

By Senator Brown-Waite

10-135A-99

See HB

1 A bill to be entitled
2 An act relating to nursing homes; creating the
3 "Bob Byram Nursing Home Care Reform Act";
4 creating s. 400.0115, F.S.; providing
5 legislative findings and intent; requiring
6 studies and recommendations by the Agency for
7 Health Care Administration; amending s.
8 400.022, F.S.; revising rights of residents of
9 nursing home facilities and providing
10 additional rights; providing for a
11 user-friendly poster of residents' rights;
12 amending s. 400.0231, F.S.; requiring
13 facilities to keep complete and accurate
14 medical records; providing a rebuttable
15 presumption in the absence of such records;
16 amending s. 400.0255, F.S.; providing
17 definitions and requirements relating to
18 discharge or transfer of residents; amending s.
19 400.063, F.S.; conforming a cross-reference;
20 amending s. 400.121, F.S.; authorizing payment
21 of facility fines or recovery costs by setoffs
22 from amounts otherwise payable to the facility;
23 providing requirements for review of
24 administrative proceedings challenging agency
25 enforcement actions; amending s. 400.151, F.S.;
26 requiring agency approval of the form of
27 facility contracts with residents; providing
28 exceptions; amending s. 400.162, F.S.;
29 providing minimum requirements for policies
30 regarding the safekeeping of residents'
31 property; amending s. 400.23, F.S.; providing

1 minimum staffing requirements; requiring
2 recordkeeping with respect to staffing and
3 report of staffing shortfalls; increasing
4 membership on the Nursing Home Advisory
5 Committee; authorizing the agency to downgrade
6 facility ratings under certain circumstances;
7 requiring issuance of amended licenses
8 reflecting facility ratings changes; revising
9 certain ratings requirements; providing
10 additional acts classified as deficiencies;
11 providing penalties and increasing maximum
12 fines; amending s. 400.241, F.S.; prohibiting
13 willful interference with unannounced required
14 inspections of a facility; providing a penalty;
15 amending s. 400.29, F.S.; requiring the agency
16 to make certain updated information available
17 to the public; amending s. 415.107, F.S.;
18 providing that the identity of a person
19 reporting adult abuse, neglect, or exploitation
20 may be released to the Attorney General's
21 Medicaid Fraud Control Unit; amending ss.
22 435.03 and 435.04, F.S.; providing for
23 employment screening of persons convicted under
24 s. 825.1035, F.S.; creating s. 825.1035, F.S.;
25 providing a penalty for failure to report known
26 abuse, neglect, or exploitation of a nursing
27 home resident to law enforcement; amending s.
28 394.4625, F.S.; conforming a cross-reference;
29 providing an appropriation; providing an
30 effective date.
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1 WHEREAS, Florida has the highest percentage of persons
2 over 65 in the United States, and the second highest median
3 age in the United States, and

4 WHEREAS, 23 percent of Florida's population is age 60
5 or older, and the portion of the state's population over the
6 age of 85 is the fastest-growing age group in Florida, and

7 WHEREAS, approximately 280,000 elder citizens and
8 approximately 60,000 other adult citizens in Florida are
9 considered severely disabled, in that they require assistance
10 with three or more activities of daily living, and

11 WHEREAS, Florida's 676 licensed nursing homes,
12 including extended care facilities, skilled nursing
13 facilities, and intermediate care facilities, provide 80,612
14 beds for residents, with an average occupancy rate of about 90
15 percent, and

16 WHEREAS, the nursing home industry is one of America's
17 fastest growing industries, with employment nationally
18 expected to grow from 1.6 million in 1995 to 2.4 million in
19 2005, and

20 WHEREAS, nursing homes in Florida constitute a
21 significant sector of the state's economy, providing jobs for
22 over 80,000 citizens, with annual payrolls of over \$125
23 million and annual gross revenues in excess of \$4.4 billion,
24 and

25 WHEREAS, the number of nursing home beds has increased
26 about 33 percent over the past 10 years, but the average
27 number of admissions to nursing homes increased 176 percent
28 over the same period, due to improvements in medical care, a
29 doubling of the rate of turnover of beds, and a decline in the
30 average stays in nursing homes from 52 days to 22 days since
31 1988, and

1 WHEREAS, Florida has the second lowest number of
2 nursing home beds per 1,000 persons over the age of 65 in the
3 nation: 27 beds compared to the national average of 58, and

4 WHEREAS, Florida nursing homes have more residents
5 between the ages of 80 and 84 than any other age group, and
6 over 65 percent of all Florida nursing home residents are over
7 80 years of age, and

8 WHEREAS, nationally, 52 percent of all women over age
9 65 and 33 percent of all men over age 65 will stay in a
10 nursing home at some point in their lives, and

11 WHEREAS, nationally, over \$77.9 billion was spent on
12 nursing home care in 1995, and

13 WHEREAS, over 60 percent of the total patient days in
14 Florida nursing homes are paid for by the Florida Medicaid
15 program, or approximately \$1.4 billion, a 133 percent increase
16 from 10 years ago, and

17 WHEREAS, approximately 10 percent of total patient days
18 at Florida nursing homes are paid by Medicare, but Medicare
19 pays for about 60 percent of new admissions to Florida nursing
20 homes, since Medicare pays only for short-term care, and

21 WHEREAS, state expenditures for nursing home care are
22 projected to continue to rise at approximately 15 percent per
23 year for the foreseeable future, and

24 WHEREAS, Florida has a significant structure of
25 regulation over nursing homes, but there continue to be too
26 many instances of violations which endanger the health,
27 safety, and welfare of residents of Florida nursing homes, and

28 WHEREAS, Florida should exert extraordinary efforts to
29 protect the interests of its citizens who are unable to fully
30 care for themselves, and

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1 WHEREAS, there is a significant expenditure of state
2 and federal dollars in providing care for Florida residents,
3 which expenditures should not be subject to fraud or abuse, or
4 diversion away from providing an adequate standard of care for
5 nursing home residents, and

6 WHEREAS, the regulation of nursing homes in Florida is
7 primarily the responsibility of the Agency for Health Care
8 Administration, and

9 WHEREAS, several other agencies are also involved in
10 regulating or investigating some aspect of Florida nursing
11 homes: the Department of Children and Family Services
12 investigates hotline reports of elder/disabled abuse; the
13 Comprehensive Assessment and Review for Extended Services
14 ("CARES") program of the Department of Elder Affairs screens
15 Medicaid recipients for eligibility for nursing home care; the
16 long-term care ombudsman councils administratively housed
17 within the Department of Elder Affairs investigate reports of
18 problems in nursing homes and mediate resolutions; the
19 Department of Insurance regulates continuing care communities;
20 the Attorney General's Medicaid Fraud Control Unit
21 investigates not only fraud cases, but also reports of abuse
22 and exploitation involving Florida nursing home residents; and
23 the 20 state attorneys prosecute criminal abuse, neglect, and
24 exploitation cases, and

25 WHEREAS, over the past 3 years, the Agency for Health
26 Care Administration has begun 125 administrative actions
27 against Florida nursing homes, issued 81 moratoria on new
28 admissions to Florida nursing homes, and instituted over 25
29 receiverships, closures, or license revocations; has imposed
30 state civil penalties of over \$2 million; and has proposed
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1 federal civil monetary penalties totaling over \$5.7 million,
2 and

3 WHEREAS, the agency issued administrative fines against
4 the Chartwell Corporation of over \$500,000 in 1998 for
5 violations at a facility in Orange Park which resulted in the
6 emergency relocation of 102 residents. This action culminated
7 a 2-year history of moratoria and other sanctions involving
8 seven facilities in Florida, which ultimately led to the
9 agency revoking several licenses and terminating the chain
10 from the Medicaid program, and

11 WHEREAS, despite these actions, unacceptable conditions
12 continue to arise at some Florida nursing homes, and

13 WHEREAS, the enforcement powers of the agency need to
14 be strengthened to prevent further abuse and to ensure
15 continuing compliance by Florida nursing homes with regulatory
16 requirements, especially quality-of-care requirements, and

17 WHEREAS, the Attorney General's Medicaid Fraud Control
18 Unit has investigated over 1,700 cases of alleged Medicaid
19 fraud in the past 5 years, and has made over 400 arrests; over
20 \$2.7 million in restitution to the state has been ordered in
21 criminal cases, and over \$8.9 million has been ordered in
22 civil cases involving all Medicaid provider types; over 442
23 cases of patient abuse have been investigated, and the unit is
24 currently investigating 51 cases involving fraud, abuse, or
25 neglect in Florida nursing homes, and

26 WHEREAS, the long-term care ombudsman councils received
27 approximately 7,500 complaints in the past fiscal year
28 concerning conditions at nursing homes, and were instrumental
29 in assisting the agency and the Elder Abuse Registry in
30 documenting numerous violations, and

