

By Representatives Brooks and Argenziano

1 A bill to be entitled
2 An act relating to nursing home facilities;
3 creating s. 400.0225, F.S.; directing the
4 Agency for Health Care Administration to
5 contract for consumer satisfaction surveys for
6 nursing home residents; providing procedures
7 and requirements for use of such surveys;
8 amending s. 400.023, F.S., relating to civil
9 enforcement; providing for disposition of
10 punitive damage awards; creating s. 400.024,
11 F.S.; directing the agency to adopt facility
12 practice guidelines, which shall constitute an
13 affirmative defense in certain regulatory
14 actions; amending s. 400.063, F.S.; correcting
15 a cross reference; amending s. 400.071, F.S.;
16 revising requirements for licensure and
17 renewal; creating s. 400.118, F.S.; directing
18 the agency to establish a quality assurance and
19 assistance program; providing for
20 multidisciplinary teams; providing for rapid
21 response teams; providing for funding; amending
22 s. 400.121, F.S.; expanding authority of the
23 agency to suspend or revoke a facility's
24 license; providing for funding of certain
25 actions to improve a facility's quality of
26 care; providing for rules; authorizing the
27 agency to establish standards for a facility's
28 medical director and director of nursing under
29 certain circumstances; authorizing the agency
30 to require certain facilities to increase or
31 enhance staffing for a specified time period;

1 providing a penalty; amending s. 400.141, F.S.;
2 providing requirements for appointment of a
3 medical director; revising conditions for
4 encouraging facilities to provide other needed
5 services; authorizing Gold Seal facilities to
6 develop programs to provide certified nursing
7 assistant training; amending s. 400.19, F.S.,
8 to conform to the act; amending s. 400.191,
9 F.S.; revising requirements for provision of
10 information to the public by the agency;
11 amending s. 400.23, F.S.; abolishing the
12 Nursing Home Advisory Committee; revising the
13 system for evaluating facility compliance with
14 licensure requirements; eliminating ratings and
15 providing for standard or conditional licensure
16 status; creating s. 400.235, F.S.; providing
17 for development of a Gold Seal Program for
18 recognition of facilities demonstrating
19 excellence in long-term care; establishing a
20 Panel on Excellence in Long-Term Care under the
21 Executive Office of the Governor; providing
22 membership; providing program criteria;
23 providing for duties of the panel and the
24 Governor; providing for agency rules; providing
25 for biennial relicensure of Gold Seal Program
26 facilities, under certain conditions; creating
27 a panel on Medicaid reimbursement; providing
28 membership and duties; requiring reports;
29 providing for expiration; directing the agency
30 to conduct a review of certified nursing
31 assistant training programs; repealing s.

1 400.29, F.S., relating to an agency annual
2 report of nursing home facilities; providing an
3 effective date.

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

6
7 Section 1. Section 400.0225, Florida Statutes, is
8 created to read:

9 400.0225 Consumer satisfaction surveys.--The agency,
10 or its contractor, shall develop an easy-to-use consumer
11 satisfaction survey, shall ensure that every nursing facility
12 licensed pursuant to this part participates in assessing
13 consumer satisfaction, and shall establish procedures to
14 ensure that, at least annually, a representative sample of
15 residents of each facility is selected to participate in the
16 survey. The sample shall be of sufficient size to allow
17 comparisons between and among facilities. Family members,
18 guardians, or other patient representatives may assist the
19 resident in completing the survey. Employees and volunteers of
20 the nursing facility or of a corporation or business entity
21 with an ownership interest in the facility are prohibited from
22 assisting a resident with or attempting to influence a
23 resident's responses to the consumer satisfaction survey. The
24 agency shall survey family members, guardians, or other
25 responsible resident representatives when the resident is
26 mentally incapable of responding to the survey. The agency, or
27 its contractor, shall specify the protocol for conducting and
28 reporting the consumer satisfaction surveys. The agency,
29 through the State Center for Health Statistics, shall contract
30 for consumer satisfaction surveys and report the results of

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1 those surveys in the consumer information materials prepared
2 and distributed by the agency.

3 Section 2. Subsection (5) of section 400.023, Florida
4 Statutes, is amended to read:

5 400.023 Civil enforcement.--

6 (5) For the purpose of this section, punitive damages
7 may be awarded for conduct which is willful, wanton, gross or
8 flagrant, reckless, or consciously indifferent to the rights
9 of the resident. Thirty-three percent of all punitive damages
10 awarded to a plaintiff under this section shall be deposited
11 in the Quality Improvement Trust Fund pursuant to s. 400. .

12 Section 3. Section 400.0231, Florida Statutes, is
13 renumbered as section 400.1415, Florida Statutes.

14 Section 4. Section 400.024, Florida Statutes, is
15 created to read:

16 400.024 Practice guidelines.--The agency, in
17 consultation with the Department of Elderly Affairs and
18 medical, nursing, social work, pharmacy, and other allied
19 health experts as needed, shall adopt practice guidelines in
20 areas of critical concern for nursing facilities. Such
21 practice guidelines, when followed in a facility, shall
22 constitute an affirmative defense in any regulatory action
23 against the facility.

