

By the Committee on Health, Aging and Long-Term Care; and
Senators Brown-Waite, Meek and Campbell

317-1732B-99

1 A bill to be entitled
2 An act relating to nursing home facilities;
3 creating s. 400.0078, F.S.; requiring the
4 Office of State Long-Term Care Ombudsman to
5 establish a statewide toll-free telephone
6 number; amending s. 400.022, F.S.; providing
7 immediate access to residents for
8 representatives of the Office of the Attorney
9 General; creating s. 400.0225, F.S.; directing
10 the Agency for Health Care Administration to
11 contract for consumer satisfaction surveys for
12 nursing home residents; providing procedures
13 and requirements for use of such surveys;
14 amending s. 400.0255, F.S.; defining terms
15 relating to facility decisions to transfer or
16 discharge a resident; providing procedures,
17 requirements, and limitations; requiring notice
18 to the agency under certain circumstances;
19 providing for review of a notice of discharge
20 or transfer by the district long-term care
21 ombudsman, upon request; specifying timeframes;
22 amending s. 400.071, F.S.; providing additional
23 requirements for licensure and renewal;
24 providing a certificate-of-need preference for
25 Gold Seal licensees; creating s. 400.118, F.S.;
26 directing the agency to establish a quality
27 assurance early warning system; providing for
28 quality-of-care monitoring; providing duties of
29 monitors; excluding certain information from
30 discovery or introduction in evidence in civil
31 or administrative actions; providing for rapid

1 response teams; amending s. 400.121, F.S.;

2 authorizing the agency to require certain

3 facilities to increase staffing; authorizing

4 such facilities to request an expedited interim

5 rate increase; providing a penalty; amending s.

6 400.141, F.S.; providing requirements for

7 appointment of a medical director; providing

8 for resident use of a community pharmacy and

9 for certain repackaging of prescription

10 medication; providing for immunity from

11 liability in the administration of repackaged

12 medication; revising conditions for encouraging

13 facilities to provide other needed services;

14 requiring public display of certain assistance

15 information; authorizing Gold Seal facilities

16 to develop programs to provide certified

17 nursing assistant training; amending s.

18 400.162, F.S.; revising procedures and policies

19 regarding the safekeeping of residents'

20 property; amending s. 400.19, F.S., relating to

21 the agency's right of entry and inspection;

22 providing a time period for investigation of

23 certain complaints; amending s. 400.191, F.S.;

24 revising requirements for provision of

25 information to the public by the agency;

26 amending s. 400.215, F.S.; providing for

27 nursing home employees to work on a

28 probationary basis upon meeting certain minimal

29 screening requirements; authorizing certain

30 employers direct access to databases for

31 employment screening; requiring notification

1 within a specified time of approval or denial
2 of a request for an exemption from employment
3 disqualification; amending s. 400.23, F.S.;
4 abolishing the Nursing Home Advisory Committee;
5 revising the system for evaluating facility
6 compliance with licensure requirements;
7 eliminating ratings and providing for standard
8 or conditional licensure status; directing the
9 agency to adopt rules to provide minimum
10 staffing requirements for nursing homes and to
11 allow certain staff to assist residents with
12 eating; increasing the maximum penalty for all
13 classes of deficiencies; creating s. 400.235,
14 F.S.; providing for development of a Gold Seal
15 Program for recognition of facilities
16 demonstrating excellence in long-term care;
17 establishing a Panel on Excellence in Long-Term
18 Care under the Executive Office of the
19 Governor; providing membership; providing
20 program criteria; providing for duties of the
21 panel and the Governor; providing for agency
22 rules; providing for biennial relicensure of
23 Gold Seal Program facilities, under certain
24 conditions; amending s. 400.241, F.S.; making
25 it unlawful to warn a nursing home of an
26 unannounced inspection; amending s. 408.035,
27 F.S.; providing certificate-of-need review
28 criteria for Gold Seal facilities; creating s.
29 408.909, F.S.; requiring that the Agency for
30 Health Care Administration implement a pilot
31 project for establishing teaching nursing

