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2 An act relating to nursing home facilities;  
3 amending s. 430.502, F.S.; establishing an  
4 additional memory disorder clinic; authorizing  
5 the Department of Elder Affairs and the  
6 Department of Children and Families to initiate  
7 certain projects; creating s. 400.0078, F.S.;  
8 requiring the Office of State Long-Term Care  
9 Ombudsman to establish a statewide toll-free  
10 telephone number; amending s. 400.022, F.S.;  
11 providing immediate access to residents for  
12 representatives of the Office of the Attorney  
13 General; creating s. 400.0225, F.S.; directing  
14 the Agency for Health Care Administration to  
15 contract for consumer satisfaction surveys for  
16 nursing home residents; providing procedures  
17 and requirements for use of such surveys;  
18 amending s. 400.0255, F.S.; defining terms  
19 relating to facility decisions to transfer or  
20 discharge a resident; providing procedures,  
21 requirements, and limitations; requiring notice  
22 to the agency under certain circumstances;  
23 providing for review of a notice of discharge  
24 or transfer by the district long-term care  
25 ombudsman, upon request; specifying timeframes;  
26 amending s. 400.071, F.S.; providing additional  
27 requirements for licensure and renewal;  
28 providing a certificate-of-need preference for  
29 Gold Seal licensees; creating s. 400.118, F.S.;  
30 directing the agency to establish a quality  
31 assurance early warning system; providing for

1           quality-of-care monitoring; providing duties of  
2           monitors; excluding certain information from  
3           discovery or introduction in evidence in civil  
4           or administrative actions; providing for rapid  
5           response teams; amending s. 400.121, F.S.;  
6           authorizing the agency to require certain  
7           facilities to increase staffing; authorizing  
8           such facilities to request an expedited interim  
9           rate increase; providing a penalty; amending s.  
10          400.141, F.S.; providing requirements for  
11          appointment of a medical director; providing  
12          for resident use of a community pharmacy and  
13          for certain repackaging of prescription  
14          medication; providing for immunity from  
15          liability in the administration of repackaged  
16          medication; revising conditions for encouraging  
17          facilities to provide other needed services;  
18          requiring public display of certain assistance  
19          information; authorizing Gold Seal facilities  
20          to develop programs to provide certified  
21          nursing assistant training; amending s.  
22          400.162, F.S.; revising procedures and policies  
23          regarding the safekeeping of residents'  
24          property; amending s. 400.19, F.S., relating to  
25          the agency's right of entry and inspection;  
26          providing a time period for investigation of  
27          certain complaints; amending s. 400.191, F.S.;  
28          revising requirements for provision of  
29          information to the public by the agency;  
30          amending s. 400.215, F.S.; specifying  
31          conditions for probationary employment of

1 applicants, pending results of an abuse  
2 registry screening; requiring the agency to  
3 provide a direct-access screening system;  
4 amending s. 400.23, F.S.; abolishing the  
5 Nursing Home Advisory Committee; revising the  
6 system for evaluating facility compliance with  
7 licensure requirements; eliminating ratings and  
8 providing for standard or conditional licensure  
9 status; directing the agency to adopt rules to  
10 provide minimum staffing requirements for  
11 nursing homes and to allow certain staff to  
12 assist residents with eating; increasing the  
13 maximum penalties for deficiencies in facility  
14 operations; creating s. 400.235, F.S.;  
15 providing for development of a Gold Seal  
16 Program for recognition of facilities  
17 demonstrating excellence in long-term care;  
18 establishing a Panel on Excellence in Long-Term  
19 Care under the Executive Office of the  
20 Governor; providing membership; providing  
21 program criteria; providing for duties of the  
22 panel and the Governor; providing for agency  
23 rules; providing for biennial relicensure of  
24 Gold Seal Program facilities, under certain  
25 conditions; amending s. 400.241, F.S.;  
26 prohibiting willful interference with an  
27 unannounced inspection; providing a penalty;  
28 amending s. 408.035, F.S.; providing  
29 certificate-of-need review criteria for Gold  
30 Seal facilities; creating s. 430.80, F.S.;  
31 requiring that the Agency for Health Care

1 Administration implement a pilot project for  
2 establishing teaching nursing homes; specifying  
3 requirements for a nursing home facility to be  
4 designated as a teaching nursing home;  
5 requiring that the agency develop additional  
6 criteria; authorizing a teaching nursing home  
7 to be affiliated with a medical school within  
8 the State University System; providing for  
9 annual appropriations to a teaching nursing  
10 home; providing certain limitations on the  
11 expenditure of funds by a teaching nursing  
12 home; amending s. 468.1755, F.S.; providing for  
13 disciplinary action against a nursing home  
14 administrator who authorizes discharge or  
15 transfer of a resident for a reason other than  
16 provided by law; amending ss. 394.4625,  
17 400.063, and 468.1756, F.S.; correcting cross  
18 references; reenacting ss. 468.1695(3) and  
19 468.1735, F.S.; incorporating the amendment to  
20 s. 468.1755, F.S., in references thereto;  
21 providing for funding for recruitment of  
22 qualified nursing facility staff; creating a  
23 panel on Medicaid reimbursement; providing  
24 membership and duties; requiring reports;  
25 providing for expiration; requiring a study of  
26 factors affecting recruitment, training,  
27 employment, and retention of qualified  
28 certified nursing assistants; requiring a  
29 report; repealing s. 400.29, F.S., relating to  
30 an agency annual report of nursing home  
31

1 facilities; providing appropriations; providing  
2 effective dates.

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6 Section 1. Paragraphs (i) and (j) of subsection (1) of  
7 section 430.502, Florida Statutes, 1998 Supplement, are  
8 amended and paragraph (k) is added to said subsection, to  
9 read:

10 430.502 Alzheimer's disease; memory disorder clinics  
11 and day care and respite care programs.--

12 (1) There is established:

13 (i) A memory disorder clinic at the Tallahassee  
14 Memorial Regional Medical Center; ~~and~~

15 (j) A memory disorder clinic at Lee Memorial Hospital  
16 created by chapter 63-1552, Laws of Florida, as amended; and

17 (k) A memory disorder clinic at Sarasota Memorial  
18 Hospital in Sarasota County,

19  
20 for the purpose of conducting research and training in a  
21 diagnostic and therapeutic setting for persons suffering from  
22 Alzheimer's disease and related memory disorders. However,  
23 memory disorder clinics funded as of June 30, 1995, shall not  
24 receive decreased funding due solely to subsequent additions  
25 of memory disorder clinics in this subsection.

26 Section 2. The Department of Elder Affairs is  
27 authorized to initiate projects to demonstrate the  
28 effectiveness of comprehensive day treatment services to  
29 seniors as a diversion from nursing home care thereby allowing  
30 seniors to remain in their homes.

31

1           Section 3. The Department of Children and Families is  
2 authorized to initiate projects to demonstrate the  
3 effectiveness of comprehensive day treatment service to the  
4 developmentally disabled to remain in their homes and/or  
5 communities.

6           Section 4. Section 400.0078, Florida Statutes, is  
7 created to read:

8           400.0078 Statewide toll-free telephone number.--The  
9 Office of State Long-Term Care Ombudsman shall establish a  
10 statewide toll-free telephone number for receiving complaints  
11 concerning nursing facilities.

12           Section 5. Paragraph (c) of subsection (1) of section  
13 400.022, Florida Statutes, is amended to read:

14           400.022 Residents' rights.--

15           (1) All licensees of nursing home facilities shall  
16 adopt and make public a statement of the rights and  
17 responsibilities of the residents of such facilities and shall  
18 treat such residents in accordance with the provisions of that  
19 statement. The statement shall assure each resident the  
20 following:

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

28           1. Any representative of the federal or state  
29 government, including, but not limited to, representatives of  
30 the Department of Children and Family Health and  
31 ~~Rehabilitative~~ Services, the Department of Health, the Agency

1 for Health Care Administration, the Office of the Attorney  
2 General, and the Department of Elderly Affairs; any law  
3 enforcement officer; members of the state or district  
4 ombudsman council; and the resident's individual physician.

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

7  
8 The facility must allow representatives of the State ~~Nursing~~  
9 ~~Home and Long-Term Care Facility~~ Ombudsman Council to examine  
10 a resident's clinical records with the permission of the  
11 resident or the resident's legal representative and consistent  
12 with state law.

13 Section 6. Section 400.0225, Florida Statutes, is  
14 created to read:

15 400.0225 Consumer satisfaction surveys.--The agency,  
16 or its contractor, in consultation with the nursing home  
17 industry and consumer representatives, shall develop an  
18 easy-to-use consumer satisfaction survey, shall ensure that  
19 every nursing facility licensed pursuant to this part  
20 participates in assessing consumer satisfaction, and shall  
21 establish procedures to ensure that, at least annually, a  
22 representative sample of residents of each facility is  
23 selected to participate in the survey. The sample shall be of  
24 sufficient size to allow comparisons between and among  
25 facilities. Family members, guardians, or other resident  
26 designees may assist the resident in completing the survey.  
27 Employees and volunteers of the nursing facility or of a  
28 corporation or business entity with an ownership interest in  
29 the facility are prohibited from assisting a resident with or  
30 attempting to influence a resident's responses to the consumer  
31 satisfaction survey. The agency, or its contractor, shall

1 survey family members, guardians, or other resident designees  
2 when the resident is mentally incapable of responding to the  
3 survey. The agency, or its contractor, shall specify the  
4 protocol for conducting and reporting the consumer  
5 satisfaction surveys. Reports of consumer satisfaction surveys  
6 shall protect the identity of individual respondents. The  
7 agency shall contract for consumer satisfaction surveys and  
8 report the results of those surveys in the consumer  
9 information materials prepared and distributed by the agency.

10 Section 7. Section 400.0231, Florida Statutes, is  
11 renumbered as section 400.1415, Florida Statutes.

12 Section 8. Section 400.0255, Florida Statutes, is  
13 amended to read:

14 400.0255 Resident ~~hearings of facility decisions to~~  
15 ~~transfer or discharge; requirements and procedures;~~  
16 hearings.--

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

18 (a) "Discharge" means to move a resident to a  
19 noninstitutional setting when the releasing facility ceases to  
20 be responsible for the resident's care.

21 (b) "Transfer" means to move a resident from the  
22 facility to another legally responsible institutional setting.

23 ~~"discharge" or "transfer" means the movement of a resident to~~  
24 ~~a bed outside the certified facility. "Discharge" or~~  
25 ~~"transfer" does not refer to the movement of a resident to a~~  
26 ~~bed within the same certified facility.~~

27 (2) Each facility licensed under this part must comply  
28 with subsection (10) and s. 400.022(1)(p) when deciding to  
29 discharge or transfer a resident.

30 (3) When a resident is to be discharged or  
31 transferred, the nursing home administrator employed by the



1 nursing home that is discharging or transferring the resident,  
2 or an individual employed by the nursing home who is  
3 designated by the nursing home administrator to act on behalf  
4 of the administrator, must sign the notice of discharge or  
5 transfer. Any notice indicating a medical reason for transfer  
6 or discharge must be signed by the resident's attending  
7 physician or the medical director of the facility.

8 (4)(a) Each facility must notify the agency of any  
9 proposed discharge or transfer of a resident when such  
10 discharge or transfer is necessitated by changes in the  
11 physical plant of the facility that make the facility unsafe  
12 for the resident.

13 (b) Upon receipt of such a notice, the agency shall  
14 conduct an onsite inspection of the facility to verify the  
15 necessity of the discharge or transfer.