24 Section 5. Subsection (1) of section 400.063, Florida
25 Statutes, is amended to read:

26 400.063 Resident Protection Trust Fund.--

27 (1) A Resident Protection Trust Fund shall be
28 established for the purpose of collecting and disbursing funds
29 generated from the license fees and administrative fines as
30 provided for in ss. 393.0673(2), 400.062(3)(b), 400.111(1),
31 400.121(2), and 400.23~~(7)~~~~(9)~~. Such funds shall be for the

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

21 Section 6. Present subsection (9) of section 400.071,
22 Florida Statutes, 1998 Supplement, is amended, subsections (8)
23 and (9) are renumbered as subsections (9) and (10),
24 respectively, and a new subsection (8) is added to said
25 section, to read:

26 400.071 Application for license.--

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

30 (10)~~(9)~~ The agency may develop an abbreviated survey
31 for licensure renewal applicable to a licensee that has

1 continuously operated as a nursing facility since 1991 or
2 earlier, ~~and~~ has operated under the same management for at
3 least the preceding 30 months, and has had during the
4 preceding 30 months no class I or class II deficiencies
5 ~~maintained a superior rating during that period.~~

6 Section 7. Section 400.118, Florida Statutes, is
7 created to read:

8 400.118 Quality assurance and assistance program;
9 rapid response teams.--

10 (1) The agency shall establish a quality assurance and
11 assistance program in a part of the agency that is totally
12 separate from its nursing facility regulation division. The
13 quality assurance and assistance program shall establish
14 multidisciplinary teams which shall include persons with
15 expertise in the domains of quality of life, reimbursement,
16 practice guidelines, and other areas the agency prescribes.
17 Staff persons with any involvement, however tenuous, in the
18 regulatory activities of the agency shall not be appointed to
19 these teams.

20 (2) The agency shall also create flexible teams of
21 experts which can function as rapid response teams when a
22 nursing facility expresses concerns about quality apart from
23 the survey or special investigation process. The rapid
24 response teams shall work collaboratively with the facility to
25 make necessary improvements. Rapid response teams shall not be
26 deployed for the purpose of assisting a facility in its
27 preparation for a regular survey by the agency. The agency
28 shall specify in rule the time period prior to a survey visit
29 during which consultation with a rapid response team shall be
30 prohibited.

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1 (3) With the permission of the requesting facility,
2 the multidisciplinary teams of the quality assurance and
3 assistance program and the rapid response teams may include
4 industry representatives with knowledge, skills, or abilities
5 appropriate to the needs of the facility receiving the team's
6 visit. The composition of these teams may change as the
7 agency determines necessary, and persons on such teams may
8 serve in more than one capacity. These teams may draw upon
9 the funds deposited in the Quality Improvement Trust Fund
10 established in s. 400. .

11 Section 8. Subsection (3) of section 400.121, Florida
12 Statutes, 1998 Supplement, is amended and subsections (6) and
13 (7) are added to said section, to read:

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

16 (3) The agency may issue an order immediately
17 suspending or revoking a license when it determines that any
18 condition in the facility presents a threat or danger to the
19 health, safety, or welfare of the residents in the facility.

20 (6) When administrative action is taken against a
21 facility under this section, the agency may use funds from the
22 Quality Improvement Trust Fund to take all necessary actions
23 to improve the quality of care offered by the facility. Funds
24 dispersed from the trust fund for this purpose shall be
25 reimbursed to the state by the facility owner, as determined
26 by the agency. The agency may adopt rules to implement this
27 subsection.

28 (7) The agency may establish standards for the medical
29 director and director of nursing in facilities against which
30 it has taken administrative action because of concerns about
31 residents' health and safety.

1 (8) The agency may require a facility against which it
2 has taken administrative action to increase or enhance
3 staffing and maintain that level of staffing for a specified
4 time period, but not beyond the time of the next regular
5 survey. A facility that fails to maintain the required
6 increased or enhanced staffing is subject to a fine of \$500
7 per day for each day the staffing is below the level required
8 by the agency.

9 Section 9. Section 400.141, Florida Statutes, is
10 amended to read:

11 400.141 Administration and management of nursing home
12 facilities.--Every licensed facility shall comply with all
13 applicable standards and rules of the agency and shall:

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

16 (2) Appoint a medical director licensed pursuant to
17 chapter 458 or chapter 459. The agency may establish by rule
18 more specific criteria for the appointment of a medical
19 director, including the circumstances under which the medical
20 director may be a contract employee.

21 ~~(3)~~~~(2)~~ Have available the regular, consultative, and
22 emergency services of physicians licensed by the state.

23 ~~(4)~~~~(3)~~ Provide for the access of the facility
24 residents to dental and other health-related services,
25 recreational services, rehabilitative services, and social
26 work services appropriate to their needs and conditions and
27 not directly furnished by the licensee. When a geriatric
28 outpatient nurse clinic is conducted in accordance with rules
29 adopted by the agency, outpatients attending such clinic shall
30 not be counted as part of the general resident population of
31 the nursing home facility, nor shall the nursing staff of the

1 geriatric outpatient clinic be counted as part of the nursing
2 staff of the facility, until the outpatient clinic load
3 exceeds 15 a day.