1 homes; specifying requirements for a nursing
2 home facility to be designated as a teaching
3 nursing home; requiring that the agency develop
4 additional criteria; authorizing a teaching
5 nursing home to be affiliated with a medical
6 school within the State University System;
7 providing for annual appropriations to a
8 teaching nursing home; providing certain
9 limitations on the expenditure of funds by a
10 teaching nursing home; amending s. 468.1755,
11 F.S.; providing for disciplinary action against
12 a nursing home administrator who authorizes
13 discharge or transfer of a resident for a
14 reason other than provided by law; amending ss.
15 394.4625, 400.063, and 468.1756, F.S.;
16 conforming cross-references; reenacting ss.
17 468.1695(3) and 468.1735, F.S.; incorporating
18 the amendment to s. 468.1755, F.S., in
19 references thereto; providing for funding for
20 recruitment of qualified nursing facility
21 staff; creating a panel on Medicaid
22 reimbursement; providing membership and duties;
23 requiring reports; providing for expiration;
24 creating s. 400.174, F.S.; requiring nursing
25 homes to annually immunize residents and
26 employees by specified dates; requiring
27 documentation; requiring written informed
28 consent prior to immunization; providing for
29 exemption from immunization because of medical
30 reasons or religious objections; requiring the
31 Agency for Health Care Administration to adopt

1 rules prescribing documentation of
2 immunizations; requiring a study of factors
3 affecting recruitment, training, employment,
4 and retention of qualified certified nursing
5 assistants; requiring a report; repealing s.
6 400.29, F.S., relating to an agency annual
7 report of nursing home facilities; amending s.
8 430.703, F.S.; defining the term "other
9 qualified provider"; amending s. 430.707, F.S.;
10 authorizing the Department of Elderly Affairs
11 to contract with other qualified providers to
12 provide long-term care within the pilot
13 projects; providing an appropriation; providing
14 effective dates.

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

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18 Section 1. Section 400.0078, Florida Statutes, is
19 created to read:

20 400.0078 Statewide toll-free telephone number.--The
21 Office of State Long-Term Care Ombudsman shall establish a
22 statewide toll-free telephone number for receiving complaints
23 concerning nursing facilities.

24 Section 2. Paragraph (c) of subsection (1) of section
25 400.022, Florida Statutes, is amended to read:

26 400.022 Residents' rights.--

27 (1) All licensees of nursing home facilities shall
28 adopt and make public a statement of the rights and
29 responsibilities of the residents of such facilities and shall
30 treat such residents in accordance with the provisions of that
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1 statement. The statement shall assure each resident the
2 following:

3 (c) Any entity or individual that provides health,
4 social, legal, or other services to a resident has the right
5 to have reasonable access to the resident. The resident has
6 the right to deny or withdraw consent to access at any time by
7 any entity or individual. Notwithstanding the visiting policy
8 of the facility, the following individuals must be permitted
9 immediate access to the resident:

10 1. Any representative of the federal or state
11 government, including, but not limited to, representatives of
12 the Department of Children and Family Health and
13 ~~Rehabilitative~~ Services, the Department of Health, the Agency
14 for Health Care Administration, the Office of the Attorney
15 General, and the Department of Elderly Affairs; any law
16 enforcement officer; members of the state or district
17 ombudsman council; and the resident's individual physician.

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

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21 The facility must allow representatives of the State ~~Nursing~~
22 ~~Home and Long-Term Care Facility~~ Ombudsman Council to examine
23 a resident's clinical records with the permission of the
24 resident or the resident's legal representative and consistent
25 with state law.

26 Section 3. Section 400.0225, Florida Statutes, is
27 created to read:

28 400.0225 Consumer satisfaction surveys.--The agency,
29 or its contractor, in consultation with the nursing home
30 industry and consumer representatives, shall develop an
31 easy-to-use consumer satisfaction survey, shall ensure that

1 every nursing facility licensed pursuant to this part
2 participates in assessing consumer satisfaction, and shall
3 establish procedures to ensure that, at least annually, a
4 representative sample of residents of each facility is
5 selected to participate in the survey. The sample shall be of
6 sufficient size to allow comparisons between and among
7 facilities. Family members, guardians, or other resident
8 designees may assist the resident in completing the survey.
9 Employees and volunteers of the nursing facility or of a
10 corporation or business entity with an ownership interest in
11 the facility are prohibited from assisting a resident with or
12 attempting to influence a resident's responses to the consumer
13 satisfaction survey. The agency, or its contractor, shall
14 survey family members, guardians, or other resident designees
15 when the resident is mentally incapable of responding to the
16 survey. The agency, or its contractor, shall specify the
17 protocol for conducting and reporting the consumer
18 satisfaction surveys. Reports of consumer satisfaction surveys
19 shall protect the identity of individual respondents. The
20 agency shall contract for consumer satisfaction surveys and
21 report the results of those surveys in the consumer
22 information materials prepared and distributed by the agency.