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1 WHEREAS, according to the State Long-Term Care
2 Ombudsman, the five most frequent complaints regarding
3 long-term care facilities involve: shortage of staff, lack of
4 dignity, personal hygiene, gross neglect, and medication
5 administration, and

6 WHEREAS, Florida law must be strengthened to require
7 nursing home staff to report instances of criminal abuse of
8 nursing home residents to law enforcement, and

9 WHEREAS, on a national basis, the United States
10 Department of Health and Human Services Inspector General
11 recently found that as many as 20 percent of nursing home
12 residents were receiving inappropriate medication, and

13 WHEREAS, the current nursing home staffing levels
14 prescribed by Florida laws and regulations are below the
15 national minimum levels recommended by the National Citizens'
16 Coalition for Nursing Home Reform and the John A. Hartford
17 Foundation Institute for Geriatric Nursing, and

18 WHEREAS, it appears that in order to ensure a minimum
19 level of care for residents of Florida nursing homes, there
20 must be improvements in the required level of skilled nursing
21 and unskilled nursing staff at facilities, and there must
22 furthermore be a minimum level of staffing prescribed for each
23 shift, and

24 WHEREAS, it appears that in order to ensure a minimum
25 level of care for residents in all Florida nursing homes, the
26 authority of the Agency for Health Care Administration must be
27 strengthened to mandate increased or improved staff when
28 serious deficiencies attributable to an inadequate number of
29 nurses or certified nursing assistants are identified, and

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1 WHEREAS, any such increase in minimum staffing levels
2 should be accompanied by an adjustment in the reimbursement
3 rates paid by Florida Medicaid, and

4 WHEREAS, even though "dumping" is forbidden by federal
5 and Florida law, some facilities discriminate against or
6 attempt to transfer or discharge residents because their care
7 is paid for by Medicaid, and it is difficult to prevent this
8 practice because of loopholes in the current statutes, and

9 WHEREAS, the agency levied state penalties of \$260,000
10 and recommended a federal fine of \$100,000 against Vencor,
11 Inc., in April of 1998 for its actions in attempting to evict
12 52 residents who were Medicaid recipients, and

13 WHEREAS, such instances indicate that Florida law must
14 be strengthened and loopholes closed to prevent "dumping," and

15 WHEREAS, the current system of rating Florida nursing
16 homes allows undeserving facilities to be given a higher
17 rating than is justified, thus misleading consumers and
18 discouraging competition, and

19 WHEREAS, the rating system needs to be strengthened so
20 that the best nursing homes receive the recognition they
21 deserve and families and residents may be assured that truly
22 superior care will be rendered by a nursing home that is rated
23 "superior," and

24 WHEREAS, the agency's Guide to Nursing Homes in Florida
25 should be expanded to provide fuller and more timely
26 information to nursing home residents, families, and the
27 public, and

28 WHEREAS, in order to uphold the rights of nursing home
29 residents and to improve the quality of their care, Florida
30 law needs to be strengthened in several areas to better inform
31 residents and their families concerning nursing home services

1 and billings, to deter fraud, to improve recordkeeping and
2 reporting, to improve the physical security of nursing home
3 residents and their personal belongings, to improve hygiene
4 for residents and minimize the risk of bedsores and other
5 infections, to enhance the resident's rights to choose a
6 pharmacy and lower his or her prescription costs, and to
7 ensure that contracts between nursing homes and their
8 residents are not misleading or otherwise unlawful, and

9 WHEREAS, to better safeguard the health, safety, and
10 welfare of Florida nursing home residents, the Agency for
11 Health Care Administration must be empowered and instructed to
12 institute an "early warning system" so that potentially
13 dangerous conditions at nursing homes may be detected and
14 corrected before tragedy strikes, NOW, THEREFORE,

15
16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. This act may be cited as the "Bob Byram
19 Nursing Home Care Reform Act."

20 Section 2. Section 400.0115, Florida Statutes, is
21 created to read:

22 400.0115 Legislative findings and intent; studies;
23 report and recommendations.--

24 (1) The Legislature finds that, in some cases, the
25 present regulatory system regarding nursing home facilities is
26 not adequate to detect and correct problems at the facilities
27 before they reach the crisis stage. Some facilities have
28 failed to meet their payroll and other normal operating
29 expenses, resulting in sudden closure of the facility and the
30 need for emergency measures and the expenditure of public
31 funds to transfer residents to another facility in order to

1 continue their care. Other facilities have lapsed into such
2 inadequate care that the health and welfare of many residents
3 has been harmed, resulting in the need for emergency measures
4 to alleviate the problems, again often at great public
5 expense. Many facilities with separate licenses for each
6 location are owned by holding companies or chains; other
7 groups of facilities, which may or may not have different
8 owners, are managed by the same management company. In either
9 case, the regulatory system must recognize such realities and
10 the potential impact they may have on the quality of care
11 received by nursing home residents. In carrying out its duties
12 under this section, the agency shall consider the terms
13 "facility" and "licensee" to include holding companies,
14 chains, or management companies, where appropriate. The
15 Legislature finds and determines that, in order to protect the
16 health, safety, and welfare of nursing home residents,
17 additional procedures are required to:

18 (a) Continuously gather and analyze information
19 regarding the operation of facilities and the condition of
20 residents therein.

21 (b) Determine which events or conditions or other data
22 are "early warning signs" indicating a substantial possibility
23 that the financial stability of the facility or the quality of
24 care of residents of the facility is or may soon be in
25 jeopardy.

26 (c) Enable the agency to inspect, survey, and examine
27 any facility deemed to be potentially in danger of having
28 deficiencies or violations threatening the financial stability
29 of the facility or the quality of care given to residents of
30 the facility, without notification to the facility and solely
31 at the discretion of the agency.

1 (d) Enable the agency to intervene immediately in the
2 case of a facility found to have such deficiencies or
3 violations, in order to prevent further deterioration of
4 conditions and possible crisis situations.

5 (e) Protect the rights of facility owners and staff,
6 as well as the rights of residents of the facilities.

7 (2) It is, further, the intent of the Legislature to
8 require that information provided to the agency by facilities
9 and by other government agencies be in a consistent,
10 user-friendly, and logical format to enable maximum use of
11 electronic data transmission and processing techniques by the
12 agency to more efficiently gather, collate, analyze, use, and
13 disseminate information used in the regulation of facilities.

14 (3) The agency is directed to perform the following
15 studies and to present a report and recommendations to the
16 Speaker of the House of Representatives and the President of
17 the Senate by February 1, 2000, for consideration at the 2000
18 Regular Session of the Legislature. The agency shall:

19 (a) Identify all sources of data and other information
20 relating to regulation of facilities presently received by the
21 agency from facilities, government agencies, and the public.

22 (b) Determine those types of events, occurrences, and
23 conditions at facilities which, in the judgment of the agency,
24 based upon its experience and knowledge of conditions in the
25 nursing home industry, serve as "early warning signs" or
26 indicators that there is a substantial possibility that the
27 financial stability of a facility, or the quality of care
28 given to residents of a facility, may be in jeopardy to the
29 extent that the health, safety, or welfare of residents could
30 be adversely affected. The criteria for such "early warning
31 signs" may be developed by the agency with the full right of

1 the agency to keep such criteria confidential in order to
2 assist in the investigation and regulation of nursing homes.
3 The events, occurrences, and conditions determined to serve as
4 "early warning signs" need not constitute violations or
5 deficiencies themselves, as long as they are sufficient
6 indicators of the possible presence of violations or
7 deficiencies which could adversely affect the health, safety,
8 or welfare of residents. For example, and without limiting
9 the generality of the foregoing:

10 1. A continuing failure or inability of a facility to
11 pay its accounts payable, payroll, taxes, etc., in a timely
12 manner may indicate that a facility's financial stability is
13 jeopardized to the extent that it may become insolvent or
14 abruptly cease operations, thus causing disruption and adverse
15 effects on the care given to residents, with the concomitant
16 need for the agency to seek moratoria, injunctions,
17 receiverships, and expenditures from the Resident Protection
18 Trust Fund. If the use of "early warning signs" enables the
19 agency to detect and alleviate such financial problems before
20 matters reach such a crisis stage, public resources will be
21 conserved and the quality of care of residents will be
22 enhanced.

23 2. A pattern of falls, significant weight loss,
24 dehydration, pressure sores, or pulmonary infections among
25 residents of a facility could indicate a decline in the
26 standard of care being given by the facility, which could lead
27 to serious adverse impacts on the health of residents if
28 unchecked.

29 3. A pattern of unexplained disappearances of
30 resident's personal property, or the presence of unauthorized
31 persons in the facility, or a pattern of attacks on residents,

1 could indicate inadequate security measures at the facility,
2 endangering the safety and welfare of residents if not
3 corrected.

4 (c) Determine whether the data and other information
5 identified under paragraph (a) is sufficient in terms of
6 timeliness and quality to serve as the "early warning signs"
7 identified under paragraph (b), and if not, what changes would
8 be required in agency rules or in statutes to provide
9 sufficient information.