4 (5)(4) Be allowed and encouraged by the agency to
5 provide other needed services under certain conditions.If the
6 facility has a standard licensure status, and has had no class
7 I or class II deficiencies during the past 2 years or has been
8 awarded a Gold Seal under the program established in s.
9 400.235, it may ~~is rated superior or standard,~~ be encouraged
10 by the agency to provide services, including, but not limited
11 to, respite and adult day services, which enable individuals
12 to move in and out of the facility. A facility is not subject
13 to any additional licensure requirements for providing these
14 services. Respite care may be offered to persons in need of
15 short-term or temporary nursing home services. Respite care
16 must be provided in accordance with this part and rules
17 adopted by the agency. However, the agency shall, by rule,
18 adopt modified requirements for resident assessment, resident
19 care plans, resident contracts, physician orders, and other
20 provisions, as appropriate, for short-term or temporary
21 nursing home services. The agency shall allow for shared
22 programming and staff in a facility which meets minimum
23 standards and offers services pursuant to this subsection,
24 but, if the facility is cited for deficiencies in patient
25 care, may require additional staff and programs appropriate to
26 the needs of service recipients. A person who receives respite
27 care may not be counted as a resident of the facility for
28 purposes of the facility's licensed capacity unless that
29 person receives 24-hour respite care. A person receiving
30 either respite care for 24 hours or longer or adult day
31 services must be included when calculating minimum staffing

1 for the facility. Any costs and revenues generated by a
2 nursing home facility from nonresidential programs or services
3 shall be excluded from the calculations of Medicaid per diems
4 for nursing home institutional care reimbursement.

5 (6)~~(5)~~ If the facility has a standard licensure status
6 or is a Gold Seal facility ~~is rated superior or standard,~~
7 exceeds minimum staffing standards, and is part of a
8 retirement community that offers other services pursuant to
9 part III, part IV, or part V, be allowed to share programming
10 and staff. At the time of relicensure, a retirement community
11 that uses this option must demonstrate through staffing
12 records that minimum staffing requirements for the facility
13 were exceeded.

14 (7)~~(6)~~ Maintain the facility premises and equipment
15 and conduct its operations in a safe and sanitary manner.

16 (8)~~(7)~~ If the licensee furnishes food service, provide
17 a wholesome and nourishing diet sufficient to meet generally
18 accepted standards of proper nutrition for its residents and
19 provide such therapeutic diets as may be prescribed by
20 attending physicians. In making rules to implement this
21 subsection, the agency shall be guided by standards
22 recommended by nationally recognized professional groups and
23 associations with knowledge of dietetics.

24 (9)~~(8)~~ Keep full records of resident admissions and
25 discharges; medical and general health status, including
26 medical records, personal and social history, and identity and
27 address of next of kin or other persons who may have
28 responsibility for the affairs of the residents; and
29 individual resident care plans including, but not limited to,
30 prescribed services, service frequency and duration, and
31

1 service goals. The records shall be open to inspection by the
2 agency.

3 (10)~~(9)~~ Keep such fiscal records of its operations and
4 conditions as may be necessary to provide information pursuant
5 to this part.

6 (11)~~(10)~~ Furnish copies of personnel records for
7 employees affiliated with such facility, to any other facility
8 licensed by this state requesting this information pursuant to
9 this part. Such information contained in the records may
10 include, but is not limited to, disciplinary matters and any
11 reason for termination. Any facility releasing such records
12 pursuant to this part shall be considered to be acting in good
13 faith and may not be held liable for information contained in
14 such records, absent a showing that the facility maliciously
15 falsified such records.

16
17 Facilities that have been awarded a Gold Seal under the
18 program established in s. 400.235 may develop a plan to
19 provide certified nursing assistant training as prescribed by
20 federal and state regulations and rules and may apply to the
21 agency for approval of its program.

22 Section 10. Subsection (4) of section 400.19, Florida
23 Statutes, is amended to read:

24 400.19 Right of entry and inspection.--

25 (4) The agency shall conduct unannounced onsite
26 facility reviews following written verification of licensee
27 noncompliance in instances in which a long-term care ombudsman
28 council, pursuant to ss. 400.0071 and 400.0075, has received a
29 complaint and has documented deficiencies in resident care or
30 in the physical plant of the facility that threaten the
31 health, safety, or security of residents, or when the agency

1 documents through inspection that conditions in a facility
2 present a direct or indirect threat to the health, safety, or
3 security of residents. However, the agency shall conduct four
4 or more unannounced onsite reviews within a 12-month period of
5 each facility which has a conditional licensure status rating.
6 Deficiencies related to physical plant do not require followup
7 reviews after the agency has determined that correction of the
8 deficiency has been accomplished and that the correction is of
9 the nature that continued compliance can be reasonably
10 expected.