23 Section 4. Section 400.0231, Florida Statutes, is
24 renumbered as section 400.1415, Florida Statutes.

25 Section 5. Section 400.0255, Florida Statutes, is
26 amended to read:

27 400.0255 ~~Resident hearings of facility decisions to~~
28 ~~transfer or discharge;~~ requirements and procedures;
29 hearings.--

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

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1 (a) "Discharge" means to move a resident to a
2 noninstitutional setting when the releasing facility ceases to
3 be responsible for the resident's care.

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

6 ~~"discharge" or "transfer" means the movement of a resident to~~
7 ~~a bed outside the certified facility. "Discharge" or~~
8 ~~"transfer" does not refer to the movement of a resident to a~~
9 ~~bed within the same certified facility.~~

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

13 (3) When a resident is to be discharged or
14 transferred, the nursing home administrator employed by the
15 nursing home that is discharging or transferring the resident,
16 or an individual employed by the nursing home who is
17 designated by the nursing home administrator to act on behalf
18 of the administrator, must sign the notice of discharge or
19 transfer. Any notice indicating a medical reason for transfer
20 or discharge must be signed by the resident's attending
21 physician or the medical director of the facility.

22 (4)(a) Each facility must notify the agency of any
23 proposed discharge or transfer of a resident when such
24 discharge or transfer is necessitated by changes in the
25 physical plant of the facility that make the facility unsafe
26 for the resident.

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

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1 ~~(5)(2)~~ A resident of any Medicaid or Medicare
2 certified facility may challenge a decision by the facility to
3 discharge or transfer the resident.

4 (6) The facility may not cite a lack of
5 Medicaid-certified beds as a reason for a transfer or
6 discharge if the facility's current Medicaid census is less
7 than the percentage of Medicaid compliance specified in the
8 facility's certificate-of-need. Facilities that do not have a
9 Medicaid compliance requirement in their certificate-of-need
10 shall use the average percentage of Medicaid compliance for
11 facilities being awarded a certificate-of-need in that
12 specific agency district or subdistrict. However, when a
13 resident converts to Medicaid, a facility is not required to
14 use a contractually obligated bed or a bed in a
15 Medicare-certified part or in a special-care unit unless the
16 resident requires the type of care provided in that part or
17 unit.

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

22 ~~(8)(3)~~ At least 30 days prior to any proposed transfer
23 or discharge, a facility must provide advance notice of the
24 proposed transfer or discharge to the resident and, if known,
25 to a family member or the resident's legal guardian or
26 representative, except, in the following circumstances, the
27 facility shall give notice as soon as practicable before the
28 transfer or discharge:

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

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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.

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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.

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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 6. 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 that 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 that 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 7. 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 that
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 8. Subsection (6) is added to section 400.121,
12 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 9. 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:

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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 that 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 the Code of Federal

1 Regulations, 5 C.F.R. 831, or a long-term-care policy as
2 defined in s. 627.9404(1). A pharmacist who correctly
3 repackages and relabels the medication and the nursing
4 facility that correctly administers such repackaged medication
5 under the provisions of this subsection are not liable in any
6 civil or administrative action arising from the repackaging.
7 In order to be eligible for the repackaging, a nursing
8 facility resident for whom the medication is to be repackaged
9 must sign an informed-consent form provided by the facility
10 which includes an explanation of the repackaging process and
11 which notifies the resident of the immunity from liability.

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

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

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

22 (8)~~(6)~~ Maintain the facility premises and equipment
23 and conduct its operations in a safe and sanitary manner.

24 (9)~~(7)~~ If the licensee furnishes food service, provide
25 a wholesome and nourishing diet sufficient to meet generally
26 accepted standards of proper nutrition for its residents and
27 provide such therapeutic diets as may be prescribed by
28 attending physicians. In making rules to implement this
29 subsection, the agency shall be guided by standards
30 recommended by nationally recognized professional groups and
31 associations with knowledge of dietetics.

1 ~~(10)(8)~~ Keep full records of resident admissions and
2 discharges; medical and general health status, including
3 medical records, personal and social history, and identity and
4 address of next of kin or other persons who may have
5 responsibility for the affairs of the residents; and
6 individual resident care plans including, but not limited to,
7 prescribed services, service frequency and duration, and
8 service goals. The records shall be open to inspection by the
9 agency.