10 (d) Determine whether additional changes are needed in
11 agency rules or in statutes to make the information identified
12 in paragraphs (a) and (b) more systematic, coherent,
13 meaningful, consistent, useful, and user-friendly, in order to
14 promote efficiency, recognize and regulate practices of
15 holding companies, chains, and management companies affecting
16 more than one facility, improve regulation of facilities, and
17 enhance protection of the health, safety, and welfare of
18 residents of facilities, without unnecessary burdens on the
19 regulated facilities, and without conflicting with nonwaivable
20 federal requirements.

21 (e) Devise a plan to implement an "early warning
22 system" whereby:

23 1. Sufficient and timely information would be provided
24 to the agency to enable "early warning signs" to be
25 identified.

26 2. Agency staff could analyze and evaluate such
27 information and detect "early warning signs."

28 3. Threshold levels of "early warning signs" would be
29 set to indicate the strong possibility of the existence of
30 conditions at a facility that could, directly or indirectly,
31 jeopardize the health, safety, or welfare of residents of the

1 facility, or which could require the inordinate expenditure of
2 public resources to stave off such jeopardy.

3 4. When such "early warning signs" are found, the
4 agency shall evaluate the level of threat to the residents of
5 the facility or threat of an inordinate expenditure of public
6 resources. Upon determination of the level of threat, the
7 agency shall apply the appropriate level of intervention, such
8 levels of intervention being graduated, such as:

9 a. Inspections or surveys.

10 b. Documenting of deficiencies or violations
11 discovered.

12 c. Consultation and advice for the facility from one
13 or more private or nonagency public consultants on a list of
14 consultants with sufficient expertise approved by the agency,
15 it being the intent of the Legislature that the agency itself
16 should not serve as a consultant with facilities because of
17 the inherent conflict with the agency's regulatory and
18 enforcement roles.

19 d. Negotiation and implementation of consent orders
20 with corrective action plans with facilities.

21 e. Incentives for facilities to enter into and comply
22 with such consent orders, such as agreement by the agency not
23 to pursue penalties or other disciplinary action for
24 identified and admitted existing deficiencies and violations,
25 so long as the terms of the consent order are complied with.

26 f. Agency monitors stationed at the facility, at the
27 expense of the facility, to monitor and report progress on the
28 corrective actions.

29 g. Enhanced penalties or other discipline.

30 h. Expedited use by the agency of remedies such as
31 moratoria, injunctions, license suspensions or revocations,

1 federal sanctions, penalties, or receiverships, if the
2 facility declines to enter into a consent order or if, at the
3 sole discretion of the agency, conditions at the facility are
4 such that a consent order with corrective action plan would
5 most likely not produce the necessary improvements.

6 i. Other measures recommended by the agency.

7 (f) Propose language amending the Florida Statutes to
8 enable the agency to carry out and implement the plan for an
9 "early warning system."

10 Section 3. Subsection (1) of section 400.022, Florida
11 Statutes, is amended to read:

12 400.022 Residents' rights.--

13 (1) All licensees of nursing home facilities shall
14 adopt and post in a ~~make~~ public place a statement of the
15 rights and responsibilities of the residents of such
16 facilities and shall treat such residents in accordance with
17 the provisions of that statement. The State Long-Term Care
18 Ombudsman shall develop a user-friendly poster, suitable for
19 framing or mounting, that summarizes the residents' rights and
20 responsibilities listed in this section and that may be used
21 by facilities to meet this posting requirement.The statement
22 shall assure each resident the following:

23 (a) The right to civil and religious liberties,
24 including knowledge of available choices and the right to
25 independent personal decision, which will not be infringed
26 upon, and the right to encouragement and assistance from the
27 staff of the facility in the fullest possible exercise of
28 these rights.

29 (b) The right to private and uncensored communication,
30 including, but not limited to, receiving and sending unopened
31 correspondence, access to a telephone at all times, visiting

1 with any person of the resident's choice during visiting
2 hours, and overnight visitation outside the facility with
3 family and friends in accordance with facility policies,
4 physician orders, and Title XVIII (Medicare) and Title XIX
5 (Medicaid) of the Social Security Act regulations, without the
6 resident's losing his or her bed. Facility visiting hours
7 shall be flexible, taking into consideration special
8 circumstances such as, but not limited to, out-of-town
9 visitors and working relatives or friends. Unless otherwise
10 indicated in the resident care plan, the licensee shall, with
11 the consent of the resident and in accordance with policies
12 approved by the agency, permit recognized volunteer groups,
13 representatives of community-based legal, social, mental
14 health, and leisure programs, and members of the clergy access
15 to the facility during visiting hours for the purpose of
16 visiting with and providing services to any resident. Facility
17 policies shall ensure the resident's right to communicate with
18 his or her legal representative and with public officials.

19 (c) Any entity or individual that provides health,
20 social, legal, or other services to a resident has the right
21 to have reasonable access to the resident. The resident has
22 the right to deny or withdraw consent to access at any time by
23 any entity or individual. Notwithstanding the visiting policy
24 of the facility, the following individuals must be permitted
25 immediate access to the resident:

26 1. Any representative of the federal or state
27 government, including, but not limited to, representatives of
28 the Department of Children and Family Health and
29 ~~Rehabilitative~~ Services, the Agency for Health Care
30 Administration, the Attorney General's Office, and the
31 Department of Elderly Affairs; any law enforcement officer;

1 members of the state or district ombudsman council; and the
2 resident's individual physician.

3 2. Subject to the resident's right to deny or withdraw
4 consent, immediate family or other relatives of the resident.

5
6 The facility must allow representatives of the state ~~Home~~ Nursing
7 ~~and long-term care Facility~~ ombudsman program ~~Council~~ to
8 examine a resident's clinical records with the permission of
9 the resident or the resident's legal representative and
10 consistent with state law.

11 (d) The right to present grievances on behalf of
12 himself or herself or others to the staff or administrator of
13 the facility, to governmental officials, or to any other
14 person; to recommend changes in policies and services to
15 facility personnel; and to join with other residents or
16 individuals within or outside the facility to work for
17 improvements in resident care, free from restraint,
18 interference, coercion, discrimination, or reprisal. This
19 right includes access to ombudsmen and advocates and the right
20 to be a member of, to be active in, and to associate with
21 advocacy or special interest groups. The right also includes
22 the right to prompt efforts by the facility to resolve
23 resident grievances, including grievances with respect to the
24 behavior of other residents.

25 (e) The right to organize and participate in resident
26 groups in the facility and the right to have the resident's
27 family meet in the facility with the families of other
28 residents.

29 (f) The right to participate in social, religious, and
30 community activities that do not interfere with the rights of
31 other residents.

1 (g) The right to examine, upon reasonable request, the
2 results of the most recent inspection of the facility
3 conducted by a federal or state agency and any plan of
4 correction in effect with respect to the facility.

5 (h) The right to manage his or her own financial
6 affairs or to delegate such responsibility to the licensee,
7 but only to the extent of the funds held in trust by the
8 licensee for the resident. A quarterly accounting of any
9 transactions made on behalf of the resident shall be furnished
10 to the resident or the person responsible for the resident.
11 The facility may not require a resident to deposit personal
12 funds with the facility. However, upon written authorization
13 of a resident, the facility must hold, safeguard, manage, and
14 account for the personal funds of the resident deposited with
15 the facility as follows:

16 1. The facility must establish and maintain a system
17 that ensures a full, complete, and separate accounting,
18 according to generally accepted accounting principles, of each
19 resident's personal funds entrusted to the facility on the
20 resident's behalf.

21 2. The accounting system established and maintained by
22 the facility must preclude any commingling of resident funds
23 with facility funds or with the funds of any person other than
24 another resident.

25 3. A quarterly accounting of any transaction made on
26 behalf of the resident shall be furnished to the resident or
27 the person responsible for the resident.

28 4. Upon the death of a resident with personal funds
29 deposited with the facility, the facility must convey within
30 30 days the resident's funds, including interest, and a final
31 accounting of those funds, to the individual or probate

1 jurisdiction administering the resident's estate, or, if a
2 personal representative has not been appointed within 30 days,
3 to the resident's spouse or adult next of kin named in the
4 beneficiary designation form provided for in s. 400.162(6).

5 5. The facility may not impose a charge against the
6 personal funds of a resident for any item or service for which
7 payment is made under Title XVIII or Title XIX of the Social
8 Security Act.

9 (i) The right to be fully informed, in writing and
10 orally, prior to or at the time of admission and during his or
11 her stay, of services available in the facility and of related
12 charges for such services, including any charges for services
13 not covered under Title XVIII or Title XIX of the Social
14 Security Act or not covered by the basic per diem rates and of
15 bed reservation and refund policies of the facility. In
16 addition, the resident or his or her designee or legal
17 representative shall have the right, upon request, to be
18 provided with an itemized bill and a reasonable explanation
19 thereof, for any care, medication, supplies, or services
20 billed with respect to the resident not covered by the
21 facility's basic per diem rate, regardless of the source of
22 payment. This information shall include a statement of any
23 third-party payments made with respect to the bill. The
24 request for billing and reimbursement information may be
25 continuing in nature and need not be renewed on each occasion.