16 (5)(2) A resident of any Medicaid or Medicare  
17 certified facility may challenge a decision by the facility to  
18 discharge or transfer the resident.

19 (7) A facility that has been reimbursed for reserving  
20 a bed and, for reasons other than those permitted under this  
21 section, refuses to readmit a resident within the prescribed  
22 timeframe shall refund the bed reservation payment.

23 (8)(3) At least 30 days prior to any proposed transfer  
24 or discharge, a facility must provide advance notice of the  
25 proposed transfer or discharge to the resident and, if known,  
26 to a family member or the resident's legal guardian or  
27 representative, except, in the following circumstances, the  
28 facility shall give notice as soon as practicable before the  
29 transfer or discharge:

30 (a) The transfer or discharge is necessary for the  
31 resident's welfare and the resident's needs cannot be met in

1 the facility, and the circumstances are documented in the  
2 resident's medical records by the resident's physician; or

3 (b) The health or safety of other residents or  
4 facility employees would be endangered, and the circumstances  
5 are documented in the resident's medical records by the  
6 resident's physician or the medical director if the resident's  
7 physician is not available.

8 ~~(9)(4)~~ The notice required by subsection ~~(8)(3)~~ must  
9 be in writing and must contain all information required by  
10 state and federal law, rules, or regulations applicable to  
11 Medicaid or Medicare cases. The agency shall develop a  
12 standard document to be used by all facilities licensed under  
13 this part for purposes of notifying residents of a discharge  
14 or transfer. Such document must include a means for a resident  
15 to request the district long-term care ombudsman council to  
16 review the notice and request information about or assistance  
17 with initiating a fair hearing with the department's Office of  
18 Appeals Hearings. In addition to any other pertinent  
19 information included, the form shall specify the reason  
20 allowed under federal or state law that the resident is being  
21 discharged or transferred, with an explanation to support this  
22 action. Further, the form shall state the effective date of  
23 the discharge or transfer and the location to which the  
24 resident is being discharged or transferred. The form shall  
25 clearly describe the resident's appeal rights and the  
26 procedures for filing an appeal, including the right to  
27 request the district ombudsman council to review the notice of  
28 discharge or transfer.A copy of the notice must be placed in  
29 the resident's clinical record, and a copy must be transmitted  
30 to the resident's legal guardian or representative and to the  
31 ~~local~~ district ombudsman council.

1           (10) A resident may request that the district  
2 ombudsman council review any notice of discharge or transfer  
3 given to the resident. When requested by a resident to review  
4 a notice of discharge or transfer, the district ombudsman  
5 council shall do so within 7 days after receipt of the  
6 request. The nursing home administrator, or the  
7 administrator's designee, must forward the request for review  
8 contained in the notice to the district ombudsman council  
9 within 24 hours after such request is submitted. Failure to  
10 forward the request within 24 hours after the request is  
11 submitted shall toll the running of the 30-day advance notice  
12 period until the request has been forwarded.

13           (11)(5)(a) A resident is entitled to a fair hearing to  
14 challenge a facility's proposed transfer or discharge. The  
15 resident, or the resident's legal representative or designee,  
16 may request a hearing at any time within 90 days after ~~of~~ the  
17 resident's receipt of the facility's notice of the proposed  
18 discharge or transfer.

19           (b) If a resident requests a hearing within 10 days  
20 after ~~of~~ receiving the notice from the facility, the request  
21 shall stay the proposed transfer or discharge pending a  
22 hearing decision. The facility may not take action, and the  
23 resident may remain in the facility, until the outcome of the  
24 initial fair hearing, which must be completed within 90 days  
25 after ~~of~~ receipt of a request for a fair hearing.

26           (c) If the resident fails to request a hearing within  
27 10 days after ~~of~~ receipt of the facility notice of the  
28 proposed discharge or transfer, the facility may transfer or  
29 discharge the resident after 30 days from the date the  
30 resident received the notice.

31

1           ~~(12)(6)~~ Notwithstanding paragraph~~(11)(b)(5)(b)~~, an  
2 emergency discharge or transfer may be implemented as  
3 necessary pursuant to state or federal law during the period  
4 of time after the notice is given and before the time a  
5 hearing decision is rendered. Notice of an emergency discharge  
6 or transfer to the resident, the resident's legal guardian or  
7 representative, and the district ombudsman council if  
8 requested pursuant to subsection (10) must be by telephone or  
9 in person. This notice shall be given before the transfer, if  
10 possible, or as soon thereafter as practicable. A district  
11 ombudsman council conducting a review under this subsection  
12 shall do so within 24 hours after receipt of the request. The  
13 resident's file must be documented to show who was contacted,  
14 whether the contact was by telephone or in person, and the  
15 date and time of the contact. If the notice is not given in  
16 writing, written notice meeting the requirements of subsection  
17 ~~(9)(4)~~ must be given the next working day.

18           (13) After receipt of any notice required under this  
19 section, the district ombudsman council may request a private  
20 informal conversation with a resident to whom the notice is  
21 directed, and, if known, a family member or the resident's  
22 legal guardian or designee, to ensure that the facility is  
23 proceeding with the discharge or transfer in accordance with  
24 the requirements of this section. If requested, the district  
25 ombudsman council shall assist the resident with filing an  
26 appeal of the proposed discharge or transfer.

27           ~~(14)(7)~~ The following persons must be present at all  
28 hearings ~~proceedings~~ authorized under this section:

29           (a) The resident, or the resident's legal  
30 representative or designee.

31

1 (b) The facility administrator, or the facility's  
2 legal representative or designee.

3  
4 A representative of the district long-term care ombudsman  
5 council may be present at all hearings ~~proceedings~~ authorized  
6 by this section.

7 (15)~~(8)~~ In any hearing ~~proceeding~~ under this section,  
8 the following information concerning the parties shall be  
9 confidential and exempt from the provisions of s. 119.07(1):

10 (a) Names and addresses.

11 (b) Medical services provided.

12 (c) Social and economic conditions or circumstances.

13 (d) Evaluation of personal information.

14 (e) Medical data, including diagnosis and past history  
15 of disease or disability.

16 (f) Any information received verifying income  
17 eligibility and amount of medical assistance payments. Income  
18 information received from the Social Security Administration  
19 or the Internal Revenue Service must be safeguarded according  
20 to the requirements of the agency that furnished the data.

21  
22 The exemption created by this subsection does not prohibit  
23 access to such information by a district long-term care  
24 ombudsman council upon request, by a reviewing court if such  
25 information is required to be part of the record upon  
26 subsequent review, or as specified in s. 24(a), Art. I of the  
27 State Constitution.

28 (16)~~(9)~~(a) The department's Office of Appeals Hearings  
29 shall conduct hearings under this section. The office shall  
30 notify the facility of a resident's request for a hearing.

31

1           (b) The department shall, by rule, establish  
2 procedures to be used for fair hearings requested by  
3 residents. These procedures shall be equivalent to the  
4 procedures used for fair hearings for other Medicaid cases,  
5 chapter 10-2, part VI, Florida Administrative Code. The  
6 burden of proof must be clear and convincing evidence. A  
7 hearing decision must be rendered within 90 days after ~~of~~  
8 receipt of the request for hearing.

9           ~~(c)(10)~~ If the hearing decision is favorable to the  
10 resident who has been transferred or discharged, the resident  
11 must be readmitted to the facility's first available bed.

12           ~~(d)(11)~~ The decision of the hearing officer shall be  
13 final. Any aggrieved party may appeal the decision to the  
14 district court of appeal in the appellate district where the  
15 facility is located. Review procedures shall be conducted in  
16 accordance with the Florida Rules of Appellate Procedure.

17           ~~(17)(12)~~ The department may adopt rules necessary to  
18 administer ~~implement the provisions of~~ this section.

19           Section 9. Paragraph (g) is added to subsection (2) of  
20 section 400.071, Florida Statutes, 1998 Supplement, present  
21 subsections (8) and (9) are amended and renumbered as  
22 subsections (9) and (10), respectively, and a new subsection  
23 (8) is added to said section, to read:

24           400.071 Application for license.--

25           (2) The application shall be under oath and shall  
26 contain the following:

27           (g) Copies of any civil verdict or judgment involving  
28 the applicant rendered within the 10 years preceding the  
29 application, relating to medical negligence, violation of  
30 residents' rights, or wrongful death. As a condition of  
31 licensure, the licensee agrees to provide to the agency copies

1 of any new verdict or judgment involving the applicant,  
2 relating to such matters, within 30 days after filing with the  
3 clerk of the court. The information required in this  
4 paragraph shall be maintained in the facility's licensure file  
5 and in an agency database which is available as a public  
6 record.

7 (8) As a condition of licensure, each facility must  
8 agree to participate in a consumer satisfaction measurement  
9 process as prescribed by the agency.

10 (9)(8) The agency may not issue a license to a nursing  
11 home that fails to receive a certificate of need under the  
12 provisions of ss. 408.031-408.045. It is the intent of the  
13 Legislature that, in reviewing a certificate-of-need  
14 application to add beds to an existing nursing home facility,  
15 preference be given to the application of a licensee who has  
16 been awarded a Gold Seal as provided for in s. 400.235, if the  
17 applicant otherwise meets the review criteria specified in s.  
18 408.035.

19 (10)(9) The agency may develop an abbreviated survey  
20 for licensure renewal applicable to a licensee that has  
21 continuously operated as a nursing facility since 1991 or  
22 earlier, and has operated under the same management for at  
23 least the preceding 30 months, and has had during the  
24 preceding 30 months no class I or class II deficiencies  
25 maintained a superior rating during that period.

26 Section 10. Section 400.118, Florida Statutes, is  
27 created to read:

28 400.118 Quality assurance; early warning system;  
29 monitoring; rapid response teams.--

30 (1) The agency shall establish an early warning system  
31 to detect conditions in nursing facilities that could be

1 detrimental to the health, safety, and welfare of residents.  
2 The early warning system shall include, but not be limited to,  
3 analysis of financial and quality-of-care indicators that  
4 would predict the need for the agency to take action pursuant  
5 to the authority set forth in this part.

6 (2)(a) The agency shall establish within each district  
7 office one or more quality-of-care monitors, based on the  
8 number of nursing facilities in the district, to monitor all  
9 nursing facilities in the district on a regular, unannounced,  
10 aperiodic basis, including nights, evenings, weekends, and  
11 holidays. Priority for monitoring visits shall be given to  
12 nursing facilities with a history of patient care  
13 deficiencies. Quality-of-care monitors shall be registered  
14 nurses who are trained and experienced in nursing facility  
15 regulation, standards of practice in long-term care, and  
16 evaluation of patient care. Individuals in these positions  
17 shall not be deployed by the agency as a part of the district  
18 survey team in the conduct of routine, scheduled surveys, but  
19 shall function solely and independently as quality-of-care  
20 monitors. Quality-of-care monitors shall assess the overall  
21 quality of life in the nursing facility and shall assess  
22 specific conditions in the facility directly related to  
23 patient care. The quality-of-care monitor shall include in an  
24 assessment visit observation of the care and services rendered  
25 to residents and formal and informal interviews with  
26 residents, family members, facility staff, resident guests,  
27 volunteers, other regulatory staff, and representatives of a  
28 long-term care ombudsman council or human rights advocacy  
29 committee.