11 Section 11. Section 400.191, Florida Statutes, is
12 amended to read:

13 400.191 Availability, distribution, and posting of
14 reports and records.--

15 (1) The agency shall provide information to the public
16 about all of the licensed nursing home facilities operating in
17 the state.The agency shall, within 60 days after ~~from the~~
18 ~~date of~~ an annual inspection visit or within 30 days after
19 ~~from the date of~~ any interim visit to a facility, send copies
20 of the inspection reports to the district long-term care
21 ombudsman council, the agency's local office, and a public
22 library or the county seat for the county in which the
23 facility is located., ~~forward the results of all inspections~~
24 ~~of nursing home facilities to:~~

25 (a) ~~The district ombudsman council in whose district~~
26 ~~the inspected facility is located.~~

27 (b) ~~At least one public library or, in the absence of~~
28 ~~a public library, the county seat in the county in which the~~
29 ~~inspected facility is located.~~

30 (c) ~~The area office supervisor of the agency in whose~~
31 ~~district the inspected facility is located.~~

1 (2) The agency shall provide additional information in
2 consumer-friendly printed and electronic formats to assist
3 consumers and their families in comparing and evaluating
4 nursing home facilities.

5 (a) The agency shall provide an Internet site which
6 shall include at least the following information:

7 1. A list by name and address of all nursing home
8 facilities in this state.

9 2. Whether such nursing home facilities are
10 proprietary or nonproprietary.

11 3. The licensure status of each facility.

12 4. The ownership history of each facility.

13 5. The name of the owner or owners of each facility
14 and whether the facility is a part of a corporation owning or
15 operating more than one nursing facility in this state.

16 6. Performance, financial, regulatory, and enforcement
17 information about the corporation, as well as the facility.

18 7. The total number of beds in each facility.

19 8. The number of private and semiprivate rooms in each
20 facility.

21 9. The religious affiliation, if any, of each
22 facility.

23 10. The languages spoken by the administrator and
24 staff of each facility.

25 11. Whether or not each facility accepts Medicare or
26 Medicaid recipients.

27 12. Recreational and other programs available at each
28 facility.

29 13. Information from the Minimum Data Set system of
30 the federal Health Care Financing Administration about the
31

- 1 clinical performance of each facility, including information
2 related to the 12 quality-of-life domains.
- 3 14. Information about the licensure status and
4 regulatory history of each facility.
- 5 15. Special care units or programs offered at each
6 facility.
- 7 16. Whether the facility is a part of a retirement
8 community that offers other services pursuant to part III,
9 part IV, or part V.
- 10 17. The results of consumer and family satisfaction
11 surveys for each facility.
- 12 18. The licensure status and rating history for the
13 past 5 years for each facility.
- 14 19. Survey and deficiency information contained on the
15 Online Survey Certification and Reporting (OSCAR) system of
16 the federal Health Care Financing Administration, including
17 annual survey, revisit, and complaint survey information, for
18 each facility for the past 3 years.
- 19 (b) The agency shall provide the following information
20 in printed form:
- 21 1. A list by name and address of all nursing home
22 facilities in this state.
- 23 2. Whether such nursing home facilities are
24 proprietary or nonproprietary and their current ownership.
- 25 3. The licensure status of each facility.
- 26 4. The total number of beds, and of private and
27 semiprivate rooms, in each facility.
- 28 5. The religious affiliation, if any, of each
29 facility.
- 30 6. The languages spoken by the administrator and staff
31 of each facility.

1 7. Whether or not each facility accepts Medicare or
2 Medicaid recipients.

3 8. Recreational programs, special care units, and
4 other programs available at each facility.

5 9. A summary of information from the Minimum Data Set
6 system of the federal Health Care Financing Administration
7 about the clinical performance of each facility.

8 10. Information about the licensure status and
9 regulatory history of each facility.

10 11. The results of consumer and family satisfaction
11 surveys for each facility.

12 ~~(3)~~(2) Each nursing home facility licensee shall
13 maintain as public information, available upon request,
14 records of all cost and inspection reports pertaining to that
15 facility that have been filed with, or issued by, any
16 governmental agency. Copies of such reports shall be retained
17 in such records for not less than 5 years from the date the
18 reports are filed or issued.

19 ~~(4)~~(3) Any records of a nursing home facility
20 determined by the agency to be necessary and essential to
21 establish lawful compliance with any rules or standards shall
22 be made available to the agency on the premises of the
23 facility.

24 ~~(5)~~(4) Every nursing home facility licensee shall:

25 (a) Post, in a sufficient number of prominent
26 positions in the nursing home so as to be accessible to all
27 residents and to the general public, a concise summary of the
28 last inspection report pertaining to the nursing home and
29 issued by the agency, with references to the page numbers of
30 the full reports, noting any deficiencies found by the agency
31 and the actions taken by the licensee to rectify such

1 deficiencies and indicating in such summaries where the full
2 reports may be inspected in the nursing home.

3 (b) Upon request, provide to any person who has
4 completed a written application with an intent to be admitted
5 to, or to any resident of, such nursing home, or to any
6 relative, spouse, or guardian of such person, a copy of the
7 last inspection report pertaining to the nursing home and
8 issued by the agency, provided the person requesting the
9 report agrees to pay a reasonable charge to cover copying
10 costs.