26 (j) The right to be adequately informed of his or her
27 medical condition and proposed treatment, unless the resident
28 is determined to be unable to provide informed consent under
29 Florida law, or the right to be fully informed in advance of
30 any nonemergency changes in care or treatment that may affect
31 the resident's well-being; and, except with respect to a

1 resident adjudged incompetent, the right to participate in the
2 planning of all medical treatment, including the right to
3 refuse medication and treatment, unless otherwise indicated by
4 the resident's physician; and to know the consequences of such
5 actions.

6 (k) The right to refuse medication or treatment and to
7 be informed of the consequences of such decisions, unless
8 determined unable to provide informed consent under state law.
9 The foregoing right includes the right to have a living will,
10 including a do-not-resuscitate order, that the facility must
11 follow when the living will or order is validly and legally
12 executed and the resident has been determined by two licensed
13 physicians to be in a terminal condition.When the resident
14 refuses medication or treatment, the nursing home facility
15 must notify the resident or the resident's legal
16 representative of the consequences of such decision and must
17 document the resident's decision in his or her medical record.
18 The nursing home facility must continue to provide other
19 services the resident agrees to in accordance with the
20 resident's care plan.

21 (l) The right to receive adequate and appropriate
22 health care and protective and support services, including
23 social services; mental health services, if available; planned
24 recreational activities; and therapeutic and rehabilitative
25 services consistent with the resident care plan, with
26 established and recognized practice standards within the
27 community, and with rules as adopted by the agency. The
28 facility shall, to the extent possible, ensure good personal
29 hygiene for residents, to minimize the risk of infections and
30 bedsores; adopt measures to prevent or reduce incontinence in
31 residents and minimize the adverse effects of unavoidable

1 incontinence; and provide a nurse call system to summon
2 assistance, with buttons or other activating mechanisms at
3 critical locations.

4 (m) The right to proper contemporaneous documentation
5 of the provision of medication, treatment, or other care in
6 the resident's medical records as required by law.

7 (n) The right to refuse to serve as a research subject
8 and to refuse any care or examination the primary purpose of
9 which is educational or informative, rather than therapeutic.

10 (o)~~(m)~~ The right to have privacy in treatment and in
11 caring for personal needs; to close room doors and to have
12 facility personnel knock before entering the room, except in
13 the case of an emergency or unless medically contraindicated;
14 and to security in storing and using personal possessions.
15 Privacy of the resident's body shall be maintained during, but
16 not limited to, toileting, bathing, and other activities of
17 personal hygiene, except as needed for resident safety or
18 assistance. Residents' personal and medical records shall be
19 confidential and exempt from the provisions of s. 119.07(1).

20 (p)~~(n)~~ The right to be treated courteously, fairly,
21 and with the fullest measure of dignity and to receive a
22 written statement and an oral explanation of the services
23 provided by the licensee, including those required to be
24 offered on an as-needed basis.

25 (q)~~(o)~~ The right to be free from mental and physical
26 abuse, corporal punishment, extended involuntary seclusion,
27 and from physical and chemical restraints, except those
28 restraints authorized in writing by a physician for a
29 specified and limited period of time or as are necessitated by
30 an emergency. In case of an emergency, restraint may be
31 applied only by a qualified licensed nurse who shall set forth

1 in writing the circumstances requiring the use of restraint,
2 and, in the case of use of a chemical restraint, a physician
3 shall be consulted immediately thereafter. Restraints may not
4 be used in lieu of staff supervision or merely for staff
5 convenience, for punishment, or for reasons other than
6 resident protection or safety.

7 (r)(p) The right not to be transferred or discharged
8 by the facility except for the reasons and under the
9 procedures set forth in s. 400.0255.~~only for medical reasons~~
10 ~~or for the welfare of other residents, and the right to be~~
11 ~~given reasonable advance notice of no less than 30 days of any~~
12 ~~involuntary transfer or discharge, except in the case of an~~
13 ~~emergency as determined by a licensed professional on the~~
14 ~~staff of the nursing home, or in the case of conflicting rules~~
15 ~~and regulations which govern Title XVIII or Title XIX of the~~
16 ~~Social Security Act. For nonpayment of a bill for care~~
17 ~~received, the resident shall be given 30 days' advance notice.~~
18 A licensee certified to provide services under Title XIX of
19 the Social Security Act may not transfer or discharge a
20 resident solely because the source of payment for care
21 changes, and the facility may not cite a lack of
22 Medicaid-certified beds as a reason for transfer or discharge
23 unless the facility has been denied permission by the agency
24 to add a vacant bed to the number of Medicaid-certified beds.
25 Admission to a nursing home facility operated by a licensee
26 certified to provide services under Title XIX of the Social
27 Security Act may not be conditioned upon a waiver of such
28 right, and any document or provision in a document which
29 purports to waive or preclude such right is void and
30 unenforceable. Any licensee certified to provide services
31 under Title XIX of the Social Security Act that obtains or

1 attempts to obtain such a waiver from a resident or potential
2 resident shall be construed to have violated the resident's
3 rights as established herein and is subject to disciplinary
4 action as provided in subsection (3). The resident and the
5 family or representative of the resident shall be consulted in
6 choosing another facility.

7 (s)~~(q)~~ The right to freedom of choice in selecting a
8 personal physician; to obtain pharmaceutical supplies and
9 services from a pharmacy of the resident's choice, at the
10 resident's own expense or through Title XIX of the Social
11 Security Act; and to obtain information about, and to
12 participate in, community-based activities programs, unless
13 medically contraindicated as documented by a physician in the
14 resident's medical record. If a resident chooses to use a
15 community pharmacy and the facility in which the resident
16 resides uses a unit-dose system, the pharmacy selected by the
17 resident shall be one that provides a compatible unit-dose
18 system, provides service delivery, and stocks the drugs
19 normally used by long-term care residents. If a resident
20 chooses to use a community pharmacy and the facility in which
21 the resident resides does not use a unit-dose system, the
22 pharmacy selected by the resident shall be one that provides
23 service delivery and stocks the drugs normally used by
24 long-term care residents. Any other law or rule
25 notwithstanding, a registered pharmacist acting on behalf of a
26 facility or resident shall be permitted to repackage
27 prescription medicine packaged by another pharmacist into a
28 unit-dose system compatible with the system used by the
29 facility, for administration to a resident, in order to
30 implement the resident's rights under this paragraph.

31

1 ~~(t)(r)~~ The right to retain and use personal clothing
2 and possessions as space permits, unless to do so would
3 infringe upon the rights of other residents or unless
4 medically contraindicated as documented in the resident's
5 medical record by a physician. If clothing is provided to the
6 resident by the licensee, it shall be of reasonable fit. The
7 facility shall establish policies and procedures to eliminate
8 or greatly reduce theft and loss of residents' personal
9 property, in accordance with s. 400.162 and rules of the
10 agency.

11 ~~(u)(s)~~ The right to have copies of the rules and
12 regulations of the facility and an explanation of the
13 responsibility of the resident to obey all reasonable rules
14 and regulations of the facility and to respect the personal
15 rights and private property of the other residents.

16 ~~(v)(t)~~ The right to receive 24 hours' written notice
17 before the room of the resident in the facility is changed.

18 ~~(w)(u)~~ The right to be informed of the bed reservation
19 policy for a hospitalization. The nursing home shall inform a
20 private-pay resident and his or her responsible party that his
21 or her bed will be reserved for any single hospitalization for
22 a period up to 30 days, provided the nursing home receives
23 reimbursement. Any resident who is a recipient of assistance
24 under Title XIX of the Social Security Act, or the resident's
25 designee or legal representative, shall be informed by the
26 licensee that his or her bed will be reserved for any single
27 hospitalization for the length of time for which Title XIX
28 reimbursement is available, up to 8 ~~15~~ days; but that the bed
29 will not be reserved if it is medically determined by the
30 agency that the resident will not need it or will not be able
31 to return to the nursing home, or if the agency determines

1 that the nursing home's occupancy rate ensures the
2 availability of a bed for the resident. A written notice of
3 the foregoing rights, as applicable, in a form to be
4 promulgated or approved by the agency,~~Notice~~ shall be
5 provided within 24 hours of the hospitalization. A facility
6 that has been reimbursed for reserving a bed and wrongfully
7 refuses to readmit a resident within the prescribed time
8 period shall refund the bed reservation compensation and shall
9 be deemed to have violated the resident's rights under this
10 paragraph.

11 ~~(x)~~(v) For residents of Medicaid or Medicare certified
12 facilities, the right to challenge a decision by the facility
13 to discharge or transfer the resident, as required under s.
14 400.0255 and Title 42 C.F.R. part 483.12 ~~483.13~~.