30 (b) Findings of a monitoring visit, both positive and  
31 negative, shall be provided orally and in writing to the



1 facility administrator or, in the absence of the facility  
2 administrator, to the administrator on duty or the director of  
3 nursing. The quality-of-care monitor may recommend to the  
4 facility administrator procedural and policy changes and staff  
5 training, as needed, to improve the care or quality of life of  
6 facility residents. Conditions observed by the quality-of-care  
7 monitor which threaten the health or safety of a resident  
8 shall be reported immediately to the agency area office  
9 supervisor for appropriate regulatory action and, as  
10 appropriate or as required by law, to law enforcement, adult  
11 protective services, or other responsible agencies.

12 (c) Any record, whether written or oral, or any  
13 written or oral communication generated pursuant to paragraph  
14 (a) or paragraph (b) shall not be subject to discovery or  
15 introduction into evidence in any civil or administrative  
16 action against a nursing facility arising out of matters which  
17 are the subject of quality-of-care monitoring, and a person  
18 who was in attendance at a monitoring visit or evaluation may  
19 not be permitted or required to testify in any such civil or  
20 administrative action as to any evidence or other matters  
21 produced or presented during the monitoring visits or  
22 evaluations. However, information, documents, or records  
23 otherwise available from original sources are not to be  
24 construed as immune from discovery or use in any such civil or  
25 administrative action merely because they were presented  
26 during monitoring visits or evaluations, and any person who  
27 participates in such activities may not be prevented from  
28 testifying as to matters within his or her knowledge, but such  
29 witness may not be asked about his or her participation in  
30 such activities. The exclusion from the discovery or  
31 introduction of evidence in any civil or administrative action

1 provided for herein shall not apply when the quality-of-care  
2 monitor makes a report to the appropriate authorities  
3 regarding a threat to the health or safety of a resident.

4 (3) The agency shall also create teams of experts that  
5 can function as rapid response teams to visit nursing  
6 facilities identified through the agency's early warning  
7 system. Rapid response teams may visit facilities that request  
8 the agency's assistance. The rapid response teams shall not be  
9 deployed for the purpose of helping a facility prepare for a  
10 regular survey.

11 Section 11. Subsection (6) is added to section  
12 400.121, Florida Statutes, 1998 Supplement, to read:

13 400.121 Denial, suspension, revocation of license;  
14 moratorium on admissions; administrative fines; procedure.--

15 (6) The agency is authorized to require a facility to  
16 increase staffing beyond the minimum required by law, if the  
17 agency has taken administrative action against the facility  
18 for care-related deficiencies directly attributable to  
19 insufficient staff. Under such circumstances, the facility may  
20 request an expedited interim rate increase. The agency shall  
21 process the request within 10 days after receipt of all  
22 required documentation from the facility. A facility that  
23 fails to maintain the required increased staffing is subject  
24 to a fine of \$500 per day for each day the staffing is below  
25 the level required by the agency.

26 Section 12. Section 400.141, Florida Statutes, is  
27 amended to read:

28 400.141 Administration and management of nursing home  
29 facilities.--Every licensed facility shall comply with all  
30 applicable standards and rules of the agency and shall:

31

1 (1) Be under the administrative direction and charge  
2 of a licensed administrator.

3 (2) Appoint a medical director licensed pursuant to  
4 chapter 458 or chapter 459. The agency may establish by rule  
5 more specific criteria for the appointment of a medical  
6 director.

7 ~~(3)(2)~~ Have available the regular, consultative, and  
8 emergency services of physicians licensed by the state.

9 ~~(4)(3)~~ Provide for the access of the facility  
10 residents to dental and other health-related services,  
11 recreational services, rehabilitative services, and social  
12 work services appropriate to their needs and conditions and  
13 not directly furnished by the licensee. When a geriatric  
14 outpatient nurse clinic is conducted in accordance with rules  
15 adopted by the agency, outpatients attending such clinic shall  
16 not be counted as part of the general resident population of  
17 the nursing home facility, nor shall the nursing staff of the  
18 geriatric outpatient clinic be counted as part of the nursing  
19 staff of the facility, until the outpatient clinic load  
20 exceeds 15 a day.

21 (5) Provide for resident use of a community pharmacy  
22 as specified in s. 400.022(1)(q). Any other law to the  
23 contrary notwithstanding, a registered pharmacist licensed in  
24 Florida may repackage a nursing facility resident's bulk  
25 prescription medication which has been packaged by another  
26 pharmacist licensed in any state in the United States into a  
27 unit dose system compatible with the system used by the  
28 nursing facility, if such resident has bulk prescription  
29 medication benefits covered under a qualified pension plan as  
30 specified in s. 4972 of the Internal Revenue Code, a federal  
31 retirement program as specified under 5 C.F.R. s. 831, or a

1 long-term care policy as defined in s. 627.9404(1). A  
2 pharmacist who correctly repackages and relabels the  
3 medication and the nursing facility which correctly  
4 administers such repackaged medication under the provisions of  
5 this subsection shall not be held liable in any civil or  
6 administrative action arising from the repackaging. In order  
7 to be eligible for the repackaging, a nursing facility  
8 resident for whom the medication is to be repackaged shall  
9 sign an informed consent form provided by the facility which  
10 includes an explanation of the repackaging process and which  
11 notifies the resident of the immunities from liability  
12 provided herein. A pharmacist who repackages and relabels  
13 prescription medications, as authorized under this subsection,  
14 may charge a reasonable fee for costs resulting from the  
15 implementation of this provision.

16 (6)(4) Be allowed and encouraged by the agency to  
17 provide other needed services under certain conditions. If the  
18 facility has a standard licensure status, and has had no class  
19 I or class II deficiencies during the past 2 years or has been  
20 awarded a Gold Seal under the program established in s.  
21 400.235, it may ~~is rated superior or standard,~~ be encouraged  
22 by the agency to provide services, including, but not limited  
23 to, respite and adult day services, which enable individuals  
24 to move in and out of the facility. A facility is not subject  
25 to any additional licensure requirements for providing these  
26 services. Respite care may be offered to persons in need of  
27 short-term or temporary nursing home services. Respite care  
28 must be provided in accordance with this part and rules  
29 adopted by the agency. However, the agency shall, by rule,  
30 adopt modified requirements for resident assessment, resident  
31 care plans, resident contracts, physician orders, and other

1 provisions, as appropriate, for short-term or temporary  
2 nursing home services. The agency shall allow for shared  
3 programming and staff in a facility which meets minimum  
4 standards and offers services pursuant to this subsection,  
5 but, if the facility is cited for deficiencies in patient  
6 care, may require additional staff and programs appropriate to  
7 the needs of service recipients. A person who receives respite  
8 care may not be counted as a resident of the facility for  
9 purposes of the facility's licensed capacity unless that  
10 person receives 24-hour respite care. A person receiving  
11 either respite care for 24 hours or longer or adult day  
12 services must be included when calculating minimum staffing  
13 for the facility. Any costs and revenues generated by a  
14 nursing home facility from nonresidential programs or services  
15 shall be excluded from the calculations of Medicaid per diems  
16 for nursing home institutional care reimbursement.

17 (7)(5) If the facility has a standard licensure status  
18 or is a Gold Seal facility ~~is rated superior or standard,~~  
19 exceeds minimum staffing standards, and is part of a  
20 retirement community that offers other services pursuant to  
21 part III, part IV, or part V, be allowed to share programming  
22 and staff. At the time of relicensure, a retirement community  
23 that uses this option must demonstrate through staffing  
24 records that minimum staffing requirements for the facility  
25 were exceeded.

26 (8)(6) Maintain the facility premises and equipment  
27 and conduct its operations in a safe and sanitary manner.

28 (9)(7) If the licensee furnishes food service, provide  
29 a wholesome and nourishing diet sufficient to meet generally  
30 accepted standards of proper nutrition for its residents and  
31 provide such therapeutic diets as may be prescribed by

1 attending physicians. In making rules to implement this  
2 subsection, the agency shall be guided by standards  
3 recommended by nationally recognized professional groups and  
4 associations with knowledge of dietetics.

5 (10)~~(8)~~ Keep full records of resident admissions and  
6 discharges; medical and general health status, including  
7 medical records, personal and social history, and identity and  
8 address of next of kin or other persons who may have  
9 responsibility for the affairs of the residents; and  
10 individual resident care plans including, but not limited to,  
11 prescribed services, service frequency and duration, and  
12 service goals. The records shall be open to inspection by the  
13 agency.

14 (11)~~(9)~~ Keep such fiscal records of its operations and  
15 conditions as may be necessary to provide information pursuant  
16 to this part.

17 (12)~~(10)~~ Furnish copies of personnel records for  
18 employees affiliated with such facility, to any other facility  
19 licensed by this state requesting this information pursuant to  
20 this part. Such information contained in the records may  
21 include, but is not limited to, disciplinary matters and any  
22 reason for termination. Any facility releasing such records  
23 pursuant to this part shall be considered to be acting in good  
24 faith and may not be held liable for information contained in  
25 such records, absent a showing that the facility maliciously  
26 falsified such records.

27 (13) Publicly display a poster provided by the agency  
28 containing the names, addresses, and telephone numbers for the  
29 state's abuse hotline, the State Long-Term Care Ombudsman, the  
30 Agency for Health Care Administration consumer hotline, the  
31 Advocacy Center for Persons with Disabilities, the Statewide

1 Human Rights Advocacy Committee, and the Medicaid Fraud  
2 Control Unit, with a clear description of the assistance to be  
3 expected from each.

4  
5 Facilities that have been awarded a Gold Seal under the  
6 program established in s. 400.235 may develop a plan to  
7 provide certified nursing assistant training as prescribed by  
8 federal regulations and state rules and may apply to the  
9 agency for approval of its program.

10 Section 13. Subsection (3) of section 400.162, Florida  
11 Statutes, is amended to read:

12 400.162 Property and personal affairs of residents.--

13 (3) A licensee shall provide for the safekeeping of  
14 personal effects, funds, and other property of the resident in  
15 the facility. Whenever necessary for the protection of  
16 valuables, or in order to avoid unreasonable responsibility  
17 therefor, the licensee may require that such valuables be  
18 excluded or removed from the facility and kept at some place  
19 not subject to the control of the licensee. At the request of  
20 a resident, the facility shall mark the resident's personal  
21 property with the resident's name or another type of  
22 identification, without defacing the property. Any theft or  
23 loss of a resident's personal property shall be documented by  
24 the facility. The facility shall develop policies and  
25 procedures to minimize the risk of theft or loss of the  
26 personal property of residents. A copy of the policy shall be  
27 provided to every employee and to each resident at admission.  
28 Facility policies must include provisions related to reporting  
29 theft or loss of a resident's property to law enforcement and  
30 any facility waiver of liability for loss or theft. The

31

1 facility shall post notice of these policies and procedures,  
2 and any revision thereof, in places accessible to residents.