10 ~~(11)(9)~~ Keep such fiscal records of its operations and
11 conditions as may be necessary to provide information pursuant
12 to this part.

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

23 (13) Publicly display a poster provided by the agency
24 containing the names, addresses, and telephone numbers for the
25 state's abuse hotline, the State Long-Term Care Ombudsman, the
26 Agency for Health Care Administration consumer hotline, the
27 Advocacy Center for Persons with Disabilities, the Statewide
28 Human Rights Advocacy Committee, and the Medicaid Fraud
29 Control Unit, with a clear description of the assistance to be
30 expected from each.

31

1 A facility that has been awarded a Gold Seal under the
2 program established in s. 400.235 may develop a plan to
3 provide certified nursing assistant training as prescribed by
4 federal regulations and state rules and may apply to the
5 agency for approval of its program.

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

8 400.162 Property and personal affairs of residents.--

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

29 Section 11. Subsections (1) and (4) of section 400.19,
30 Florida Statutes, are amended to read:

31 400.19 Right of entry and inspection.--

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

29 (4) The agency shall conduct unannounced onsite
30 facility reviews following written verification of licensee
31 noncompliance in instances in which a long-term care ombudsman

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

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

17 400.191 Availability, distribution, and posting of
18 reports and records.--

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

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

31

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

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

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

10 (a) The agency shall provide an Internet site that
11 shall include at least the following information:

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

14 2. Whether such nursing home facilities are
15 proprietary or nonproprietary.

16 3. The licensure status of each facility.

17 4. The ownership history of each facility.

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

21 6. Performance, regulatory, and enforcement
22 information about the corporation as well as the facility.

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

24 8. The number of private and semiprivate rooms in each
25 facility.

26 9. The religious affiliation, if any, of each
27 facility.

28 10. The languages spoken by the administrator and
29 staff of each facility.

30 11. Whether or not each facility accepts Medicare or
31 Medicaid recipients.

1 12. Recreational and other programs available at each
2 facility.

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

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

10 15. Special care units or programs offered at each
11 facility.

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

15 17. The results of consumer and family satisfaction
16 surveys for each facility.

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

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

27 (b) The agency shall provide the following information
28 in printed form:

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

31

- 1 2. Whether such nursing home facilities are
2 proprietary or nonproprietary and their current ownership.
3 3. The licensure status of each facility.
4 4. The total number of beds, and of private and
5 semiprivate rooms, in each facility.
6 5. The religious affiliation, if any, of each
7 facility.
8 6. The languages spoken by the administrator and staff
9 of each facility.
10 7. Whether or not each facility accepts Medicare or
11 Medicaid recipients.
12 8. Recreational programs, special care units, and
13 other programs available at each facility.
14 9. A summary of information from the Minimum Data Set
15 system of the federal Health Care Financing Administration
16 about the clinical performance of each facility.
17 10. Information about the licensure status and
18 regulatory history of each facility.
19 11. The results of consumer and family satisfaction
20 surveys for each facility.
21 12. The Internet address for the site where more
22 detailed information can be seen.
23 13. A statement advising consumers that each facility
24 will have its own policies and procedures related to
25 protecting resident property.
26 (3)~~(2)~~ Each nursing home facility licensee shall
27 maintain as public information, available upon request,
28 records of all cost and inspection reports pertaining to that
29 facility that have been filed with, or issued by, any
30 governmental agency. Copies of such reports shall be retained
31

1 in such records for not less than 5 years from the date the
2 reports are filed or issued.

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

8 (5)~~(4)~~ Every nursing home facility licensee shall:

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

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

26 Section 13. Subsections (2) and (4) of section
27 400.215, Florida Statutes, 1998 Supplement, are amended to
28 read:

29 400.215 Personnel screening requirement.--

30 (2) Employers and employees shall comply with the
31 requirements of s. 435.05.