11 Section 12. Section 400.23, Florida Statutes, 1998
12 Supplement, is amended, and subsections (11) and (12) of said
13 section are renumbered as subsections (1) and (2) of section
14 400.232, Florida Statutes, to read:

15 400.23 Rules; ~~criteria; Nursing Home Advisory~~
16 ~~Committee; evaluation and~~ deficiencies; licensure status
17 ~~rating system; fee for review of plans.--~~

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

29 (2) Pursuant to the intention of the Legislature, the
30 agency, in consultation with the Department of Health ~~and~~
31 ~~Rehabilitative Services~~ and the Department of Elderly Affairs,

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

1 (b) The number and qualifications of all personnel,
2 including management, medical, nursing, and other professional
3 personnel, and nursing assistants, orderlies, and support
4 personnel, having responsibility for any part of the care
5 given residents.

6 (c) All sanitary conditions within the facility and
7 its surroundings, including water supply, sewage disposal,
8 food handling, and general hygiene which will ensure the
9 health and comfort of residents.

10 (d) The equipment essential to the health and welfare
11 of the residents.

12 (e) A uniform accounting system.

13 (f) The care, treatment, and maintenance of residents
14 and measurement of the quality and adequacy thereof, based on
15 rules developed under this chapter and the Omnibus Budget
16 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
17 1987), Title IV (Medicare, Medicaid, and Other Health-Related
18 Programs), Subtitle C (Nursing Home Reform), as amended.

19 (g) The preparation and annual update of a
20 comprehensive emergency management plan. The agency shall
21 adopt rules establishing minimum criteria for the plan after
22 consultation with the Department of Community Affairs. At a
23 minimum, the rules must provide for plan components that
24 address emergency evacuation transportation; adequate
25 sheltering arrangements; postdisaster activities, including
26 emergency power, food, and water; postdisaster transportation;
27 supplies; staffing; emergency equipment; individual
28 identification of residents and transfer of records; and
29 responding to family inquiries. The comprehensive emergency
30 management plan is subject to review and approval by the local
31 emergency management agency. During its review, the local

1 emergency management agency shall ensure that the following
2 agencies, at a minimum, are given the opportunity to review
3 the plan: the Department of Elderly Affairs, the Department
4 of Health ~~and Rehabilitative Services~~, the Agency for Health
5 Care Administration, and the Department of Community Affairs.
6 Also, appropriate volunteer organizations must be given the
7 opportunity to review the plan. The local emergency
8 management agency shall complete its review within 60 days and
9 either approve the plan or advise the facility of necessary
10 revisions.

11 (3) Rules developed pursuant to this section shall not
12 restrict the use of shared staffing and shared programming in
13 facilities which are part of retirement communities that
14 provide multiple levels of care and otherwise meet the
15 requirement of law or rule.

16 (4) The agency, in collaboration with the Division of
17 Children's Medical Services ~~Program Office~~ of the Department
18 of Health ~~and Rehabilitative Services~~, must, no later than
19 December 31, 1993, adopt rules for minimum standards of care
20 for persons under 21 years of age who reside in nursing home
21 facilities. The rules must include a methodology for
22 reviewing a nursing home facility under ss. 408.031-408.045
23 which serves only persons under 21 years of age.

24 (5) Prior to conducting a survey of the facility, the
25 survey team shall obtain a copy of the district nursing home
26 and long-term care facility ombudsman council report on the
27 facility. Problems noted in the report shall be incorporated
28 into and followed up through the agency's inspection process.
29 This procedure does not preclude the district nursing home and
30 long-term care facility ombudsman council from requesting the
31 agency to conduct a followup visit to the facility.

1 ~~(6) There is created the Nursing Home Advisory~~
2 ~~Committee, which shall consist of 15 members who are to be~~
3 ~~appointed by and report directly to the director of the~~
4 ~~agency. The membership is to include:~~
5 ~~(a) One researcher from a university center on aging.~~
6 ~~(b) Two representatives from the Florida Health Care~~
7 ~~Association.~~
8 ~~(c) Two representatives from the Florida Association~~
9 ~~of Homes for the Aging.~~
10 ~~(d) One representative from the Department of Elderly~~
11 ~~Affairs.~~
12 ~~(e) Five consumer representatives, at least two of~~
13 ~~whom serve on or are staff members of the state or a district~~
14 ~~nursing home and long-term care facility ombudsman council.~~
15 ~~(f) One representative from the Florida American~~
16 ~~Medical Directors Association.~~
17 ~~(g) One representative from the Florida Association of~~
18 ~~Directors of Nursing Administrators.~~
19 ~~(h) One representative from the Agency for Health Care~~
20 ~~Administration.~~
21 ~~(i) One representative from the nursing home industry~~
22 ~~at large who owns or operates a licensed nursing home facility~~
23 ~~in the state and is not a member of any state nursing home~~
24 ~~association.~~
25
26 ~~At least one member shall be over 60 years of age.~~
27 ~~(7) The committee shall perform the following duties~~
28 ~~to assist the agency in ensuring compliance with the intent of~~
29 ~~the Legislature specified in subsection (1):~~
30 ~~(a) Assist in developing a nursing home rating system~~
31 ~~based on the requirements of rules developed under this~~