3 Section 14. Subsections (1) and (4) of section 400.19,  
4 Florida Statutes, are amended to read:

5 400.19 Right of entry and inspection.--

6 (1) The agency and any duly designated officer or  
7 employee thereof or a member of the State Long-Term Care  
8 Ombudsman Council or the district long-term care ombudsman  
9 council shall have the right to enter upon and into the  
10 premises of any facility licensed pursuant to this part, or  
11 any distinct nursing home unit of a hospital licensed under  
12 chapter 395 or any freestanding facility licensed under  
13 chapter 395 that provides extended care or other long-term  
14 care services, at any reasonable time in order to determine  
15 the state of compliance with the provisions of this part and  
16 rules in force pursuant thereto. The right of entry and  
17 inspection shall also extend to any premises which the agency  
18 has reason to believe is being operated or maintained as a  
19 facility without a license, but no such entry or inspection of  
20 any premises shall be made without the permission of the owner  
21 or person in charge thereof, unless a warrant is first  
22 obtained from the circuit court authorizing same. Any  
23 application for a facility license or renewal thereof, made  
24 pursuant to this part, shall constitute permission for and  
25 complete acquiescence in any entry or inspection of the  
26 premises for which the license is sought, in order to  
27 facilitate verification of the information submitted on or in  
28 connection with the application; to discover, investigate, and  
29 determine the existence of abuse or neglect; or to elicit,  
30 receive, respond to, and resolve complaints. The agency shall,  
31 within 60 days after receipt of a complaint made by a resident



1 or resident's representative, complete its investigation and  
2 provide to the complainant its findings and resolution.

3 (4) The agency shall conduct unannounced onsite  
4 facility reviews following written verification of licensee  
5 noncompliance in instances in which a long-term care ombudsman  
6 council, pursuant to ss. 400.0071 and 400.0075, has received a  
7 complaint and has documented deficiencies in resident care or  
8 in the physical plant of the facility that threaten the  
9 health, safety, or security of residents, or when the agency  
10 documents through inspection that conditions in a facility  
11 present a direct or indirect threat to the health, safety, or  
12 security of residents. However, the agency shall conduct four  
13 or more unannounced onsite reviews within a 12-month period of  
14 each facility which has a conditional licensure status rating.  
15 Deficiencies related to physical plant do not require followup  
16 reviews after the agency has determined that correction of the  
17 deficiency has been accomplished and that the correction is of  
18 the nature that continued compliance can be reasonably  
19 expected.

20 Section 15. Section 400.191, Florida Statutes, is  
21 amended to read:

22 400.191 Availability, distribution, and posting of  
23 reports and records.--

24 (1) The agency shall provide information to the public  
25 about all of the licensed nursing home facilities operating in  
26 the state.The agency shall, within 60 days after ~~from the~~  
27 ~~date of~~ an annual inspection visit or within 30 days after  
28 ~~from the date of~~ any interim visit to a facility, send copies  
29 of the inspection reports to the district long-term care  
30 ombudsman council, the agency's local office, and a public  
31 library or the county seat for the county in which the

- 1 ~~facility is located., forward the results of all inspections~~  
2 ~~of nursing home facilities to:~~
- 3 ~~(a) The district ombudsman council in whose district~~  
4 ~~the inspected facility is located.~~
- 5 ~~(b) At least one public library or, in the absence of~~  
6 ~~a public library, the county seat in the county in which the~~  
7 ~~inspected facility is located.~~
- 8 ~~(c) The area office supervisor of the agency in whose~~  
9 ~~district the inspected facility is located.~~
- 10 (2) The agency shall provide additional information in  
11 consumer-friendly printed and electronic formats to assist  
12 consumers and their families in comparing and evaluating  
13 nursing home facilities.
- 14 (a) The agency shall provide an Internet site which  
15 shall include at least the following information:
- 16 1. A list by name and address of all nursing home  
17 facilities in this state.
- 18 2. Whether such nursing home facilities are  
19 proprietary or nonproprietary.
- 20 3. The licensure status of each facility.
- 21 4. The ownership history of each facility.
- 22 5. The name of the owner or owners of each facility  
23 and whether the facility is a part of a corporation owning or  
24 operating more than one nursing facility in this state.
- 25 6. Performance, regulatory, and enforcement  
26 information about the corporation, as well as the facility.
- 27 7. The total number of beds in each facility.
- 28 8. The number of private and semiprivate rooms in each  
29 facility.
- 30 9. The religious affiliation, if any, of each  
31 facility.

1           10. The languages spoken by the administrator and  
2 staff of each facility.

3           11. Whether or not each facility accepts Medicare or  
4 Medicaid recipients.

5           12. Recreational and other programs available at each  
6 facility.

7           13. For nursing homes certified for Medicare or  
8 Medicaid, information from the Minimum Data Set system of the  
9 federal Health Care Financing Administration about the  
10 clinical performance of each facility, including information  
11 related to the nursing home quality indicators.

12           14. Information about the licensure status and  
13 regulatory history of each facility.

14           15. Special care units or programs offered at each  
15 facility.

16           16. Whether the facility is a part of a retirement  
17 community that offers other services pursuant to part III,  
18 part IV, or part V.

19           17. The results of consumer and family satisfaction  
20 surveys for each facility.

21           18. The licensure status and rating history for the  
22 past 5 years for each facility.

23           19. Survey and deficiency information contained on the  
24 Online Survey Certification and Reporting (OSCAR) system of  
25 the federal Health Care Financing Administration, including  
26 annual survey, revisit, and complaint survey information, for  
27 each facility for the past 3 years. For noncertified nursing  
28 homes, state survey and deficiency information, including  
29 annual survey, revisit, and complaint survey information for  
30 the past 3 years shall be provided.

31

1           **(b) The agency shall provide the following information**  
2 **in printed form:**

3           **1. A list by name and address of all nursing home**  
4 **facilities in this state.**

5           **2. Whether such nursing home facilities are**  
6 **proprietary or nonproprietary and their current ownership.**

7           **3. The licensure status of each facility.**

8           **4. The total number of beds, and of private and**  
9 **semiprivate rooms, in each facility.**

10           **5. The religious affiliation, if any, of each**  
11 **facility.**

12           **6. The languages spoken by the administrator and staff**  
13 **of each facility.**

14           **7. Whether or not each facility accepts Medicare or**  
15 **Medicaid recipients.**

16           **8. Recreational programs, special care units, and**  
17 **other programs available at each facility.**

18           **9. A summary of information from the Minimum Data Set**  
19 **system of the federal Health Care Financing Administration**  
20 **about the clinical performance of each facility.**

21           **10. Information about the licensure status and**  
22 **regulatory history of each facility.**

23           **11. The results of consumer and family satisfaction**  
24 **surveys for each facility.**

25           **12. The Internet address for the site where more**  
26 **detailed information can be seen.**

27           **13. A statement advising consumers that each facility**  
28 **will have its own policies and procedures related to**  
29 **protecting resident property.**

30           **(3)(2)** Each nursing home facility licensee shall  
31 maintain as public information, available upon request,

1 records of all cost and inspection reports pertaining to that  
2 facility that have been filed with, or issued by, any  
3 governmental agency. Copies of such reports shall be retained  
4 in such records for not less than 5 years from the date the  
5 reports are filed or issued.

6 (4)~~(3)~~ Any records of a nursing home facility  
7 determined by the agency to be necessary and essential to  
8 establish lawful compliance with any rules or standards shall  
9 be made available to the agency on the premises of the  
10 facility.

11 (5)~~(4)~~ Every nursing home facility licensee shall:

12 (a) Post, in a sufficient number of prominent  
13 positions in the nursing home so as to be accessible to all  
14 residents and to the general public, a concise summary of the  
15 last inspection report pertaining to the nursing home and  
16 issued by the agency, with references to the page numbers of  
17 the full reports, noting any deficiencies found by the agency  
18 and the actions taken by the licensee to rectify such  
19 deficiencies and indicating in such summaries where the full  
20 reports may be inspected in the nursing home.

21 (b) Upon request, provide to any person who has  
22 completed a written application with an intent to be admitted  
23 to, or to any resident of, such nursing home, or to any  
24 relative, spouse, or guardian of such person, a copy of the  
25 last inspection report pertaining to the nursing home and  
26 issued by the agency, provided the person requesting the  
27 report agrees to pay a reasonable charge to cover copying  
28 costs.

29 Section 16. Effective upon this act becoming a law,  
30 paragraph (a) of subsection (2) of section 400.215, Florida

31

1 Statutes, 1998 Supplement, is amended, and paragraph (e) is  
2 added to said subsection, to read:

3 400.215 Personnel screening requirement.--

4 (2) Employers and employees shall comply with the  
5 requirements of s. 435.05.

6 (a) Notwithstanding the provisions of s. 435.05(1),  
7 facilities must have in their possession evidence that level 1  
8 screening has been completed before allowing an employee to  
9 begin working with patients as provided in subsection (1). All  
10 information necessary for conducting background screening  
11 using level 1 standards as specified in s. 435.03(1) and for  
12 conducting a search of the central abuse registry and tracking  
13 system as specified in s. 435.03(3)(a) shall be submitted by  
14 the nursing facility to the agency. Results of the background  
15 screening and the abuse registry check shall be provided by  
16 the agency to the requesting nursing facility. An applicant  
17 who has been qualified under a level 1 criminal screening and  
18 who, under penalty of perjury, attests to not having been  
19 classified in the central abuse registry and tracking system  
20 as a perpetrator in a confirmed report of abuse, neglect, or  
21 exploitation may be allowed to work on a probationary status  
22 in the nursing facility, under supervision, for a period not  
23 to exceed 30 days, pending the results of an abuse registry  
24 screening.

25 (e) Notwithstanding the confidentiality provisions of  
26 s. 415.107, the agency shall provide no later than 45 days  
27 after the effective date of this paragraph, a direct-access  
28 electronic screening capability to all enrolled facilities or  
29 agencies required by law to restrict employment to only an  
30 applicant who does not have a disqualifying report in the  
31 central abuse registry and tracking system. The agency shall,

1 upon request, provide to such facility or agency a user code  
2 by which the facility or agency may query the listing of all  
3 persons disqualified because of a confirmed classification.  
4 The direct-access screening system shall allow for the  
5 electronic matching of an applicant's identifying information,  
6 including name, date of birth, race, sex, and social security  
7 number, against the listing of disqualified persons. The  
8 agency may charge a fee for issuing the user code sufficient  
9 to cover the cost of establishing and maintaining the  
10 direct-access screening system. The direct-access screening  
11 system shall provide immediately to the user only the  
12 electronic notification of applicant clearance or  
13 disqualification. The system shall also maintain for  
14 appropriate entry into the agency screening database an  
15 electronic record of the inquiry on behalf of the applicant.

16 Section 17. Section 400.23, Florida Statutes, 1998  
17 Supplement, is amended, and subsections (11) and (12) of said  
18 section are renumbered as subsections (1) and (2) of section  
19 400.232, Florida Statutes, to read:

20 400.23 Rules; ~~criteria; Nursing Home Advisory~~  
21 ~~Committee; evaluation and~~ deficiencies; licensure status  
22 ~~rating system; fee for review of plans.--~~

23 (1) It is the intent of the Legislature that rules  
24 published and enforced pursuant to this part shall include  
25 criteria by which a reasonable and consistent quality of  
26 resident care may be ensured and the results of such resident  
27 care can be demonstrated and by which safe and sanitary  
28 nursing homes can be provided. It is further intended that  
29 reasonable efforts be made to accommodate the needs and  
30 preferences of residents to enhance the quality of life in a  
31 nursing home. In addition, efforts shall be made to minimize

1 the paperwork associated with the reporting and documentation  
2 requirements of these rules.