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

20 (b) Employees qualified under the provisions of
21 paragraph (a) who have not maintained continuous residency
22 within the state for the 5 years immediately preceding the
23 date of request for background screening must complete level 2
24 screening, as provided in chapter 435. Such employees may work
25 in a conditional status up to 180 days pending the receipt of
26 written findings evidencing the completion of level 2
27 screening. Level 2 screening shall not be required of
28 employees or prospective employees who attest in writing under
29 penalty of perjury that they meet the residency requirement.
30 Completion of level 2 screening shall require the employee or
31 prospective employee to furnish to the nursing facility a full

1 set of fingerprints to enable a criminal background
2 investigation to be conducted. The nursing facility shall
3 submit the completed fingerprint card to the agency. The
4 agency shall establish a record of the request in the database
5 provided for in paragraph (c) and forward the request to the
6 Department of Law Enforcement, which is authorized to submit
7 the fingerprints to the Federal Bureau of Investigation for a
8 national criminal history records check. The results of the
9 national criminal history records check shall be returned to
10 the agency, which shall maintain the results in the database
11 provided for in paragraph (c). The agency shall notify the
12 administrator of the requesting nursing facility or the
13 administrator of any other facility licensed under chapter
14 393, chapter 394, chapter 395, chapter 397, or this chapter,
15 as requested by such facility, as to whether or not the
16 employee has qualified under level 1 or level 2 screening. An
17 employee or prospective employee who has qualified under level
18 2 screening and has maintained such continuous residency
19 within the state shall not be required to complete a
20 subsequent level 2 screening as a condition of employment at
21 another facility.

22 (c) The agency shall establish and maintain a database
23 of background screening information which shall include the
24 results of both level 1 and level 2 screening and central
25 abuse registry and tracking system checks. The Department of
26 Law Enforcement shall timely provide to the agency,
27 electronically, the results of each statewide screening for
28 incorporation into the database. The Department of Children
29 and Family Services shall provide the agency with electronic
30 access to the central abuse registry and tracking system. The
31 agency shall search the registry to identify any confirmed

1 report and shall access such report for incorporation into the
2 database. The agency shall, upon request from any facility,
3 agency, or program required by or authorized by law to screen
4 its employees or applicants, notify the administrator of the
5 facility, agency, or program of the qualifying or
6 disqualifying status of the employee or applicant named in the
7 request.

8 (d) Applicants and employees shall be excluded from
9 employment pursuant to s. 435.06.

10 (e) Notwithstanding the confidentiality provisions of
11 s. 415.107, the agency shall provide, by August 15, 1999, a
12 direct-access electronic-screening capability to all enrolled
13 facilities or agencies required by law to restrict employment
14 to only those applicants who do not have a disqualifying
15 report in the central abuse registry and tracking system. The
16 agency shall, upon request, provide to such facility or agency
17 a user code by which the facility or agency may query the
18 listing of all persons disqualified because of a confirmed
19 classification. The direct-access screening system must allow
20 for the electronic matching of an applicant's identifying
21 information, including name, date of birth, race, sex, and
22 social security number, against the listing of disqualified
23 persons. The agency may charge a fee for issuing the user code
24 which is sufficient to cover the cost of establishing and
25 maintaining the direct-access screening system. The
26 direct-access screening system must provide the user with
27 immediate electronic notification of applicant clearance or
28 disqualification only. The system must also maintain, for
29 appropriate entry into the agency screening database, an
30 electronic record of the inquiry on behalf of the applicant.
31

1 (4)(a) As provided in s. 435.07, the agency may grant
2 an exemption from disqualification to an employee or
3 prospective employee who is subject to this section and who
4 has not received a professional license or certification from
5 the Department of Health.

6 (b) As provided in s. 435.07, the Department of Health
7 may grant an exemption from disqualification to an employee or
8 prospective employee who is subject to this section and who
9 has received a professional license or certification from the
10 Department of Health.

11 (c) An applicant requesting exemption from
12 disqualification as specified in paragraphs (a) and (b) shall
13 be notified by the agency or the department, as appropriate,
14 of a decision to approve or deny the request within 30 days
15 after the date the agency or department receives all required
16 documentation.

17 Section 14. Section 400.23, Florida Statutes, 1998
18 Supplement, is amended to read:

19 400.23 Rules; ~~criteria; Nursing Home Advisory~~
20 ~~Committee; evaluation and deficiencies; licensure status~~
21 ~~rating system; fee for review of plans.--~~

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

31

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.

1 (b) The agency shall adopt rules to allow properly
2 trained staff of a nursing facility, in addition to certified
3 nursing assistants and licensed nurses, to assist residents
4 with eating. The rules shall specify the minimum training
5 requirements and shall specify the physiological conditions or
6 disorders of residents which would necessitate that the eating
7 assistance be provided by nursing personnel of the facility.