15 Section 4. Section 400.0231, Florida Statutes, is
16 amended to read:

17 400.0231 Patient records; penalties for alteration.--

18 (1) Every licensed facility shall keep complete and
19 accurate medical records for each resident, as provided by law
20 and by rules of the agency and the Department of Health.
21 Assessments of each resident's condition and the provision of
22 medication, treatment, therapy or other medical or skilled
23 nursing care shall be contemporaneously documented in the
24 resident's medical records. The absence of such documentation
25 of the provision of medication, treatment, or other care in
26 the resident's medical records creates a rebuttable
27 presumption that the medication, treatment, or other care was
28 not provided. This presumption shall apply in disciplinary
29 proceedings by the agency or other regulatory entity against
30 the licensee or a licensed health care provider and may, at
31 the court's discretion, apply in other actions to which the

1 resident is a party. This presumption may be rebutted by clear
2 and convincing evidence.

3 (2)~~(1)~~ Any person who fraudulently alters, defaces, or
4 falsifies any medical or other nursing home record, or causes
5 or procures any of these offenses to be committed, commits a
6 misdemeanor of the second degree, punishable as provided in s.
7 775.082 or s. 775.083.

8 (3)~~(2)~~ A conviction under subsection (2)~~(1)~~ is also
9 grounds for restriction, suspension, or termination of license
10 privileges.

11 Section 5. Present subsections (1), (3), (4), and (6)
12 of section 400.0255, Florida Statutes, are amended, present
13 subsections (2) through (12) are renumbered as subsections (4)
14 through (14), respectively, and new subsections (2) and (3)
15 are added to that section, to read:

16 400.0255 Resident hearings of facility decisions to
17 transfer or discharge.--

18 (1) As used in this section: ~~the term~~

19 (a) "Discharge" or "transfer" means the movement of a
20 resident to a bed outside the certified facility. "Discharge"
21 or "transfer" does not refer to the movement of a resident to
22 a bed within the same certified facility.

23 (b) "Necessary for the resident's welfare" means that,
24 by objective criteria as provided in rules of the agency, the
25 resident's physical or emotional well-being would more likely
26 than not be harmed by remaining in the facility and receiving
27 adequate levels of care, which harm would be less likely to
28 occur if the resident were discharged or transferred.

29 (c) "The resident's needs cannot be met in the
30 facility" means that the resident's medical condition has
31 changed to the extent that the resident now needs additional

1 or different treatments or advanced levels of care which the
2 facility does not provide to any resident of the facility.

3 (2) A facility must permit each resident to remain in
4 the facility, and may not discharge or transfer a resident
5 from the facility, unless one or more of the following
6 applies:

7 (a) The transfer or discharge is medically appropriate
8 because the resident's health has improved sufficiently that
9 the resident no longer needs the services provided by the
10 facility;

11 (b) The transfer or discharge is necessary for the
12 resident's welfare and the resident's needs cannot be met in
13 the facility;

14 (c) The safety of other individuals in the facility is
15 endangered;

16 (d) The health of other individuals in the facility
17 would otherwise be endangered;

18 (e) The resident has failed, after reasonable and
19 appropriate notice, to pay for, or to have paid for under
20 Medicare or Medicaid, a stay at the facility. For a resident
21 who becomes eligible for Medicaid after admission to a
22 Medicaid-certified facility, the facility may charge a
23 resident only allowable charges under Medicaid; or

24 (f) The facility ceases to operate. For purposes of
25 this subsection, "ceases to operate" means actual cessation of
26 nursing home operations and surrender of the facility's
27 license. Change of ownership, affiliation, management, or name
28 of a facility shall not constitute ceasing of operation.

29 (3) When the facility transfers or discharges a
30 resident under any of the circumstances specified in
31 paragraphs (2)(a)-(e), the resident's medical or other record

1 must be so documented. The documentation must be made by the
2 resident's physician under the circumstances specified in
3 paragraphs (2)(a) or paragraph (2)(b), or by any physician
4 under the circumstances specified in paragraph (2)(d).

5 (5)(3) Except as provided in paragraphs (a) and (b),
6 at least 30 days prior to any proposed transfer or discharge,
7 a facility must provide advance notice of the proposed
8 transfer or discharge to the resident and, if known, to a
9 family member or the resident's legal guardian or
10 representative, ~~except, in the following~~

11 (a) In the circumstances listed in paragraph 2(a), or
12 if the resident has been a resident of the facility for fewer
13 than 30 days, at least 5 working days' advance notice must be
14 provided.

15 (b) If the circumstances listed in paragraph (2)(b),
16 paragraph (2)(c), or paragraph (2)(d) constitute an emergency
17 as documented in the resident's medical records by the
18 resident's physician, or by the medical director if the
19 resident's physician is not available, the facility shall give
20 notice as soon as practicable before the transfer or
21 discharge. +

22 ~~(a) The transfer or discharge is necessary for the~~
23 ~~resident's welfare and the resident's needs cannot be met in~~
24 ~~the facility, and the circumstances are documented in the~~
25 ~~resident's medical records by the resident's physician; or~~

26 ~~(b) The health or safety of other residents or~~
27 ~~facility employees would be endangered, and the circumstances~~
28 ~~are documented in the resident's medical records by the~~
29 ~~resident's physician or the medical director if the resident's~~
30 ~~physician is not available.~~

31

1 ~~(6)(4)~~ The notice required by subsection~~(5)(3)~~ must
2 be in writing and must contain all information required by
3 state and federal law, rules, or regulations applicable to
4 Medicaid or Medicare cases. A copy of the notice must be
5 placed in the resident's clinical record, and a copy must be
6 transmitted to the resident's legal guardian or representative
7 and to the local district ombudsman council. The agency shall
8 by rule promulgate a standard form or forms of notice of
9 transfer or discharge, which shall be used by all facilities
10 unless a facility's own form has been submitted to and
11 approved by the agency.

12 ~~(8)(6)~~ Notwithstanding paragraph~~(7)(b)(5)(b)~~, an
13 emergency discharge or transfer may be implemented as
14 necessary pursuant to state or federal law during the period
15 of time after the notice is given and before the time a
16 hearing decision is rendered. Notice of an emergency
17 discharge or transfer to the resident's legal guardian or
18 representative must be by telephone or in person. This notice
19 shall be given before the transfer, if possible, or as soon
20 thereafter as practicable. The resident's file must be
21 documented to show who was contacted, whether the contact was
22 by telephone or in person, and the date and time of the
23 contact. If the notice is not given in writing, written
24 notice meeting the requirements of subsection~~(6)(4)~~ must be
25 given the next working day.

26 Section 6. Subsection (1) of section 400.063, Florida
27 Statutes, is amended to read:

28 400.063 Resident Protection Trust Fund.--

29 (1) A Resident Protection Trust Fund shall be
30 established for the purpose of collecting and disbursing funds
31 generated from the license fees and administrative fines as

1 provided for in ss. 393.0673(2), 400.062(3)(b), 400.111(1),
2 400.121(2), and 400.23(10)~~(9)~~. Such funds shall be for the
3 sole purpose of paying for the appropriate alternate
4 placement, care, and treatment of residents who are removed
5 from a facility licensed under this part or a facility
6 specified in s. 393.0678(1) in which the agency determines
7 that existing conditions or practices constitute an immediate
8 danger to the health, safety, or security of the residents.
9 If the agency determines that it is in the best interest of
10 the health, safety, or security of the residents to provide
11 for an orderly removal of the residents from the facility, the
12 agency may utilize such funds to maintain and care for the
13 residents in the facility pending removal and alternative
14 placement. The maintenance and care of the residents shall be
15 under the direction and control of a receiver appointed
16 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds
17 may be expended in an emergency upon a filing of a petition
18 for a receiver, upon the declaration of a state of local
19 emergency pursuant to s. 252.38(3)(a)5., or upon a duly
20 authorized local order of evacuation of a facility by
21 emergency personnel to protect the health and safety of the
22 residents.

23 Section 7. Subsections (6) and (7) are added to
24 section 400.121, Florida Statutes, 1998 Supplement, to read:

25 400.121 Denial, suspension, revocation of license;
26 moratorium on admissions; administrative fines; procedure.--

27 (6) Any fine or civil penalty or recovery of costs
28 imposed by or awarded to the agency under this part may be
29 collected by the agency as a setoff from amounts otherwise
30 payable by the state to the facility under the Florida
31 Medicaid program or any other program by which the agency

1 makes payments to the facility. The collection method set
2 forth in this subsection shall be supplemental to any other
3 method which the agency may lawfully utilize.

4 (7) Administrative proceedings challenging agency
5 action under this section shall be reviewed on the basis of
6 the facts and conditions that resulted in the agency action.