3 (2) Pursuant to the intention of the Legislature, the  
4 agency, in consultation with the Department of Health ~~and~~  
5 ~~Rehabilitative Services~~ and the Department of Elderly Affairs,  
6 shall adopt and enforce rules to implement this part, which  
7 shall include reasonable and fair criteria in relation to:

8 (a) The location and construction of the facility;  
9 including fire and life safety, plumbing, heating, lighting,  
10 ventilation, and other housing conditions which will ensure  
11 the health, safety, and comfort of residents, including an  
12 adequate call system. The agency shall establish standards  
13 for facilities and equipment to increase the extent to which  
14 new facilities and a new wing or floor added to an existing  
15 facility after July 1, 1999, are structurally capable of  
16 serving as shelters only for residents, staff, and families of  
17 residents and staff, and equipped to be self-supporting during  
18 and immediately following disasters. The agency ~~for Health~~  
19 ~~Care Administration~~ shall work with facilities licensed under  
20 this part and report to the Governor and Legislature by April  
21 1, 1999, its recommendations for cost-effective renovation  
22 standards to be applied to existing facilities. In making such  
23 rules, the agency shall be guided by criteria recommended by  
24 nationally recognized reputable professional groups and  
25 associations with knowledge of such subject matters. The  
26 agency shall update or revise such criteria as the need  
27 arises. All nursing homes must comply with those lifesafety  
28 code requirements and building code standards applicable at  
29 the time of approval of their construction plans. The agency  
30 may require alterations to a building if it determines that an  
31 existing condition constitutes a distinct hazard to life,



1 health, or safety. The agency shall adopt fair and reasonable  
2 rules setting forth conditions under which existing facilities  
3 undergoing additions, alterations, conversions, renovations,  
4 or repairs shall be required to comply with the most recent  
5 updated or revised standards.

6 (b) The number and qualifications of all personnel,  
7 including management, medical, nursing, and other professional  
8 personnel, and nursing assistants, orderlies, and support  
9 personnel, having responsibility for any part of the care  
10 given residents.

11 (c) All sanitary conditions within the facility and  
12 its surroundings, including water supply, sewage disposal,  
13 food handling, and general hygiene which will ensure the  
14 health and comfort of residents.

15 (d) The equipment essential to the health and welfare  
16 of the residents.

17 (e) A uniform accounting system.

18 (f) The care, treatment, and maintenance of residents  
19 and measurement of the quality and adequacy thereof, based on  
20 rules developed under this chapter and the Omnibus Budget  
21 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,  
22 1987), Title IV (Medicare, Medicaid, and Other Health-Related  
23 Programs), Subtitle C (Nursing Home Reform), as amended.

24 (g) The preparation and annual update of a  
25 comprehensive emergency management plan. The agency shall  
26 adopt rules establishing minimum criteria for the plan after  
27 consultation with the Department of Community Affairs. At a  
28 minimum, the rules must provide for plan components that  
29 address emergency evacuation transportation; adequate  
30 sheltering arrangements; postdisaster activities, including  
31 emergency power, food, and water; postdisaster transportation;

1 supplies; staffing; emergency equipment; individual  
2 identification of residents and transfer of records; and  
3 responding to family inquiries. The comprehensive emergency  
4 management plan is subject to review and approval by the local  
5 emergency management agency. During its review, the local  
6 emergency management agency shall ensure that the following  
7 agencies, at a minimum, are given the opportunity to review  
8 the plan: the Department of Elderly Affairs, the Department  
9 of Health ~~and Rehabilitative Services~~, the Agency for Health  
10 Care Administration, and the Department of Community Affairs.  
11 Also, appropriate volunteer organizations must be given the  
12 opportunity to review the plan. The local emergency  
13 management agency shall complete its review within 60 days and  
14 either approve the plan or advise the facility of necessary  
15 revisions.

16 (3)(a) The agency shall adopt rules providing for the  
17 minimum staffing requirements for nursing homes. These  
18 requirements shall include, for each nursing home facility, a  
19 minimum certified nursing assistant staffing and a minimum  
20 licensed nursing staffing per resident per day, including  
21 evening and night shifts and weekends. Agency rules shall  
22 specify requirements for documentation of compliance with  
23 staffing standards, sanctions for violation of such standards,  
24 and requirements for daily posting of the names of staff on  
25 duty for the benefit of facility residents and the public. The  
26 agency shall recognize the use of licensed nurses for  
27 compliance with minimum staffing requirements for certified  
28 nursing assistants, provided that the facility otherwise meets  
29 the minimum staffing requirements for licensed nurses and that  
30 the licensed nurses so recognized are performing the duties of  
31 a certified nursing assistant. Unless otherwise approved by

1 the agency, licensed nurses counted towards the minimum  
2 staffing requirements for certified nursing assistants must  
3 exclusively perform the duties of a certified nursing  
4 assistant for the entire shift and shall not also be counted  
5 towards the minimum staffing requirements for licensed nurses.  
6 If the agency approved a facility's request to use a licensed  
7 nurse to perform both licensed nursing and certified nursing  
8 assistant duties, the facility must allocate the amount of  
9 staff time specifically spent on certified nursing assistant  
10 duties for the purpose of documenting compliance with minimum  
11 staffing requirements for certified and licensed nursing  
12 staff. In no event may the hours of a licensed nurse with dual  
13 job responsibilities be counted twice.

14 (b) The agency shall adopt rules to allow properly  
15 trained staff of a nursing facility, in addition to certified  
16 nursing assistants and licensed nurses, to assist residents  
17 with eating. The rules shall specify the minimum training  
18 requirements and shall specify the physiological conditions or  
19 disorders of residents which would necessitate that the eating  
20 assistance be provided by nursing personnel of the facility.  
21 Non-nursing staff providing eating assistance to residents  
22 under the provisions of this subsection shall not count  
23 towards compliance with minimum staffing standards.

24 (4)(3) Rules developed pursuant to this section shall  
25 not restrict the use of shared staffing and shared programming  
26 in facilities which are part of retirement communities that  
27 provide multiple levels of care and otherwise meet the  
28 requirement of law or rule.

29 (5)(4) The agency, in collaboration with the Division  
30 of Children's Medical Services Program Office of the  
31 Department of Health ~~and Rehabilitative Services~~, must, no

1 later than December 31, 1993, adopt rules for minimum  
2 standards of care for persons under 21 years of age who reside  
3 in nursing home facilities. The rules must include a  
4 methodology for reviewing a nursing home facility under ss.  
5 408.031-408.045 which serves only persons under 21 years of  
6 age.

7 (6)~~(5)~~ Prior to conducting a survey of the facility,  
8 the survey team shall obtain a copy of the district ~~nursing~~  
9 ~~home and long-term care facility~~ ombudsman council report on  
10 the facility. Problems noted in the report shall be  
11 incorporated into and followed up through the agency's  
12 inspection process. This procedure does not preclude the  
13 district nursing home and long-term care facility ombudsman  
14 council from requesting the agency to conduct a followup visit  
15 to the facility.

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

20 ~~(a) One researcher from a university center on aging.~~

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

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

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

27 ~~(e) Five consumer representatives, at least two of~~  
28 ~~whom serve on or are staff members of the state or a district~~  
29 ~~nursing home and long-term care facility ombudsman council.~~

30 ~~(f) One representative from the Florida American~~  
31 ~~Medical Directors Association.~~

1           ~~(g) One representative from the Florida Association of~~  
2 ~~Directors of Nursing Administrators.~~

3           ~~(h) One representative from the Agency for Health Care~~  
4 ~~Administration.~~

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

9  
10 ~~At least one member shall be over 60 years of age.~~

11           ~~(7) The committee shall perform the following duties~~  
12 ~~to assist the agency in ensuring compliance with the intent of~~  
13 ~~the Legislature specified in subsection (1):~~

14           ~~(a) Assist in developing a nursing home rating system~~  
15 ~~based on the requirements of rules developed under this~~  
16 ~~chapter and the Omnibus Budget Reconciliation Act of 1987~~  
17 ~~(Pub. L. No. 100-203) (December 22, 1987), Title IV (Medicare,~~  
18 ~~Medicaid, and Other Health-Related Programs), Subtitle C~~  
19 ~~(Nursing Home Reform), as amended.~~

20           ~~(b) Assist in developing surveyor guidelines and~~  
21 ~~training to ensure the equitable application of the nursing~~  
22 ~~home rating system.~~

23           ~~(c) Assist in developing guidelines to determine the~~  
24 ~~scope and severity of noncompliance.~~

25           ~~(d) Identify burdensome paperwork that is not~~  
26 ~~specifically related to resident care.~~

27           ~~(e) Advise the agency of proposed changes in statutes~~  
28 ~~and rules necessary to ensure adequate care and services and~~  
29 ~~the promotion and protection of residents' rights in long-term~~  
30 ~~care facilities.~~

31

1           ~~(7)(8)~~ The agency shall, at least every 15 months,  
2 evaluate all nursing home facilities and make a determination  
3 as to the degree of compliance by each licensee with the  
4 established rules adopted under this part as a basis for  
5 assigning a licensure status ~~rating~~ to that facility. The  
6 agency shall base its evaluation on the most recent inspection  
7 report, taking into consideration findings from other official  
8 reports, surveys, interviews, investigations, and inspections.  
9 The agency shall assign a licensure status of standard or  
10 conditional ~~one of the following ratings~~ to each nursing home.  
11 ~~standard, conditional, or superior.~~

12           (a) A standard licensure status ~~rating~~ means that a  
13 facility has no class I or class II deficiencies, has  
14 corrected all class III deficiencies within the time  
15 established by the agency, and is in substantial compliance at  
16 the time of the survey with criteria established under this  
17 part, with rules adopted by the agency, and, if applicable,  
18 with rules adopted under the Omnibus Budget Reconciliation Act  
19 of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV  
20 (Medicare, Medicaid, and Other Health-Related Programs),  
21 Subtitle C (Nursing Home Reform), as amended.

22           (b) A conditional licensure status ~~rating~~ means that a  
23 facility, due to the presence of one or more class I or class  
24 II deficiencies, or class III deficiencies not corrected  
25 within the time established by the agency, is not in  
26 substantial compliance at the time of the survey with criteria  
27 established under this part, with rules adopted by the agency,  
28 or, if applicable, with rules adopted under the Omnibus Budget  
29 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,  
30 1987), Title IV (Medicare, Medicaid, and Other Health-Related  
31 Programs), Subtitle C (Nursing Home Reform), as amended. If

1 the facility comes into substantial compliance at the time of  
2 the followup survey, a standard licensure status rating may be  
3 assigned issued. A ~~facility assigned a conditional rating at~~  
4 ~~the time of the relicensure survey may not qualify for~~  
5 ~~consideration for a superior rating until the time of the next~~  
6 ~~subsequent relicensure survey.~~

7 (c) ~~A superior rating means that a facility has no~~  
8 ~~class I or class II deficiencies and has corrected all class~~  
9 ~~III deficiencies within the time established by the agency and~~  
10 ~~is in substantial compliance with the criteria established~~  
11 ~~under this part and the rules adopted by the agency and, if~~  
12 ~~applicable, with rules adopted pursuant to the Omnibus Budget~~  
13 ~~Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,~~  
14 ~~1987), Title IV (Medicare, Medicaid, and Other Health-Related~~  
15 ~~Programs), Subtitle C (Nursing Home Reform), as amended; and~~  
16 ~~the facility exceeds the criteria for a standard rating~~  
17 ~~through enhanced programs and services in the following areas:~~

- 18 1. ~~Nursing service.~~
- 19 2. ~~Dietary or nutritional services.~~
- 20 3. ~~Physical environment.~~
- 21 4. ~~Housekeeping and maintenance.~~
- 22 5. ~~Restorative therapies and self-help activities.~~
- 23 6. ~~Social services.~~
- 24 7. ~~Activities and recreational therapy.~~

25 (d) ~~In order to facilitate the development of special~~  
26 ~~programs or facilitywide initiatives and promote creativity~~  
27 ~~based on the needs and preferences of residents, the areas~~  
28 ~~listed in paragraph (c) may be grouped or addressed~~  
29 ~~individually by the licensee. However, a facility may not~~  
30 ~~qualify for a superior rating if fewer than three programs or~~  
31 ~~initiatives are developed to encompass the required areas.~~

1           ~~(c)(e)~~ In ~~determining the rating and~~ evaluating the  
2 overall quality of care and services and determining whether  
3 the facility will receive a conditional or standard license,  
4 the agency shall consider the needs and limitations of  
5 residents in the facility and the results of interviews and  
6 surveys of a representative sampling of residents, families of  
7 residents, ombudsman council members in the district in which  
8 the facility is located, guardians of residents, and staff of  
9 the nursing home facility.