8 ~~(4)(3)~~ Rules developed pursuant to this section shall
9 not restrict the use of shared staffing and shared programming
10 in facilities which are part of retirement communities that
11 provide multiple levels of care and otherwise meet the
12 requirement of law or rule.

13 ~~(5)(4)~~ The agency, in collaboration with the Division
14 of Children's Medical Services Program Office of the
15 Department of Health ~~and Rehabilitative Services~~, must, no
16 later than December 31, 1993, adopt rules for minimum
17 standards of care for persons under 21 years of age who reside
18 in nursing home facilities. The rules must include a
19 methodology for reviewing a nursing home facility under ss.
20 408.031-408.045 which serves only persons under 21 years of
21 age.

22 ~~(6)(5)~~ Prior to conducting a survey of the facility,
23 the survey team shall obtain a copy of the district ~~nursing~~
24 ~~home and long-term care facility~~ ombudsman council report on
25 the facility. Problems noted in the report shall be
26 incorporated into and followed up through the agency's
27 inspection process. This procedure does not preclude the
28 district nursing home and long-term care facility ombudsman
29 council from requesting the agency to conduct a followup visit
30 to the facility.

31

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 (7)~~(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 (8)(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 \$25,000~~\$10,000~~ for each and
28 every 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 \$10,000~~\$5,000~~ for each and
5 every 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 \$2,500~~\$1,000~~ for each
16 and every deficiency. A citation for a class III deficiency
17 shall specify the time within which the deficiency is required
18 to be corrected. If a class III deficiency is corrected
19 within the time specified, no civil penalty shall be imposed,
20 unless it is a repeated offense.

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

24 ~~(11) The agency shall approve or disapprove the plans
25 and specifications within 60 days after receipt of the final
26 plans and specifications. The agency may be granted one
27 15-day extension for the review period, if the director of the
28 agency so approves. If the agency fails to act within the
29 specified time, it shall be deemed to have approved the plans
30 and specifications. When the agency disapproves plans and
31 specifications, it shall set forth in writing the reasons for~~

1 ~~disapproval. Conferences and consultations may be provided as~~
2 ~~necessary.~~

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

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

23 Section 15. Section 400.232, Florida Statutes, is
24 created to read:

25 400.232 Review and approval of plans; fees and
26 costs.--

27 (1) The agency shall approve or disapprove the plans
28 and specifications within 60 days after receipt of the final
29 plans and specifications. The agency may be granted one
30 15-day extension for the review period, if the director of the
31 agency so approves. If the agency fails to act within the

1 specified time, it shall be deemed to have approved the plans
2 and specifications. When the agency disapproves plans and
3 specifications, it shall set forth in writing the reasons for
4 disapproval. Conferences and consultations may be provided as
5 necessary.

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

22 Section 16. Section 400.235, Florida Statutes, is
23 created to read:

24 400.235 Nursing home quality and licensure status;
25 Gold Seal Program.--

26 (1) To protect the health and welfare of persons
27 receiving care in nursing facilities, it is the intent of the
28 Legislature to develop a regulatory framework that promotes
29 the stability of the industry and facilitates the physical,
30 social, and emotional well-being of nursing facility
31 residents.

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

5 (3)(a) The Gold Seal Program shall be developed and
6 implemented by the Governor's Panel on Excellence in Long-Term
7 Care, which shall operate under the authority of the Executive
8 Office of the Governor. The panel shall be composed of three
9 persons appointed by the Governor, to include a consumer
10 advocate for senior citizens and two persons with expertise in
11 the fields of quality management, service-delivery excellence,
12 or public-sector accountability; three persons appointed by
13 the Secretary of the Department of Elderly Affairs, to include
14 an active member of a nursing facility family and resident
15 care council and a member of the University Consortium on
16 Aging; the State Long-Term Care Ombudsman; one person
17 appointed by the Florida Life Care Residents Association; one
18 person appointed by the Secretary of the Department of Health;
19 two persons appointed by the director of the Agency for Health
20 Care Administration, to include the director of health
21 purchasing; one person appointed by the Florida Association of
22 Homes for the Aging; and one person appointed by the Florida
23 Health Care Association. All members of the panel shall be
24 appointed by October 1, 1999, and the panel shall hold its
25 organizational meeting by December 10, 1999. Vacancies on the
26 panel shall be filled in the same manner as the original
27 appointments. A member may not serve for more than 4
28 consecutive years after the date of appointment.