7 Section 8. Present subsection (2) of section 400.151,
8 Florida Statutes, is renumbered as subsection (3), and a new
9 subsection (2) is added to that section to read:

10 400.151 Contracts.--

11 (2) Every licensed facility shall submit the form of
12 its contract or contracts with residents to the agency for
13 approval. The agency shall reject any contract which contains
14 language which is vague, misleading, illegal, or against
15 public policy as set forth in the Florida Statutes or federal
16 laws or regulations, and the facility shall submit revised
17 contracts which cure the deficiencies found by the agency. If
18 a facility is part of a continuing care facility certified
19 under chapter 651, the review and approval of the contract or
20 contracts shall be completed by the Department of Insurance,
21 which shall consult with the agency regarding portions of
22 contracts related to nursing home care. Beginning 1 year after
23 the effective date of this subsection, a facility may not
24 enter into a contract, renew a contract, or enforce a contract
25 with a resident unless the form of the contract has been
26 approved by the agency. Any contract submitted for review
27 shall be deemed approved if the reviewing agency has not
28 rejected it within 180 days after its submission, unless the
29 facility waives this provision. However, contracts which were
30 fully entered into prior to the effective date of this act and

31

1 which have not been amended or renewed subsequent thereto need
2 not be reviewed and approved pursuant to this subsection.

3 Section 9. Subsection (3) of section 400.162, Florida
4 Statutes, is amended to read:

5 400.162 Property and personal affairs of residents.--

6 (3) A licensee shall provide for the safekeeping of
7 personal effects, funds, and other property of the resident in
8 the facility. Whenever necessary for the protection of
9 valuables, or in order to avoid unreasonable responsibility
10 therefor, the licensee may require that such valuables be
11 excluded or removed from the facility and kept at some place
12 not subject to the control of the licensee. The facility's
13 policies regarding the safekeeping of a resident's property
14 pursuant to s. 400.022(1)(t) shall comply with rules of the
15 agency and shall, at a minimum, provide for:

16 1. An inventory of a resident's personal property upon
17 admission to the facility, to be updated when the resident
18 disposes of old property or acquires new property. The types
19 of items to be included in the inventory shall be determined
20 by agency rule.

21 2. Marking each resident's personal property with
22 identification numbers, with the resident's permission, where
23 feasible without defacing the item or reducing the property's
24 value.

25 3. Securing residents' personal property.

26 4. Documenting any theft or loss of personal property.

27 5. Reporting to law enforcement any theft or loss of
28 property worth \$100 or more.

29 6. Instructing facility staff regarding policies and
30 procedures to reduce theft and loss of residents' personal
31 property.

1 7. Periodic review of these policies and procedures
2 for effectiveness, and revision if necessary.

3 8. Posting notice of these policies and procedures,
4 and any revision thereof, in places accessible to residents.

5 Section 10. Present subsections (4), (6), (8), (9),
6 and (10) of section 400.23, Florida Statutes, 1998 Supplement,
7 are amended, present subsections (3) through (13) are
8 renumbered as subsections (4) through (14), respectively, and
9 a new subsection (3) is added to that section, to read:

10 400.23 Rules; criteria; Nursing Home Advisory
11 Committee; evaluation and rating system; fee for review of
12 plans.--

13 (3) The agency shall adopt rules providing the minimum
14 staffing requirements for nursing homes. These requirements
15 shall include, for each nursing home facility:

16 (a) One full-time licensed or registered nurse as
17 director of nursing.

18 (b) For facilities serving more than 100 residents,
19 one licensed or registered nurse as assistant director of
20 nursing.

21 (c) One full-time licensed or registered nurse as
22 director of inservice education.

23 (d) The following number of licensed or certified
24 nursing personnel, including registered nurses, licensed
25 practical nurses, and certified nursing assistants, for every
26 day, by shift:

27 1. Day shift: one nurse or nursing assistant for
28 every five residents.

29 2. Evening shift: one nurse or nursing assistant for
30 every 10 residents.

31

1 3. Night shift: one nurse or nursing assistant for
2 every 15 residents.

3 (e) The following number of registered nurses or
4 licensed practical nurses, in addition to the licensed or
5 certified nursing personnel required under paragraph (d), for
6 every day, by shift:

7 1. Day shift: one nurse for every 15 residents.

8 2. Evening shift: one nurse for every 25 residents.

9 3. Night shift: one nurse for every 35 residents.

10 (f) One registered nurse supervisor on duty 24 hours
11 every day.

12
13 The agency's rules shall provide that facilities that do not
14 utilize three 8-hour shifts per day shall maintain staffing
15 levels equivalent to or better than the levels set forth in
16 paragraphs (d) and (e). The agency's rules shall further
17 provide that the staffing requirements provided in this
18 subsection apply to all nursing home residents, including
19 respite care residents, and must be adjusted upward to meet
20 any special care needs of residents; and that staffing
21 assignments must be made based on accurate acuity levels and
22 the resources and time needed to provide safe, preventive, and
23 restorative care. The requirements provided in this
24 subsection must be enforced for all residents, regardless of
25 payment source. No ongoing waivers shall be allowed. The
26 agency's rules shall further provide that each facility shall
27 keep records showing the names, registration or certification
28 status (e.g., RN, ARNP, LPN, CNA, MD), and assignment of
29 facility staff or contract personnel actually on duty at the
30 facility during each shift, together with documentation of any
31 instances in which such actual staffing falls short of the

1 minimum staffing levels required by agency rules pursuant to
2 this subsection. Each facility shall report to the agency, no
3 less often than monthly, in a form prescribed by agency rules,
4 a summary of instances in which actual staffing levels at the
5 facility fell short of the prescribed minimum staffing levels.

6 (5)~~(4)~~ The agency, in collaboration with the Division
7 of Children's Medical Services Program Office of the
8 Department of Health ~~and Rehabilitative Services~~, must, no
9 later than December 31, 1993, adopt rules for minimum
10 standards of care for persons under 21 years of age who reside
11 in nursing home facilities. The rules must include a
12 methodology for reviewing a nursing home facility under ss.
13 408.031-408.045 which serves only persons under 21 years of
14 age.

15 (7)~~(6)~~ There is created the Nursing Home Advisory
16 Committee, which shall consist of 16 ~~15~~ members who are to be
17 appointed by and report directly to the director of the
18 agency. The membership is to include:

19 (a) One researcher from a university center on aging.

20 (b) Two representatives from the Florida Health Care
21 Association.

22 (c) Two representatives from the Florida Association
23 of Homes for the Aging.

24 (d) One representative from the Department of Elderly
25 Affairs.

26 (e) Six ~~Five~~ consumer members ~~representatives~~, at
27 least two of whom serve on or are staff members of the state
28 or a district ~~nursing home and long-term care Facility~~
29 ombudsman council, and at least one of whom is a
30 representative of the Florida Life Care Resident's
31 Association.

1 (f) One representative from the Florida American
2 Medical Directors Association.

3 (g) One representative from the Florida Association of
4 Directors of Nursing Administrators.

5 (h) One representative from the Agency for Health Care
6 Administration.

7 (i) One representative from the nursing home industry
8 at large who owns or operates a licensed nursing home facility
9 in the state and is not a member of any state nursing home
10 association.

11

12 At least one member shall be over 60 years of age.

13 ~~(9)~~⁽⁸⁾ The agency shall, at least every 15 months,
14 evaluate all nursing home facilities and make a determination
15 as to the degree of compliance by each licensee with the
16 established rules adopted under this part as a basis for
17 assigning a rating to that facility. The agency shall base
18 its evaluation on the most recent inspection report, taking
19 into consideration findings from other official reports,
20 surveys, interviews, investigations, and inspections. The
21 agency shall assign one of the following ratings to each
22 nursing home: standard, conditional, or superior. The agency
23 shall have the authority to downgrade the rating of a facility
24 upon finding that the facility no longer qualifies for its
25 present rating, and shall issue an amended license showing the
26 new rating. Likewise, when a facility's rating is upgraded,
27 the agency shall issue an amended license showing the new
28 rating. The new rating on an amended license shall not be
29 retroactive to the beginning of the licensing period.

30 (a) A standard rating means that a facility has no
31 class I or class II deficiencies, has corrected all class III

1 deficiencies within the time established by the agency, and is
2 in substantial compliance at the time of the survey with
3 criteria established under this part, with rules adopted by
4 the agency, and, if applicable, with rules adopted under the
5 Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.
6 100-203) (December 22, 1987), Title IV (Medicare, Medicaid,
7 and Other Health-Related Programs), Subtitle C (Nursing Home
8 Reform), as amended.

9 (b) A conditional rating means that a facility, due to
10 the presence of one or more class I or class II deficiencies,
11 or class III deficiencies not corrected within the time
12 established by the agency, is not in substantial compliance at
13 the time of the survey with criteria established under this
14 part, with rules adopted by the agency, or, if applicable,
15 with rules adopted under the Omnibus Budget Reconciliation Act
16 of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV
17 (Medicare, Medicaid, and Other Health-Related Programs),
18 Subtitle C (Nursing Home Reform), as amended. If the facility
19 comes into substantial compliance at the time of the followup
20 survey, a standard rating may be issued. A facility assigned
21 a conditional rating at the time of the relicensure survey may
22 not qualify for consideration for a superior rating until the
23 time of the next subsequent relicensure survey.