10           ~~(d)(f)~~ The current licensure status ~~rating~~ of each  
11 facility must be indicated in bold print on the face of the  
12 license. A list of the deficiencies of the facility shall be  
13 posted in a prominent place that is in clear and unobstructed  
14 public view at or near the place where residents are being  
15 admitted to that facility. Licensees receiving a conditional  
16 licensure status ~~rating~~ for a facility shall prepare, within  
17 10 working days after receiving notice of deficiencies, a plan  
18 for correction of all deficiencies and shall submit the plan  
19 to the agency for approval. Correction of all deficiencies,  
20 within the period approved by the agency, shall result in  
21 termination of the conditional licensure status ~~rating~~.  
22 Failure to correct the deficiencies within a reasonable period  
23 approved by the agency shall be grounds for the imposition of  
24 sanctions pursuant to this part.

25           ~~(e)(g)~~ Each licensee shall post its license in a  
26 prominent place that is in clear and unobstructed public view  
27 at or near the place where residents are being admitted to the  
28 facility. ~~A licensee with a superior rating may advertise its~~  
29 ~~rating in any nonpermanent medium and in accordance with rules~~  
30 ~~adopted by the agency. A list of the facilities receiving a~~  
31



1 ~~superior rating shall be distributed to the state and district~~  
2 ~~ombudsman councils.~~

3 (f)~~(h)~~ Not later than January 1, 1994, the agency  
4 shall adopt rules that:

5 1. Establish uniform procedures for the evaluation of  
6 facilities.

7 2. Provide criteria in the areas referenced in  
8 paragraph (c).

9 3. Address other areas necessary for carrying out the  
10 intent of this section.

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

22 ~~(j) A superior rating is not transferable to another~~  
23 ~~license, except when an existing facility is being relicensed~~  
24 ~~in the name of an entity related to the current licenseholder~~  
25 ~~by common ownership or control and there will be no change in~~  
26 ~~the management, operation, or programs at the facility as a~~  
27 ~~result of the relicensure.~~

28 (8)~~(9)~~ The agency shall adopt rules to provide that,  
29 when the criteria established under subsection (2) are not  
30 met, such deficiencies shall be classified according to the  
31 nature of the deficiency. The agency shall indicate the

1 classification on the face of the notice of deficiencies as  
2 follows:

3 (a) Class I deficiencies are those which the agency  
4 determines present an imminent danger to the residents or  
5 guests of the nursing home facility or a substantial  
6 probability that death or serious physical harm would result  
7 therefrom. The condition or practice constituting a class I  
8 violation shall be abated or eliminated immediately, unless a  
9 fixed period of time, as determined by the agency, is required  
10 for correction. Notwithstanding s. 400.121(2), a class I  
11 deficiency is subject to a civil penalty in an amount not less  
12 than \$5,000 and not exceeding \$25,000~~\$10,000~~ for each and  
13 every deficiency. A fine may be levied notwithstanding the  
14 correction of the deficiency.

15 (b) Class II deficiencies are those which the agency  
16 determines have a direct or immediate relationship to the  
17 health, safety, or security of the nursing home facility  
18 residents, other than class I deficiencies. A class II  
19 deficiency is subject to a civil penalty in an amount not less  
20 than \$1,000 and not exceeding \$10,000~~\$5,000~~ for each and  
21 every deficiency. A citation for a class II deficiency shall  
22 specify the time within which the deficiency is required to be  
23 corrected. If a class II deficiency is corrected within the  
24 time specified, no civil penalty shall be imposed, unless it  
25 is a repeated offense.

26 (c) Class III deficiencies are those which the agency  
27 determines to have an indirect or potential relationship to  
28 the health, safety, or security of the nursing home facility  
29 residents, other than class I or class II deficiencies. A  
30 class III deficiency shall be subject to a civil penalty of  
31 not less than \$500 and not exceeding \$2,500~~\$1,000~~ for each

1 and every deficiency. A citation for a class III deficiency  
2 shall specify the time within which the deficiency is required  
3 to be corrected. If a class III deficiency is corrected  
4 within the time specified, no civil penalty shall be imposed,  
5 unless it is a repeated offense.

6 (9)~~(10)~~ Civil penalties paid by any licensee under  
7 subsection~~(8)~~(9) shall be deposited in the Health Care Trust  
8 Fund and expended as provided in s. 400.063.

9 ~~(13) This section may not be used to increase the~~  
10 ~~total Medicaid funding paid as incentives for facilities~~  
11 ~~receiving a superior or standard rating.~~

12 400.232 Review and approval of plans; fees and  
13 costs.--

14 (1)~~(11)~~ The agency shall approve or disapprove the  
15 plans and specifications within 60 days after receipt of the  
16 final plans and specifications. The agency may be granted one  
17 15-day extension for the review period, if the director of the  
18 agency so approves. If the agency fails to act within the  
19 specified time, it shall be deemed to have approved the plans  
20 and specifications. When the agency disapproves plans and  
21 specifications, it shall set forth in writing the reasons for  
22 disapproval. Conferences and consultations may be provided as  
23 necessary.

24 (2)~~(12)~~ The agency is authorized to charge an initial  
25 fee of \$2,000 for review of plans and construction on all  
26 projects, no part of which is refundable. The agency may also  
27 collect a fee, not to exceed 1 percent of the estimated  
28 construction cost or the actual cost of review, whichever is  
29 less, for the portion of the review which encompasses initial  
30 review through the initial revised construction document  
31 review. The agency is further authorized to collect its

1 actual costs on all subsequent portions of the review and  
2 construction inspections. Initial fee payment shall accompany  
3 the initial submission of plans and specifications. Any  
4 subsequent payment that is due is payable upon receipt of the  
5 invoice from the agency. Notwithstanding any other provisions  
6 of law to the contrary, all money received by the agency  
7 pursuant to the provisions of this section shall be deemed to  
8 be trust funds, to be held and applied solely for the  
9 operations required under this section.

10 Section 18. Section 400.235, Florida Statutes, is  
11 created to read:

12 400.235 Nursing home quality and licensure status;  
13 Gold Seal Program.--

14 (1) To protect the health and welfare of persons  
15 receiving care in nursing facilities, it is the intent of the  
16 Legislature to develop a regulatory framework that promotes  
17 the stability of the industry and facilitates the physical,  
18 social, and emotional well-being of nursing facility  
19 residents.

20 (2) The Legislature intends to develop an award and  
21 recognition program for nursing facilities that demonstrate  
22 excellence in long-term care over a sustained period. This  
23 program shall be known as the Gold Seal Program.

24 (3)(a) The Gold Seal Program shall be developed and  
25 implemented by the Governor's Panel on Excellence in Long-Term  
26 Care which shall operate under the authority of the Executive  
27 Office of the Governor. The panel shall be composed of three  
28 persons appointed by the Governor, to include a consumer  
29 advocate for senior citizens and two persons with expertise in  
30 the fields of quality management, service delivery excellence,  
31 or public sector accountability; three persons appointed by

1 the Secretary of Elderly Affairs, to include an active member  
2 of a nursing facility family and resident care council and a  
3 member of the University Consortium on Aging; the State  
4 Long-Term Care Ombudsman; one person appointed by the Florida  
5 Life Care Residents Association; one person appointed by the  
6 Secretary of Health; two persons appointed by the Director of  
7 Health Care Administration, to include the Deputy Director for  
8 State Health Purchasing; one person appointed by the Florida  
9 Association of Homes for the Aging; and one person appointed  
10 by the Florida Health Care Association. All members of the  
11 panel shall be appointed by October 1, 1999, and the panel  
12 shall hold its organizational meeting no later than December  
13 10, 1999. Vacancies on the panel shall be filled in the same  
14 manner as the original appointments. No member shall serve for  
15 more than 4 consecutive years from the date of appointment.

16 (b) Members of the Governor's Panel on Excellence in  
17 Long-Term Care shall be prohibited from having any ownership  
18 interest in a nursing facility. Any member of the panel who is  
19 employed by a nursing facility in any capacity shall be  
20 prohibited from participating in reviewing or voting on  
21 recommendations involving the facility by which the member is  
22 employed or any facility under common ownership with that  
23 facility.

24 (c) Recommendations to the panel for designation of a  
25 nursing facility as a Gold Seal facility may be received by  
26 the panel after January 1, 2000. The activities of the panel  
27 shall be supported by staff of the Department of Elderly  
28 Affairs and the Agency for Health Care Administration.

29 (4) The panel shall consider at least the following  
30 resident-based quality indicator domains when evaluating a  
31 facility for the Gold Seal Program:

- 1           (a) Accidents.  
2           (b) Behavioral/emotional patterns.  
3           (c) Clinical management.  
4           (d) Cognitive patterns.  
5           (e) Elimination/continence.  
6           (f) Infection control.  
7           (g) Nutrition and eating.  
8           (h) Physical functioning.  
9           (i) Psychotropic drug use.  
10          (j) Quality of life.  
11          (k) Sensory functioning and communication.  
12          (l) Skin care.  
13          (5) Facilities must meet the following additional  
14 criteria for recognition as a Gold Seal Program facility:  
15           (a) Had no class I or class II deficiencies within the  
16 30 months preceding application for the program.  
17           (b) Evidence financial soundness and stability  
18 according to standards adopted by the agency in administrative  
19 rule.  
20           (c) Participate consistently in the required consumer  
21 satisfaction process as prescribed by the agency, and  
22 demonstrate that information is elicited from residents,  
23 family members, and guardians about satisfaction with the  
24 nursing facility, its environment, the services and care  
25 provided, the staff's skills and interactions with residents,  
26 attention to resident's needs, and the facility's efforts to  
27 act on information gathered from the consumer satisfaction  
28 measures.  
29           (d) Evidence the involvement of families and members  
30 of the community in the facility on a regular basis.  
31

1           (e) Have a stable workforce, as evidenced by a  
2 relatively low rate of turnover among certified nursing  
3 assistants and registered nurses within the 30 months  
4 preceding application for the Gold Seal Program, and  
5 demonstrate a continuing effort to maintain a stable workforce  
6 and to reduce turnover of licensed nurses and certified  
7 nursing assistants.

8           (f) Evidence an outstanding record regarding the  
9 number and types of substantiated complaints reported to the  
10 State Long-Term Care Ombudsman Council within the 30 months  
11 preceding application for the program.

12           (g) Provide targeted inservice training provided to  
13 meet training needs identified by internal or external quality  
14 assurance efforts.