1 ~~chapter and the Omnibus Budget Reconciliation Act of 1987~~
2 ~~(Pub. L. No. 100-203) (December 22, 1987), Title IV (Medicare,~~
3 ~~Medicaid, and Other Health-Related Programs), Subtitle C~~
4 ~~(Nursing Home Reform), as amended.~~

5 ~~(b) Assist in developing surveyor guidelines and~~
6 ~~training to ensure the equitable application of the nursing~~
7 ~~home rating system.~~

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

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

12 ~~(e) Advise the agency of proposed changes in statutes~~
13 ~~and rules necessary to ensure adequate care and services and~~
14 ~~the promotion and protection of residents' rights in long-term~~
15 ~~care facilities.~~

16 (6)(8) The agency shall, at least every 15 months,
17 evaluate all nursing home facilities and make a determination
18 as to the degree of compliance by each licensee with the
19 established rules adopted under this part as a basis for
20 assigning a licensure status rating to that facility. The
21 agency shall base its evaluation on the most recent inspection
22 report, taking into consideration findings from other official
23 reports, surveys, interviews, investigations, and inspections.
24 The agency shall assign a licensure status of standard or
25 conditional ~~one of the following ratings~~ to each nursing home~~+~~
26 ~~standard, conditional, or superior.~~

27 (a) A standard licensure status rating means that a
28 facility has no class I or class II deficiencies, has
29 corrected all class III deficiencies within the time
30 established by the agency, and is in substantial compliance at
31 the time of the survey with criteria established under this

1 part, with rules adopted by the agency, and, if applicable,
2 with rules adopted under the Omnibus Budget Reconciliation Act
3 of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV
4 (Medicare, Medicaid, and Other Health-Related Programs),
5 Subtitle C (Nursing Home Reform), as amended.

6 (b) A conditional licensure status rating means that a
7 facility, due to the presence of one or more class I or class
8 II deficiencies, or class III deficiencies not corrected
9 within the time established by the agency, is not in
10 substantial compliance at the time of the survey with criteria
11 established under this part, with rules adopted by the agency,
12 or, if applicable, with rules adopted under 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. If
16 the facility comes into substantial compliance at the time of
17 the followup survey, a standard licensure status rating may be
18 assigned issued. ~~A facility assigned a conditional rating at~~
19 ~~the time of the relicensure survey may not qualify for~~
20 ~~consideration for a superior rating until the time of the next~~
21 ~~subsequent relicensure survey.~~

22 ~~(c) A superior rating means that a facility has no~~
23 ~~class I or class II deficiencies and has corrected all class~~
24 ~~III deficiencies within the time established by the agency and~~
25 ~~is in substantial compliance with the criteria established~~
26 ~~under this part and the rules adopted by the agency and, if~~
27 ~~applicable, with rules adopted pursuant to the Omnibus Budget~~
28 ~~Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,~~
29 ~~1987), Title IV (Medicare, Medicaid, and Other Health-Related~~
30 ~~Programs), Subtitle C (Nursing Home Reform), as amended; and~~
31

1 ~~the facility exceeds the criteria for a standard rating~~
2 ~~through enhanced programs and services in the following areas:~~

- 3 ~~1. Nursing service.~~
- 4 ~~2. Dietary or nutritional services.~~
- 5 ~~3. Physical environment.~~
- 6 ~~4. Housekeeping and maintenance.~~
- 7 ~~5. Restorative therapies and self-help activities.~~
- 8 ~~6. Social services.~~
- 9 ~~7. Activities and recreational therapy.~~

10 ~~(d) In order to facilitate the development of special~~
11 ~~programs or facilitywide initiatives and promote creativity~~
12 ~~based on the needs and preferences of residents, the areas~~
13 ~~listed in paragraph (c) may be grouped or addressed~~
14 ~~individually by the licensee. However, a facility may not~~
15 ~~qualify for a superior rating if fewer than three programs or~~
16 ~~initiatives are developed to encompass the required areas.~~

17 (c)(e) ~~In determining the rating and evaluating the~~
18 ~~overall quality of care and services and determining whether~~
19 ~~the facility will receive a conditional or standard license,~~
20 ~~the agency shall consider the needs and limitations of~~
21 ~~residents in the facility and the results of interviews and~~
22 ~~surveys of a representative sampling of residents, families of~~
23 ~~residents, ombudsman council members in the district in which~~
24 ~~the facility is located, guardians of residents, and staff of~~
25 ~~the nursing home facility.~~

26 (d)(f) ~~The current licensure status rating~~ of each
27 facility must be indicated in bold print on the face of the
28 license. A list of the deficiencies of the facility shall be
29 posted in a prominent place that is in clear and unobstructed
30 public view at or near the place where residents are being
31 admitted to that facility. Licensees receiving a conditional

1 licensure status ~~rating~~ for a facility shall prepare, within
2 10 working days after receiving notice of deficiencies, a plan
3 for correction of all deficiencies and shall submit the plan
4 to the agency for approval. Correction of all deficiencies,
5 within the period approved by the agency, shall result in
6 termination of the conditional licensure status ~~rating~~.
7 Failure to correct the deficiencies within a reasonable period
8 approved by the agency shall be grounds for the imposition of
9 sanctions pursuant to this part.