24 (c) To qualify for a superior rating,~~means that~~ a
25 facility must have had ~~has~~ no class I or class II deficiencies
26 within the preceding 2 years, must not have been rated
27 conditional within the preceding 2 years, must have had no
28 more than 10 class III deficiencies within the preceding 2
29 years, and must have ~~has~~ corrected all class III deficiencies
30 within the time established by the agency and be ~~is~~ in
31 substantial compliance with the criteria established under

1 this part and the rules adopted by the agency and, if
2 applicable, with rules adopted pursuant to the Omnibus Budget
3 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
4 1987), Title IV (Medicare, Medicaid, and Other Health-Related
5 Programs), Subtitle C (Nursing Home Reform), as amended; and
6 the facility must exceed ~~exceeds~~ the criteria for a standard
7 rating through enhanced programs and services in all of the
8 following areas:

- 9 1. Nursing service.
- 10 2. Dietary or nutritional services.
- 11 3. Physical environment.
- 12 4. Housekeeping and maintenance.
- 13 5. Restorative therapies and self-help activities.
- 14 6. Social services.
- 15 7. Activities and recreational therapy.

16 (d) In order to facilitate the development of special
17 programs or facilitywide initiatives and promote creativity
18 based on the needs and preferences of residents, the areas
19 listed in paragraph (c) may be grouped or addressed
20 individually by the licensee. However, a facility may not
21 qualify for a superior rating if fewer than three programs or
22 initiatives are developed to encompass the required areas or
23 if standard measurements, approved by the agency, of patient
24 outcomes and resident satisfaction for the facility are below
25 the statewide average for facilities of its type.

26 (e) In determining the rating and evaluating the
27 overall quality of care and services, the agency shall
28 consider the needs and limitations of residents in the
29 facility and the results of interviews and surveys of a
30 representative sampling of residents, families of residents,
31 ombudsman council members in the district in which the

1 facility is located, guardians of residents, and staff of the
2 nursing home facility.

3 (f) The current rating of each facility must be
4 indicated in bold print on the face of the license. A list of
5 the deficiencies of the facility shall be posted in a
6 prominent place that is in clear and unobstructed public view
7 at or near the place where residents are being admitted to
8 that facility. Licensees receiving a conditional rating for a
9 facility shall prepare, within 10 working days after receiving
10 notice of deficiencies, a plan for correction of all
11 deficiencies and shall submit the plan to the agency for
12 approval. Correction of all deficiencies, within the period
13 approved by the agency, shall result in termination of the
14 conditional rating. Failure to correct the deficiencies
15 within a reasonable period approved by the agency shall be
16 grounds for the imposition of sanctions pursuant to this part.

17 (g) Each licensee shall post its license in a
18 prominent place that is in clear and unobstructed public view
19 at or near the place where residents are being admitted to the
20 facility. A licensee with a superior rating may advertise its
21 rating in any nonpermanent medium and in accordance with rules
22 adopted by the agency. A list of the facilities receiving a
23 superior rating shall be distributed to the state and district
24 ombudsman councils.

25 (h) Not later than January 1, 1994, the agency shall
26 adopt rules that:

27 1. Establish uniform procedures for the evaluation of
28 facilities.

29 2. Provide criteria in the areas referenced in
30 paragraph (c).

31

1 3. Address other areas necessary for carrying out the
2 intent of this section.

3 (i) A license rated superior shall continue until it
4 is replaced by a rating based on a later survey. A superior
5 rating may be revoked at any time for failure to maintain
6 substantial compliance with criteria established under this
7 part, with rules adopted by the agency, or, if applicable,
8 with rules adopted under the Omnibus Budget Reconciliation Act
9 of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV
10 (Medicare, Medicaid, and Other Health-Related Programs),
11 Subtitle C (Nursing Home Reform), as amended, or for failure
12 to exceed the criteria specified for any area as listed in
13 paragraph (c).

14 (j) A superior rating is not transferable to another
15 license, except when an existing facility is being relicensed
16 in the name of an entity related to the current licenseholder
17 by common ownership or control and there will be no change in
18 the management, operation, or programs at the facility as a
19 result of the relicensure.

20 ~~(10)(9)~~ The agency shall adopt rules to provide that,
21 when the criteria established under subsections ~~subsection~~ (2)
22 and (3) are not met, such deficiencies shall be classified
23 according to the nature of the deficiency. The agency shall
24 indicate the classification on the face of the notice of
25 deficiencies as follows:

26 (a) Class I deficiencies are those which the agency
27 determines present an imminent danger to the residents or
28 guests of the nursing home facility or a substantial
29 probability that death or serious physical harm would result
30 therefrom. The condition or practice constituting a class I
31 violation shall be abated or eliminated immediately, unless a

1 fixed period of time, as determined by the agency, is required
2 for correction. Notwithstanding s. 400.121(2), a class I
3 deficiency is subject to a civil penalty in an amount not less
4 than \$5,000 and not exceeding ~~\$10,000~~ \$25,000 for each and
5 every deficiency. A fine may be levied notwithstanding the
6 correction of the deficiency. For purposes of the rating
7 system under subsection (9), a confirmed report of abuse,
8 neglect, or exploitation under chapter 415 of a resident by
9 the facility or an employee or contractor of the facility, or
10 a conviction or plea of guilty or nolo contendere under s.
11 825.102, s. 825.1025, or s. 825.103 of the facility or an
12 employee or contractor of the facility wherein the victim was
13 a resident of the facility, shall be treated as a class I
14 deficiency if not also the subject of an agency disciplinary
15 proceeding.

16 (b) Class II deficiencies are those which the agency
17 determines have a direct or immediate relationship to the
18 health, safety, or security of the nursing home facility
19 residents, other than class I deficiencies. A class II
20 deficiency is subject to a civil penalty in an amount not less
21 than \$1,000 and not exceeding ~~\$5,000~~ \$10,000 for each and
22 every deficiency. A citation for a class II deficiency shall
23 specify the time within which the deficiency is required to be
24 corrected. If a class II deficiency is corrected within the
25 time specified, no civil penalty shall be imposed, unless it
26 is a repeated offense. For purposes of the rating system under
27 subsection (9), a conviction or plea of guilty or nolo
28 contendere of a facility or a facility administrator for one
29 or more violations of s. 409.920(2) shall be treated as a
30 class II deficiency if not also the subject of an agency
31 disciplinary proceeding. For purposes of the rating system

1 under subsection (9), wrongful transfer or discharge of a
2 resident in violation of s. 400.0255, or wrongful refusal to
3 permit a resident to return to a reserved bed in violation of
4 s. 400.022(1)(w), shall be treated as a class II deficiency.

5 (c) Class III deficiencies are those which the agency
6 determines to have an indirect or potential relationship to
7 the health, safety, or security of the nursing home facility
8 residents, other than class I or class II deficiencies. A
9 class III deficiency shall be subject to a civil penalty of
10 not less than \$500 and not exceeding \$2,500~~\$1,000~~ for each
11 and every deficiency. A citation for a class III deficiency
12 shall specify the time within which the deficiency is required
13 to be corrected. If a class III deficiency is corrected
14 within the time specified, no civil penalty shall be imposed,
15 unless it is a repeated offense.

16 (d) Each day during any portion of which a violation
17 occurs constitutes a separate offense. More than three
18 violations of the same class shall be treated as repeated
19 offenses if committed within 2 years of one another. If a
20 facility has three or more repeat offenses within 1 year, the
21 civil penalties for the third and subsequent offenses shall be
22 double the amounts listed in paragraphs (a), (b), and (c).

23 ~~(11)~~~~(10)~~ Civil penalties paid by any licensee under
24 subsection ~~(10)~~~~(9)~~ shall be deposited in the Resident
25 Protection Health Care Trust Fund and expended as provided in
26 s. 400.063.

27 Section 11. Subsection (3) of section 400.241, Florida
28 Statutes, is renumbered as subsection (4), and a new
29 subsection (3) is added to said section to read:

30 400.241 Prohibited acts; penalties for violations.--

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1 (3) It is unlawful for any person, long-term care
2 facility, or other entity to willfully interfere with the
3 unannounced inspections mandated by s. 400.19(3). Alerting or
4 advising a facility of the actual or approximate date of any
5 such inspection shall be a per se violation of this
6 subsection.

7 ~~(4)(3)~~ A violation of any provision of this part or of
8 any minimum standard, rule, or regulation adopted pursuant
9 thereto constitutes a misdemeanor of the second degree,
10 punishable as provided in s. 775.082 or s. 775.083. Each day
11 of a continuing violation shall be considered a separate
12 offense.