15           (h) Evidence superior levels of clinical outcomes as  
16 measured in the Minimum Data Set system of the federal Health  
17 Care Financing Administration. Facilities that are not  
18 certified for Medicare or Medicaid are not required to  
19 complete the Minimum Data Set in order to qualify for the Gold  
20 Seal Program. Such facilities may demonstrate superior levels  
21 of performance with an alternate assessment as approved by the  
22 panel.

23  
24 A facility assigned a conditional licensure status may not  
25 qualify for consideration for the Gold Seal Program until  
26 after it has operated for 30 months with no class I or class  
27 II deficiencies and has completed a regularly scheduled  
28 relicensure survey.

29           (6) The agency, nursing facility industry  
30 organizations, consumers, State Long-Term Care Ombudsman  
31 Council, and members of the community may recommend to the

1 Governor facilities that meet the established criteria for  
2 consideration for and award of the Gold Seal. The panel shall  
3 review nominees and make a recommendation to the Governor for  
4 final approval and award. The decision of the Governor is  
5 final and is not subject to appeal.

6 (7) A facility must be licensed and operating for 30  
7 months before it is eligible to apply for the Gold Seal  
8 Program. The agency shall establish by rule the frequency of  
9 review for designation as a Gold Seal Program facility and  
10 under what circumstances a facility may be denied the  
11 privilege of using this designation. The designation of a  
12 facility as a Gold Seal Program facility is not transferable  
13 to another license, except when an existing facility is being  
14 relicensed in the name of an entity related to the current  
15 licenseholder by common ownership or control, and there will  
16 be no change in the management, operation, or programs at the  
17 facility as a result of the relicensure.

18 (8)(a) Facilities awarded the Gold Seal may use the  
19 designation in their advertising and marketing.

20 (b) Upon approval by the United States Department of  
21 Health and Human Services, the agency shall adopt a revised  
22 schedule of survey and relicensure visits for Gold Seal  
23 Program facilities. Gold Seal Program facilities may be  
24 surveyed for certification and relicensure every 2 years, so  
25 long as they maintain the standards associated with retaining  
26 the Gold Seal.

27 Section 19. 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.--  
31



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 such  
5 inspection shall be a per se violation of this subsection.

6           ~~(4)(3)~~ A violation of any provision of this part or of  
7 any minimum standard, rule, or regulation adopted pursuant  
8 thereto constitutes a misdemeanor of the second degree,  
9 punishable as provided in s. 775.082 or s. 775.083. Each day  
10 of a continuing violation shall be considered a separate  
11 offense.

12           Section 20. Paragraph (p) is added to subsection (1)  
13 of section 408.035, Florida Statutes, to read:

14           408.035 Review criteria.--

15           (1) The agency shall determine the reviewability of  
16 applications and shall review applications for  
17 certificate-of-need determinations for health care facilities  
18 and health services in context with the following criteria:

19           (p) The applicant's designation as a Gold Seal Program  
20 nursing facility pursuant to s. 400.235, when the applicant is  
21 requesting additional nursing home beds at that facility.

22           Section 21. Subsection (1) of section 468.1755,  
23 Florida Statutes, 1998 Supplement, is amended to read:

24           468.1755 Disciplinary proceedings.--

25           (1) The following acts shall constitute grounds for  
26 which the disciplinary actions in subsection (2) may be taken:

27           (a) Violation of any provision of s. 455.624(1) or s.  
28 468.1745(1).

29           (b) Attempting to procure a license to practice  
30 nursing home administration by bribery, by fraudulent  
31

1 misrepresentation, or through an error of the department or  
2 the board.

3 (c) Having a license to practice nursing home  
4 administration revoked, suspended, or otherwise acted against,  
5 including the denial of licensure, by the licensing authority  
6 of another state, territory, or country.

7 (d) Being convicted or found guilty, regardless of  
8 adjudication, of a crime in any jurisdiction which relates to  
9 the practice of nursing home administration or the ability to  
10 practice nursing home administration. Any plea of nolo  
11 contendere shall be considered a conviction for purposes of  
12 this part.

13 (e) Making or filing a report or record which the  
14 licensee knows to be false, intentionally failing to file a  
15 report or record required by state or federal law, willfully  
16 impeding or obstructing such filing, or inducing another  
17 person to impede or obstruct such filing. Such reports or  
18 records shall include only those which are signed in the  
19 capacity of a licensed nursing home administrator.

20 (f) Authorizing the discharge or transfer of a  
21 resident for a reason other than those provided in ss. 400.022  
22 and 400.0255.

23 (g)~~(f)~~ Advertising goods or services in a manner which  
24 is fraudulent, false, deceptive, or misleading in form or  
25 content.

26 (h)~~(g)~~ Fraud or deceit, negligence, incompetence, or  
27 misconduct in the practice of nursing home administration.

28 (i)~~(h)~~ A violation or repeated violations of this  
29 part, part II of chapter 455, or any rules promulgated  
30 pursuant thereto.

31

1           (j)~~(i)~~ Violation of a lawful order of the board or  
2 department previously entered in a disciplinary hearing or  
3 failing to comply with a lawfully issued subpoena of the board  
4 or department.

5           (k)~~(j)~~ Practicing with a revoked, suspended, inactive,  
6 or delinquent license.

7           (l)~~(k)~~ Repeatedly acting in a manner inconsistent with  
8 the health, safety, or welfare of the patients of the facility  
9 in which he or she is the administrator.

10           (m)~~(l)~~ Being unable to practice nursing home  
11 administration with reasonable skill and safety to patients by  
12 reason of illness, drunkenness, use of drugs, narcotics,  
13 chemicals, or any other material or substance or as a result  
14 of any mental or physical condition. In enforcing this  
15 paragraph, upon a finding of the secretary or his or her  
16 designee that probable cause exists to believe that the  
17 licensee is unable to serve as a nursing home administrator  
18 due to the reasons stated in this paragraph, the department  
19 shall have the authority to issue an order to compel the  
20 licensee to submit to a mental or physical examination by a  
21 physician designated by the department. If the licensee  
22 refuses to comply with such order, the department's order  
23 directing such examination may be enforced by filing a  
24 petition for enforcement in the circuit court where the  
25 licensee resides or serves as a nursing home administrator.  
26 The licensee against whom the petition is filed shall not be  
27 named or identified by initials in any public court records or  
28 documents and the proceedings shall be closed to the public.  
29 The department shall be entitled to the summary procedure  
30 provided in s. 51.011. A licensee affected under this  
31 paragraph shall have the opportunity, at reasonable intervals,

1 to demonstrate that he or she can resume the competent  
2 practice of nursing home administration with reasonable skill  
3 and safety to patients.

4 (n)~~(m)~~ ~~Has~~ Willfully or repeatedly violating ~~violated~~  
5 any of the provisions of the law, code or rules of the  
6 licensing or supervising authority or agency of the state or  
7 political subdivision thereof having jurisdiction of the  
8 operation and licensing of nursing homes.

9 (o)~~(n)~~ Paying, giving, causing ~~Has paid, given, caused~~  
10 to be paid or given, or offering ~~offered~~ to pay or to give to  
11 any person a commission or other valuable consideration for  
12 the solicitation or procurement, either directly or  
13 indirectly, of nursing home usage.

14 (p)~~(o)~~ ~~Has~~ Willfully permitting ~~permitted~~ unauthorized  
15 disclosure of information relating to a patient or his or her  
16 records.

17 (q)~~(p)~~ Discriminating with ~~Has discriminated in~~  
18 respect to patients, employees, or staff on account of race,  
19 religion, color, sex, or national origin.

20 Section 22. Paragraph (b) of subsection (1) of section  
21 394.4625, Florida Statutes, is amended to read:

22 394.4625 Voluntary admissions.--

23 (1) AUTHORITY TO RECEIVE PATIENTS.--

24 (b) A mental health overlay program or a mobile crisis  
25 response service or a licensed professional who is authorized  
26 to initiate an involuntary examination pursuant to s. 394.463  
27 and is employed by a community mental health center or clinic  
28 must, pursuant to district procedure approved by the  
29 respective district administrator, conduct an initial  
30 assessment of the ability of the following persons to give  
31

1 express and informed consent to treatment before such persons  
2 may be admitted voluntarily:

3 1. A person 60 years of age or older for whom transfer  
4 is being sought from a nursing home, assisted living facility,  
5 adult day care center, or adult family-care home, when such  
6 person has been diagnosed as suffering from dementia.

7 2. A person 60 years of age or older for whom transfer  
8 is being sought from a nursing home pursuant to s.  
9 400.0255(12)~~s. 400.0255(6)~~.

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

13 Section 23. Subsection (1) of section 400.063, Florida  
14 Statutes, is amended to read:

15 400.063 Resident Protection Trust Fund.--

16 (1) A Resident Protection Trust Fund shall be  
17 established for the purpose of collecting and disbursing funds  
18 generated from the license fees and administrative fines as  
19 provided for in ss. 393.0673(2), 400.062(3)(b), 400.111(1),  
20 400.121(2), and 400.23(8)~~(9)~~. Such funds shall be for the  
21 sole purpose of paying for the appropriate alternate  
22 placement, care, and treatment of residents who are removed  
23 from a facility licensed under this part or a facility  
24 specified in s. 393.0678(1) in which the agency determines  
25 that existing conditions or practices constitute an immediate  
26 danger to the health, safety, or security of the residents.  
27 If the agency determines that it is in the best interest of  
28 the health, safety, or security of the residents to provide  
29 for an orderly removal of the residents from the facility, the  
30 agency may utilize such funds to maintain and care for the  
31 residents in the facility pending removal and alternative

1 placement. The maintenance and care of the residents shall be  
2 under the direction and control of a receiver appointed  
3 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds  
4 may be expended in an emergency upon a filing of a petition  
5 for a receiver, upon the declaration of a state of local  
6 emergency pursuant to s. 252.38(3)(a)5., or upon a duly  
7 authorized local order of evacuation of a facility by  
8 emergency personnel to protect the health and safety of the  
9 residents.

10 Section 24. Section 430.80, Florida Statutes, is  
11 created to read:

12 430.80 Implementation of a teaching nursing home pilot  
13 project.--

14 (1) As used in this section, the term "teaching  
15 nursing home" means a nursing home facility licensed under  
16 chapter 400 which contains a minimum of 400 licensed nursing  
17 home beds; has access to a resident senior population of  
18 sufficient size to support education, training, and research  
19 relating to geriatric care; and has a contractual relationship  
20 with a federally funded accredited geriatric research center  
21 in this state.

22 (2)(a) The Agency for Health Care Administration shall  
23 implement a comprehensive multidisciplinary program of  
24 geriatric education and research as a pilot project in a  
25 nursing home facility designated by the agency as a teaching  
26 nursing home. The program shall be established as a pilot  
27 project and shall be administered at the nursing home facility  
28 and other appropriate settings.

