services" for the word "care."

400.619 Licensure application and renewal.--

(1) Each person who intends to be an adult family-care home provider must apply for a license from the agency at least 90 days before the applicant intends to operate the adult family-care home.

(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) Application for a license or annual license renewal must be made on a form provided by the agency, signed under oath, and must be accompanied by a licensing fee of \$100 per year.

(4) Upon receipt of a completed license application or license renewal, and the fee, the agency shall² initiate a level 1 background screening as provided under chapter 435 on the adult family-care home provider, the designated relief person, all adult household members, and all staff members. The agency shall conduct an onsite visit to the home that is to be licensed.

(a) Proof of compliance with level 1 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies the requirements of this subsection. Such proof must be accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.

(b) The person required to be screened must have been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service that exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old must be provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided to the person screened by the employer retaining documentation of the screening.

(5) The application must be accompanied by a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from participation in the Medicaid or Medicare programs or any other governmental health care or health insurance program.

(6) 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.

(7) 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 district long-term care ombudsman council.

(8) A license is effective for 1 year after the date of issuance unless revoked sooner. Each license must state the name of the provider, the address of the home to which the license applies, and the maximum number of residents of the home. Failure to timely file a license renewal application shall result in a late fee equal to 50 percent of the license fee.

(9) A license is not transferable or applicable to any location or person other than the location and person indicated on the license.

(10) 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.

(11) Each adult family-care home must designate at least one licensed space for a resident receiving optional state supplementation. The ³Department 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.

(12) 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.

(13) All moneys collected under this section must be deposited into the Department of Elderly Affairs Administrative Trust Fund.

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

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. 8, ch. 2004-298**

¹Note.--

A. Section 70, ch. 98-171, provides that "[t]he provisions of this act which require an applicant for licensure, certification, or registration to undergo background screening shall apply to any individual or entity that applies, on or after July 1, 1998, for renewal of a license, certificate, or registration that is subject to the background screening required by this act."

B. Section 71(1), ch. 98-171, provides that "[t]he provisions of this act which require an applicant for licensure, certification, or registration to undergo background screening shall stand repealed on June 30, 2001, unless reviewed and saved from repeal through reenactment by this legislature."

²Note.--As amended by s. 57, ch. 98-171. Section 8, ch. 98-148, and s. 4, ch. 98-338, substituted the word "conduct" for "initiate."

³Note.--As amended by s. 57, ch. 98-171. Section 4, ch. 98-338, substituted the word "department" for the existing reference to the Department of Health and Rehabilitative Services; s. 400.618(7) defines "department" as the Department of Elderly Affairs for purposes of this part.

¹400.6194 Denial, revocation, or suspension of a license.--The agency may deny, suspend, or revoke a license for any of the following reasons:

(1) Failure of any of the persons required to undergo background screening under s. 400.619 to meet the level 1 screening standards of s. 435.03, unless an exemption from disqualification has been provided by the agency.

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

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

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

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

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

(7) Failure to submit a completed initial license application or to complete an application for license renewal within the specified timeframes.

(8) Exclusion, permanent suspension, or termination of the provider from the Medicare or Medicaid program.

History.--ss. 58, 71, ch. 98-171; s. 5, ch. 98-338.

¹Note.--

A. Section 70, ch. 98-171, provides that "[t]he provisions of this act which require an applicant for licensure, certification, or registration to undergo background screening shall apply to any individual or entity that applies, on or after July 1, 1998, for renewal of a license, certificate, or registration that is subject to the background screening required by this act."

B. Section 71(1), ch. 98-171, provides that "[t]he provisions of this act which require an applicant for licensure, certification, or registration to undergo background screening shall stand repealed on June 30, 2001, unless reviewed and saved from repeal through reenactment by this legislature."

400.6196 Violations; penalties.--

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

(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 include:

(a) Violating any term or condition of a license.

(b) Violating any rule adopted under this part.

(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.

(7) Civil penalties paid by a provider must be deposited into the Department of Elderly Affairs Administrative Trust Fund and used to offset the expenses of departmental training and education for adult family-care home providers.

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

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.

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

(1) 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. 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. 400.628.

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

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

(2) The department shall by rule provide minimum standards and procedures for emergencies.

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 rules adopted by the department.

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

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.

400.6211 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.

¹(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.

1Note.--As amended by s. 8, ch. 98-338. For a description of treatment of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes 1997, page viii. Subsection (3) was also amended by s. 11, ch. 98-148, and that version reads:

(3) Providers must complete the training and education program within a reasonable time determined by the department by rule. Failure to complete the training and education program within the time set by the department subjects the provider to revocation or denial of the license under this part.

400.622 Injunctive proceedings.--The department, the Department of Children and Family Services, or the agency may institute injunctive proceedings in a court of competent jurisdiction to:

(1) Enforce the provisions of this part or any license requirement, minimum standard, rule, or order issued or entered into under this part; or

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

History.--ss. 1, 2, ch. 85-195; s. 39, ch. 87-225; s. 4, ch. 91-429; s. 9, ch. 93-209; s. 67, ch. 95-418; s. 9, ch. 98-338.

400.625 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.

400.6255 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.

400.628 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. 400.427.

(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 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 district ombudsman council and the adult abuse registry 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.

¹400.629 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.

¹Note.--Section 34, ch. 99-225, provides that "[i]t is the intent of this act and the Legislature to accord the utmost comity and respect to the constitutional prerogatives of Florida's judiciary, and nothing in this act should be construed as any effort to impinge upon those prerogatives. To that end, should any court of competent jurisdiction enter a final judgment concluding or declaring that any provision of this act improperly encroaches upon the authority of the Florida Supreme Court to determine the rules of practice and procedure in Florida courts, the Legislature hereby declares its intent that any such provision be construed as a request for rule change pursuant to s. 2, Art. 5 of the State Constitution and not as a mandatory legislative directive."