10 ~~(e)(g)~~ Each licensee shall post its license in a
11 prominent place that is in clear and unobstructed public view
12 at or near the place where residents are being admitted to the
13 facility. ~~A licensee with a superior rating may advertise its~~
14 ~~rating in any nonpermanent medium and in accordance with rules~~
15 ~~adopted by the agency. A list of the facilities receiving a~~
16 ~~superior rating shall be distributed to the state and district~~
17 ~~ombudsman councils.~~

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

20 1. Establish uniform procedures for the evaluation of
21 facilities.

22 2. Provide criteria in the areas referenced in
23 paragraph (c).

24 3. Address other areas necessary for carrying out the
25 intent of this section.

26 ~~(i)~~ ~~A license rated superior shall continue until it~~
27 ~~is replaced by a rating based on a later survey. A superior~~
28 ~~rating may be revoked at any time for failure to maintain~~
29 ~~substantial compliance with criteria established under this~~
30 ~~part, with rules adopted by the agency, or, if applicable,~~
31 ~~with rules adopted under the Omnibus Budget Reconciliation Act~~

1 ~~of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV~~
2 ~~(Medicare, Medicaid, and Other Health-Related Programs),~~
3 ~~Subtitle C (Nursing Home Reform), as amended, or for failure~~
4 ~~to exceed the criteria specified for any area as listed in~~
5 ~~paragraph (c).~~

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

12 (7)~~(9)~~ The agency shall adopt rules to provide that,
13 when the criteria established under subsection (2) are not
14 met, such deficiencies shall be classified according to the
15 nature of the deficiency. The agency shall indicate the
16 classification on the face of the notice of deficiencies as
17 follows:

18 (a) Class I deficiencies are those which the agency
19 determines present an imminent danger to the residents or
20 guests of the nursing home facility or a substantial
21 probability that death or serious physical harm would result
22 therefrom. The condition or practice constituting a class I
23 violation shall be abated or eliminated immediately, unless a
24 fixed period of time, as determined by the agency, is required
25 for correction. Notwithstanding s. 400.121(2), a class I
26 deficiency is subject to a civil penalty in an amount not less
27 than \$5,000 and not exceeding \$10,000 for each and every
28 deficiency. A fine may be levied notwithstanding the
29 correction of the deficiency.

30 (b) Class II deficiencies are those which the agency
31 determines have a direct or immediate relationship to the

1 health, safety, or security of the nursing home facility
2 residents, other than class I deficiencies. A class II
3 deficiency is subject to a civil penalty in an amount not less
4 than \$1,000 and not exceeding \$5,000 for each and every
5 deficiency. A citation for a class II deficiency shall
6 specify the time within which the deficiency is required to be
7 corrected. If a class II deficiency is corrected within the
8 time specified, no civil penalty shall be imposed, unless it
9 is a repeated offense.

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

21 ~~(8)(10)~~ Civil penalties paid by any licensee under
22 subsection ~~(7)(9)~~ shall be deposited in the Health Care Trust
23 Fund and expended as provided in s. 400.063.

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

27 400.232 Review and approval of plans; fees and
28 costs.--

29 ~~(1)(11)~~ The agency shall approve or disapprove the
30 plans and specifications within 60 days after receipt of the
31 final plans and specifications. The agency may be granted one

1 15-day extension for the review period, if the director of the
2 agency so approves. If the agency fails to act within the
3 specified time, it shall be deemed to have approved the plans
4 and specifications. When the agency disapproves plans and
5 specifications, it shall set forth in writing the reasons for
6 disapproval. Conferences and consultations may be provided as
7 necessary.

8 (2)~~(12)~~ The agency is authorized to charge an initial
9 fee of \$2,000 for review of plans and construction on all
10 projects, no part of which is refundable. The agency may also
11 collect a fee, not to exceed 1 percent of the estimated
12 construction cost or the actual cost of review, whichever is
13 less, for the portion of the review which encompasses initial
14 review through the initial revised construction document
15 review. The agency is further authorized to collect its
16 actual costs on all subsequent portions of the review and
17 construction inspections. Initial fee payment shall accompany
18 the initial submission of plans and specifications. Any
19 subsequent payment that is due is payable upon receipt of the
20 invoice from the agency. Notwithstanding any other provisions
21 of law to the contrary, all money received by the agency
22 pursuant to the provisions of this section shall be deemed to
23 be trust funds, to be held and applied solely for the
24 operations required under this section.

25 Section 13. Section 400.235, Florida Statutes, is
26 created to read:

27 400.235 Nursing home quality and licensure status;
28 Gold Seal Program.--

29 (1) To protect the health and welfare of persons
30 receiving care in nursing facilities, it is the intent of the
31 Legislature to develop a regulatory framework that promotes

1 the stability of the industry and facilitates the physical,
2 social, and emotional well-being of nursing facility
3 residents.