29 (b) The agency shall develop criteria for designating  
30 teaching nursing homes in consultation with advocates of the  
31 elderly, advocates of persons with disabilities,

- 1 representatives of the nursing home industry, and  
2 representatives of the State University System.
- 3 (3) To be designated as a teaching nursing home, a  
4 nursing home licensee must, at a minimum:
- 5 (a) Provide a comprehensive program of integrated  
6 senior services that include institutional services and  
7 community-based services;
- 8 (b) Participate in a nationally recognized  
9 accreditation program and hold a valid accreditation, such as  
10 the accreditation awarded by the Joint Commission on  
11 Accreditation of Healthcare Organizations;
- 12 (c) Have been in business in this state for a minimum  
13 of 10 consecutive years;
- 14 (d) Demonstrate an active program in multidisciplinary  
15 education and research that relates to gerontology;
- 16 (e) Have a formalized contractual relationship with at  
17 least one accredited health profession education program  
18 located in this state;
- 19 (f) Have a formalized contractual relationship with an  
20 accredited hospital that is designated by law as a teaching  
21 hospital; and
- 22 (g) Have senior staff members who hold formal faculty  
23 appointments at universities, which must include at least one  
24 accredited health profession education program.
- 25 (4) A teaching nursing home may be affiliated with a  
26 medical school within the state and a federally funded center  
27 of excellence in geriatric research and education. The purpose  
28 of such affiliations is to foster the development of methods  
29 for improving and expanding the capability of health care  
30 facilities to respond to the medical, psychological, and  
31 social needs of frail and elderly persons by providing the

1 most effective and appropriate services. A teaching nursing  
2 home shall serve as a resource for research and for training  
3 health care professionals in providing health care services in  
4 institutional settings to frail and older persons.

5 (5) The Legislature may provide an annual  
6 appropriation to the nursing home facility designated as a  
7 teaching nursing home.

8 (6) In order for a nursing home to qualify as a  
9 teaching nursing home under this section and to be entitled to  
10 the benefits provided under this section, the nursing home  
11 must:

12 (a) Be primarily operated and established to offer,  
13 afford, and render a comprehensive multidisciplinary program  
14 of geriatric education and research to residents of the state;  
15 and

16 (b) Certify to the Agency for Health Care  
17 Administration each school year the name, address, and  
18 educational history of each trainee approved and accepted for  
19 enrollment in the institution.

20 (7) A teaching nursing home may not expend any of the  
21 funds received under this section for any purpose other than  
22 operating and maintaining a teaching nursing home and  
23 conducting geriatric research. In addition, a teaching nursing  
24 home may not expend any funds received under this section for  
25 constructing any building of any kind, nature, or description  
26 or for maintaining or operating, in any form or manner, a  
27 nursing home or health care facility.

28 Section 25. For purposes of incorporating the  
29 amendment to section 468.1755, Florida Statutes, in references  
30 thereto, subsection (3) of section 468.1695, Florida Statutes,  
31 and section 468.1735, Florida Statutes, are reenacted to read:



1           468.1695 Licensure by examination.--

2           (3) The department shall issue a license to practice  
3 nursing home administration to any applicant who successfully  
4 completes the examination in accordance with this section and  
5 otherwise meets the requirements of this part. The department  
6 shall not issue a license to any applicant who is under  
7 investigation in this state or another jurisdiction for an  
8 offense which would constitute a violation of s. 468.1745 or  
9 s. 468.1755. Upon completion of the investigation, the  
10 provisions of s. 468.1755 shall apply.

11           468.1735 Provisional license.--The board may establish  
12 by rule requirements for issuance of a provisional license. A  
13 provisional license shall be issued only to fill a position of  
14 nursing home administrator that unexpectedly becomes vacant  
15 due to illness, sudden death of the administrator, or  
16 abandonment of position and shall be issued for one single  
17 period as provided by rule not to exceed 6 months. The  
18 department shall not issue a provisional license to any  
19 applicant who is under investigation in this state or another  
20 jurisdiction for an offense which would constitute a violation  
21 of s. 468.1745 or s. 468.1755. Upon completion of the  
22 investigation, the provisions of s. 468.1755 shall apply. The  
23 provisional license may be issued to a person who does not  
24 meet all of the licensing requirements established by this  
25 part, but the board shall by rule establish minimal  
26 requirements to ensure protection of the public health,  
27 safety, and welfare. The provisional license shall be issued  
28 to the person who is designated as the responsible person next  
29 in command in the event of the administrator's departure. The  
30 board may set an application fee not to exceed \$500 for a  
31 provisional license.

1 Section 26. Section 468.1756, Florida Statutes, 1998  
2 Supplement, is amended to read:

3 468.1756 Statute of limitations.--An administrative  
4 complaint may only be filed pursuant to s. 455.621 for an act  
5 listed in ~~s. 468.1755(1)(c)-(q) paragraphs (1)(c)-(p) of s.~~  
6 ~~468.1755~~ within 4 years from the time of the incident giving  
7 rise to the complaint, or within 4 years from the time the  
8 incident is discovered or should have been discovered.

9 Section 27. Panel on Medicaid reimbursement.--

10 (1) There is created a panel on Medicaid reimbursement  
11 to study the state's Medicaid reimbursement plan for nursing  
12 home facilities and recommend changes to accomplish the  
13 following goals:

14 (a) Increase the rate of employee retention in  
15 individual nursing home facilities and in the field of  
16 long-term care, and ensure salary enhancements for staff who  
17 achieve targets of longevity with a nursing home facility.

18 (b) Create incentives for facilities to renovate and  
19 update existing physical plants, when practicable, instead of  
20 building new facilities or selling to another entity.

21 (c) Create incentives for facilities to provide more  
22 direct-care staff and nurses.

23 (2) The panel shall be administratively attached to  
24 and supported by the Agency for Health Care Administration and  
25 shall be composed of the following members: the Director for  
26 Medicaid of the Agency for Health Care Administration and two  
27 agency staff persons competent in the technical and policy  
28 aspects of Medicaid reimbursement; one representative from the  
29 Governor's Office of Planning and Budgeting; one  
30 representative from the Florida Association of Homes for the  
31 Aging; one representative from the Florida Health Care

1 Association; one representative from the Department of Elderly  
2 Affairs, and one consumer representative appointed by the  
3 secretary of that department; and a consumer's advocate for  
4 senior citizens and two persons with expertise in the field of  
5 quality management, financing, or public sector  
6 accountability, appointed by the Governor.

7 (3) The panel shall hold its first meeting by August  
8 1, 1999, and shall report its preliminary findings and  
9 recommendations to the Legislature no later than December 31,  
10 1999, by submitting a copy of its report to the President of  
11 the Senate, the Speaker of the House of Representatives, and  
12 the majority and minority offices of each chamber. The panel  
13 shall report its final findings and recommendations to those  
14 persons and offices no later than December 8, 2000. The panel  
15 shall cease to exist and its operation shall terminate on  
16 January 1, 2001.

17 Section 28. Study of certified nursing assistant  
18 training, employment, and retention.--The Department of  
19 Elderly Affairs, in consultation with the nursing home  
20 industry, consumer advocates, persons employed by nursing  
21 homes as licensed nurses and certified nursing assistants, the  
22 Department of Health, the Agency for Health Care  
23 Administration, the Department of Labor and Employment  
24 Security, and the Department of Education, shall conduct, or  
25 contract for, a study of the major factors affecting the  
26 recruitment, training, employment, and retention of qualified  
27 certified nursing assistants within the nursing home industry.  
28 The Department of Elderly Affairs shall, by January 15, 2000,  
29 provide to the Speaker of the House of Representatives and the  
30 President of the Senate the results of the study, along with  
31 recommendations to improve the quality and availability of

1 certified nursing assistants employed by nursing facilities.  
2 The study shall include a one-time review of the performance  
3 of certified nursing assistant training programs and shall  
4 compare the types of training programs as to admission  
5 criteria, program requirements, graduation rates, job  
6 placement, and job retention in nursing homes relative to job  
7 retention in other health care environments and other job  
8 classifications for which certified nursing assistants may  
9 qualify. The study shall identify factors likely to improve  
10 the rates of employment and retention of certified nursing  
11 assistants in nursing homes. The study shall also include an  
12 assessment of the extent and impact of certified nursing  
13 assistant shortages within the major regional job markets of  
14 the state. The study shall include an assessment of the  
15 following factors:

16 (1) The extent and characteristics of the shortage  
17 within the various regions of the state.

18 (2) The causes of the shortage, including, but not  
19 restricted to, salary and benefits, working conditions, career  
20 development, and the availability of certified nursing  
21 assistant training programs.

22 (3) The impact of labor shortages on the ability of  
23 nursing homes to hire sufficient staff to meet both the  
24 minimum staffing standards required by agency rule and the  
25 facility-specific staffing standards based on the needs of  
26 residents.

27 (4) The impact of the labor shortage on the increased  
28 use of temporary nursing pool agencies by nursing homes; the  
29 influences of this trend on the quality and cost of services  
30 provided; and the benefits of additional regulation of such  
31 nursing pool agencies in light of the shortage.

1           (5) Comparisons of the extent and effect of the  
2 shortage of certified nursing assistants in Florida to the  
3 experiences of other states and with respect to national  
4 trends.

5           (6) The need for and feasibility of various measures  
6 to enhance the image of certified nursing assistants,  
7 including enhanced recruitment efforts directed towards  
8 students at the junior high school and senior high school  
9 levels, local education outreach, and job placement programs.

10           (7) The implications of the shortage as it relates to  
11 the supply of and need for related paraprofessionals and other  
12 health care workers, such as licensed practical nurses.

13           (8) The feasibility of allocating loans, grants, and  
14 scholarships for the purpose of providing greater incentive  
15 for and access to certified nursing assistant education, and  
16 the probable effects of such efforts.

17           (9) The desirability of demonstration projects to test  
18 innovative models and methods for the purpose of addressing  
19 the need for more and better-qualified certified nursing  
20 assistants in nursing homes.

21           Section 29. Section 400.29, Florida Statutes, is  
22 repealed.

23           Section 30. There is hereby appropriated the sum of  
24 \$3,500,000 from the General Revenue Fund and the sum  
25 \$4,420,344 from the Medical Care Trust Fund to the Agency for  
26 Health Care Administration in order to allow nursing  
27 facilities the ability to recruit and retain qualified staff  
28 and to provide appropriate care. The Agency for Health Care  
29 Administration shall adjust limitations in the patient care  
30 component of the per diem rate to allow these additional funds  
31 to be reimbursed through the per diem rate, effective April 1,

1 2000. The agency in expending the funds provided in this  
2 appropriation shall establish a formula for reimbursing  
3 nursing facilities for the cost of hiring additional certified  
4 nursing assistants and licensed nurses or for the cost of  
5 salary or benefit enhancements to retain such staff in these  
6 specific classes. The formula shall provide for an increase  
7 in a nursing facility's per diem rate inversely proportionate  
8 to the facility's current staffing level for these staff  
9 compared to the staffing standards set forth in agency rule.  
10 The agency shall maintain for tracking purposes the record of  
11 each facility's staffing increases or enhancements resulting  
12 from these funds.

13       Section 31. The sum of \$150,000 is hereby appropriated  
14 from the General Revenue Fund to the Department of Elderly  
15 Affairs for fiscal year 1999-2000 to fund the responsibilities  
16 of the Office of State Long-Term Care Ombudsman and establish  
17 a statewide toll-free telephone number pursuant to s.  
18 400.0078, Florida Statutes, as created by this act. Eighteen  
19 positions and the sum of \$1,304,720 from recurring General  
20 Revenue Funds, \$72,994 from nonrecurring General Revenue Funds  
21 and \$452,584 from the Administrative Trust Fund is  
22 appropriated to the Agency for Health Care Administration for  
23 Fiscal Year 1999-2000 implement the provisions of this act.  
24 The sum of \$26,000 from General Revenue Fund is appropriated  
25 to the Executive Office of the Governor for Fiscal Year  
26 1999-2000 for the Governor's Panel on Excellence in Long Term  
27 Care.

28       Section 32. Except as otherwise provided herein, this  
29 act shall take effect July 1, 1999.  
30  
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