13 Section 12. Section 400.29, Florida Statutes, is
14 amended to read:

15 400.29 Annual report of nursing home facilities.--The
16 agency shall publish a nursing home ~~an annual~~ report on or
17 before January 1 of each year, and shall update the
18 information therein no less than monthly, making such updated
19 information available to the public on the Internet or other
20 speedy and inexpensive electronic means of public access. The
21 report and the monthly updates ~~which~~ shall be available to the
22 public in printed form for free or at a cost no greater than
23 the cost of copying and postage. The report ~~and which~~ shall
24 include, but not be limited to:

25 (1) A list by name and address of all nursing home
26 facilities in this state.

27 (2) Whether such nursing home facilities are for
28 profit or not for profit ~~proprietary or nonproprietary~~.

29 (3) The rating of each nursing home facility.

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1 (4) The name of the owner or owners, including the
2 commonly used name of a chain or holding company that
3 ultimately owns the facility, if applicable.

4 (5) The name of the management company managing or
5 administering the facility, if applicable.

6 ~~(6)~~~~(5)~~ The total number of beds.

7 ~~(7)~~~~(6)~~ The number of private and semiprivate rooms.

8 ~~(8)~~~~(7)~~ The religious affiliation, if any, of such
9 nursing home facility.

10 ~~(9)~~~~(8)~~ The languages spoken by the administrator and
11 staff of such nursing home facility.

12 ~~(10)~~~~(9)~~ Whether or not such nursing home facility
13 accepts recipients of Title XVIII (Medicare) or Title XIX
14 (Medicaid) of the Social Security Act.

15 ~~(11)~~~~(10)~~ Recreational and other programs available.

16 (12) The facility's scores on standard measurements of
17 patient outcomes and resident satisfaction within the
18 preceding 12 month or since the current license was issued,
19 whichever period is longer.

20 (13) A list of all services offered by the facility
21 and the fees or prices charged by the facility.

22 (14) A summary of all official adverse findings
23 relating to the facility within the past 12 months, including,
24 but not limited to:

25 (a) Class I, II, or III deficiencies found by the
26 agency.

27 (b) Confirmed reports of abuse, neglect, or
28 exploitation under chapter 415, wherein the victim was a
29 resident of the facility and the perpetrator was the facility
30 or an employee or contractor of the facility.

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1 (c) Convictions or pleas of guilty or nolo contendere
2 of the facility, the facility administrator, or an officer of
3 the facility for any violation of s. 409.920(2).

4 (d) Convictions or pleas of guilty or nolo contendere
5 of the facility or an employee or contractor of the facility
6 under s. 825.102, s. 825.1025, or s. 825.103, wherein the
7 victim was a resident of the facility.

8 (e) Convictions or pleas of guilty or nolo contendere
9 of the facility or an employee or contractor of the facility
10 under s. 400.0083 or s. 400.0085.

11 (f) Final judgments from courts of this state wherein
12 the facility or an employee or contractor of the facility has
13 been found to have violated a resident's rights under s.
14 400.023.

15 Section 13. Subsection (6) of section 415.107, Florida
16 Statutes, 1998 Supplement, is amended to read:

17 415.107 Confidentiality of reports and records.--

18 (6) The identity of any person reporting adult abuse,
19 neglect, or exploitation may not be released, without that
20 person's written consent, to any person other than employees
21 of the department responsible for adult protective services,
22 the central abuse registry and tracking system, or the
23 appropriate state attorney or law enforcement agency,
24 including the Attorney General's Medicaid Fraud Control Unit.

25 This subsection grants protection only for the person who
26 reported the adult abuse, neglect, or exploitation and
27 protects only the fact that the person is the reporter. This
28 subsection does not prohibit the subpoena of a person
29 reporting adult abuse, neglect, or exploitation when deemed
30 necessary by the state attorney or the department to protect a
31 disabled adult or an elderly person who is the subject of a

1 report, if the fact that the person made the report is not
2 disclosed.

3 Section 14. Present paragraphs (w) through (cc) of
4 subsection (2) of section 435.03, Florida Statutes, are
5 redesignated as paragraphs (x) through (dd), respectively, and
6 a new paragraph (w) is added to that section, to read:

7 435.03 Level 1 screening standards.--

8 (2) Any person for whom employment screening is
9 required by statute must not have been found guilty of,
10 regardless of adjudication, or entered a plea of nolo
11 contendere or guilty to, any offense prohibited under any of
12 the following provisions of the Florida Statutes or under any
13 similar statute of another jurisdiction:

14 (w) Section 825.1035, relating to abuse, neglect, or
15 exploitation of a nursing home resident.

16 Section 15. Present paragraphs (w) through (cc) of
17 subsection (2) of section 435.04, Florida Statutes, are
18 redesignated as paragraphs (x) through (dd), respectively, and
19 a new paragraph (w) is added to that subsection, to read:

20 435.04 Level 2 screening standards.--

21 (2) The security background investigations under this
22 section must ensure that no persons subject to the provisions
23 of this section have been found guilty of, regardless of
24 adjudication, or entered a plea of nolo contendere or guilty
25 to, any offense prohibited under any of the following
26 provisions of the Florida Statutes or under any similar
27 statute of another jurisdiction:

28 (w) Section 825.1035, relating to abuse, neglect, or
29 exploitation of a nursing home resident.

30 Section 16. Section 825.1035, Florida Statutes, is
31 created to read:

1 825.1035 Report of abuse, neglect, or exploitation of
2 nursing home residents required; penalty.--An employee of a
3 nursing home facility as defined in part II of chapter 400,
4 including any contractor or consultant working for such a
5 facility, shall report to law enforcement any known abuse,
6 neglect, or exploitation of an elderly person or disabled
7 adult committed upon a resident of the facility in violation
8 of ss. 825.101-825.103. This report shall be in addition to
9 any report of abuse, neglect, or exploitation made to the
10 central abuse hotline of the Department of Children and Family
11 Services pursuant to the requirements of chapter 415. An
12 employee of a nursing home facility who fails to make the
13 report required by this section commits a misdemeanor of the
14 second degree, punishable as provided in s. 775.082 or s.
15 775.083.

16 Section 17. Paragraph (b) of subsection (1) of ection
17 394.4625, Florida Statutes, is amended to read:

18 394.4625 Voluntary admissions.--

19 (1) AUTHORITY TO RECEIVE PATIENTS.--

20 (b) A mental health overlay program or a mobile crisis
21 response service or a licensed professional who is authorized
22 to initiate an involuntary examination pursuant to s. 394.463
23 and is employed by a community mental health center or clinic
24 must, pursuant to district procedure approved by the
25 respective district administrator, conduct an initial
26 assessment of the ability of the following persons to give
27 express and informed consent to treatment before such persons
28 may be admitted voluntarily:

29 1. A person 60 years of age or older for whom transfer
30 is being sought from a nursing home, assisted living facility,
31

1 adult day care center, or adult family-care home, when such
2 person has been diagnosed as suffering from dementia.

3 2. A person 60 years of age or older for whom transfer
4 is being sought from a nursing home pursuant to s.
5 400.0255(8)(6).

6 3. A person for whom all decisions concerning medical
7 treatment are currently being lawfully made by the health care
8 surrogate or proxy designated under chapter 765.

9 Section 18. There is appropriated from the Health Care
10 Trust Fund to the Department of Elderly Affairs for fiscal
11 year 1999-2000 the sum of \$30,000 to enable the Office of the
12 State Long-Term Care Ombudsman to establish a statewide
13 toll-free telephone service.

14 Section 19. This act shall take effect October 1,
15 1999.

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LEGISLATIVE SUMMARY

Creates the "Bob Byram Nursing Home Care Reform Act." Requires the Agency for Health Care Administration to perform studies and make recommendations to the Legislature. Revises rights of nursing home residents and provides additional rights. Requires facilities to keep complete and accurate medical records and provides a rebuttable presumption, in the absence of such records, that care or treatment was not provided. Provides definitions and requirements relating to transfer or discharge of residents. Authorizes payment of facility fines or recovery costs using setoffs from amounts payable to the facility by the state. Requires agency approval of the form of facility contracts with residents, except in specified circumstances. Provides minimum requirements for policies regarding the safekeeping of residents' property. Provides for minimum staffing requirements, recordkeeping therefor, and reports of staffing shortfalls. Revises ratings requirements, provides additional acts classified as deficiencies, provides penalties and increases maximum fines, and requires issuance of amended licenses reflecting facility ratings changes. Prohibits willful interference with unannounced required inspections of a facility, and provides a penalty. Requires inclusion of information on facility services, fees, and deficiencies in the agency's annual report. Requires the report and monthly updates to be made available to the public. Requires nursing home employees to report known abuse, neglect, or exploitation of a resident to law enforcement, provides a penalty for failure to report, and provides for background employment screening of person convicted of this offense. Provides an appropriation for a statewide toll-free telephone service under the Office of the State Long-Term Care Ombudsman.