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

8 (3) The Gold Seal Program shall be developed and
9 implemented by the Governor's Panel on Excellence in Long-Term
10 Care which shall operate under the authority of the Executive
11 Office of the Governor. The panel shall include: two persons
12 appointed by the Agency for Health Care Administration, at
13 least one of whom is the Director for Medicaid; one person
14 appointed by the Secretary of Health; two persons appointed by
15 the Secretary of Elderly Affairs; the State Long-Term Care
16 Ombudsman or a designee; two persons representing the nursing
17 facility industry, one selected by the Florida Health Care
18 Association and one selected by the Florida Association of
19 Homes for the Aging; three persons appointed by the Governor,
20 including a consumer's advocate for senior citizens and two
21 persons with expertise in the field of quality management,
22 service delivery excellence, public sector accountability or
23 the like; and one person appointed by the Secretary of Elderly
24 Affairs from the University Consortium on Aging.

25 (4) The panel may recommend methods and procedures for
26 nursing facility quality assurance, including peer review by
27 other facilities. The agency may adopt rules to implement any
28 quality assurance methods or procedures the panel recommends.

29 (5) 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 (6) 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) Participate in a regular and ongoing program of
30 peer review by other licensed facilities that have been
31

1 without class I or class II deficiencies within the preceding
2 year.

3 (e) Evidence the involvement of families and members
4 of the community in the facility on a regular basis.

5 (f) Have a stable workforce, as evidenced by a
6 relatively low rate of turnover among certified nursing
7 assistants and registered nurses within the 30 months
8 preceding application for the Gold Seal Program, and
9 demonstrate a continuing effort to maintain a stable workforce
10 and to reduce turnover of registered nurses and certified
11 nursing assistants.

12 (g) Evidence an outstanding record regarding the
13 number and types of complaints reported to the State Long-Term
14 Care Ombudsman Council within the 30 months preceding
15 application for the program.

16 (h) Provide targeted inservice training provided to
17 meet training needs identified by internal or external quality
18 assurance efforts.

19 (i) Evidence superior levels of clinical outcomes as
20 measured in the Minimum Data Set system of the federal Health
21 Care Financing Administration.

22
23 A facility assigned a conditional licensure status may not
24 qualify for consideration for the Gold Seal Program until
25 after it has had no class I or class II deficiencies within
26 the preceding 30 months and then has completed a subsequent
27 relicensure survey.

28 (7) The agency, nursing facility industry
29 organizations, consumers, State Long-Term Care Ombudsman
30 Council, and members of the community may recommend to the
31 Governor facilities that meet the established criteria for

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

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

15 (9)(a) Facilities awarded the Gold Seal may use the
16 designation in their advertising and marketing.

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

24 Section 14. Panel on Medicaid reimbursement.--

25 (1) There is created a panel on Medicaid reimbursement
26 to study the state's Medicaid reimbursement plan for nursing
27 home facilities and recommend changes to accomplish the
28 following goals:

29 (a) Increase the rate of employee retention in
30 individual nursing home facilities and in the field of
31

1 long-term care, and ensure salary enhancements for staff who
2 achieve targets of longevity with a nursing home facility.

3 (b) Create incentives for facilities to renovate and
4 update existing physical plants, when practicable, instead of
5 building new facilities.

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

8 (2) The panel shall be administratively attached to
9 and supported by the Agency for Health Care Administration and
10 shall be composed of the following members: the Director for
11 Medicaid of the Agency for Health Care Administration and two
12 agency staff persons competent in the technical and policy
13 aspects of Medicaid reimbursement; one representative from the
14 Governor's Office of Planning and Budgeting; one
15 representative from the Florida Association of Homes for the
16 Aging; one representative from the Florida Health Care
17 Association; one representative from the Department of Elderly
18 Affairs, and one consumer representative appointed by the
19 secretary of that department; and a consumer's advocate for
20 senior citizens and two persons with expertise in the field of
21 quality management, financing, or public sector
22 accountability, appointed by the Governor.

23 (3) The panel shall hold its first meeting by August
24 1, 1999, and shall report its preliminary findings and
25 recommendations to the Legislature no later than December 31,
26 1999, by submitting a copy of its report to the President of
27 the Senate, the Speaker of the House of Representatives, and
28 the majority and minority offices of each chamber. The panel
29 shall report its final findings and recommendations to those
30 persons and offices no later than December 8, 2000. The panel
31

1 shall cease to exist and its operation shall terminate on
2 January 1, 2001.
3 Section 15. Certified nursing assistant training.--The
4 agency, in consultation with the Department of Health, the
5 Department of Elderly Affairs, the Department of Labor and
6 Employment Security, and the Department of Education shall
7 conduct a one-time review of the performance of certified
8 nursing assistant training programs. The agency shall study
9 and compare the types of training programs available,
10 considering at least the following: admission criteria,
11 program requirements, graduation rates, job placement, and job
12 retention. The agency shall identify incentives that could be
13 used to attract mature and capable individuals into these
14 training programs. Such incentives must include a provision
15 that would require a certified nursing assistant to commit to
16 a minimum period of employment in a nursing facility licensed
17 under part II of chapter 400, Florida Statutes.

18 Section 16. Section 400.29, Florida Statutes, is
19 repealed.

20 Section 17. This act shall take effect July 1, 1999.

21
22 *****

23 HOUSE SUMMARY

24 Revises various provisions of part II of chapter 400,
25 F.S., relating to nursing home facilities.
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31