29 (b) Members of the Governor's Panel on Excellence in
30 Long-Term Care may not have any ownership interest in a
31 nursing facility. Any member of the panel who is employed by a

1 nursing facility in any capacity may not participate in
2 reviewing or voting on recommendations involving the facility
3 at which the member is employed or involving any facility
4 under common ownership with the facility at which the member
5 is employed.

6 (c) Recommendations to the panel for designation of a
7 nursing facility as a Gold Seal facility may be received by
8 the panel after January 1, 2000. The activities of the panel
9 shall be supported by staff members of the Department of
10 Elderly Affairs and the Agency for Health Care Administration.

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

14 (a) Accidents.

15 (b) Behavioral/emotional patterns.

16 (c) Clinical management.

17 (d) Cognitive patterns.

18 (e) Elimination/continence.

19 (f) Infection control.

20 (g) Nutrition and eating.

21 (h) Physical functioning.

22 (i) Psychotropic drug use.

23 (j) Quality of life.

24 (k) Sensory functioning and communication.

25 (l) Skin care.

26 (5) Facilities must meet the following additional
27 criteria for recognition as a Gold Seal Program facility:

28 (a) Have no class I or class II deficiencies within
29 the 30 months preceding application for the program.

30
31

1 (b) Evidence financial soundness and stability
2 according to standards adopted by the agency in administrative
3 rule.

4 (c) Participate consistently in the required consumer
5 satisfaction process as prescribed by the agency, and
6 demonstrate that information is elicited from residents,
7 family members, and guardians about satisfaction with the
8 nursing facility, its environment, the services and care
9 provided, the staff's skills and interactions with residents,
10 attention to resident's needs, and the facility's efforts to
11 act on information gathered from the consumer satisfaction
12 measures.

13 (d) Evidence the involvement of families and members
14 of the community in the facility on a regular basis.

15 (e) Have a stable workforce, as evidenced by a
16 relatively low rate of turnover among certified nursing
17 assistants and registered nurses within the 30 months
18 preceding application for the Gold Seal Program, and
19 demonstrate a continuing effort to maintain a stable workforce
20 and to reduce turnover of licensed nurses and certified
21 nursing assistants.

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

26 (g) Provide targeted inservice training to meet
27 training needs identified by internal or external quality
28 assurance efforts.

29 (h) Evidence superior levels of clinical outcomes as
30 measured in the Minimum Data Set system of the federal Health
31 Care Financing Administration. Facilities that are not

1 certified for Medicare or Medicaid are not required to
2 complete the Minimum Data Set in order to qualify for the Gold
3 Seal Program. Such facilities may demonstrate superior levels
4 of performance with an alternate assessment as approved by the
5 panel.

6
7 A facility assigned a conditional licensure status may not
8 qualify for consideration for the Gold Seal Program until
9 after it has operated for 30 months with no class I or class
10 II deficiencies and has completed a regularly scheduled
11 relicensure survey.

12 (6) The agency, nursing facility industry
13 organizations, consumers, State Long-Term Care Ombudsman
14 Council, and members of the community may recommend to the
15 Governor facilities that meet the established criteria for
16 consideration for and award of the Gold Seal. The panel shall
17 review nominees and make a recommendation to the Governor for
18 final approval and award. The decision of the Governor is
19 final and is not subject to appeal.

20 (7) A facility must be licensed and operating for 30
21 months before it is eligible to apply for the Gold Seal
22 Program. The agency shall establish by rule the frequency of
23 review for designation as a Gold Seal Program facility and
24 under what circumstances a facility may be denied the
25 privilege of using this designation. The designation of a
26 facility as a Gold Seal Program facility is not transferable
27 to another license, except when an existing facility is being
28 relicensed in the name of an entity related to the current
29 licenseholder by common ownership or control and there will be
30 no change in the management, operation, or programs at the
31 facility as a result of the relicensure.

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

3 (b) Upon approval by the United States Department of
4 Health and Human Services, the agency shall adopt a revised
5 schedule of survey and relicensure visits for Gold Seal
6 Program facilities. Gold Seal Program facilities may be
7 surveyed for certification and relicensure every 2 years, so
8 long as they maintain the standards associated with retaining
9 the Gold Seal.

10 Section 17. Paragraph (p) is added to subsection (1)
11 of section 408.035, Florida Statutes, to read:

12 408.035 Review criteria.--

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

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

20 Section 18. Present subsection (3) of section 400.241,
21 Florida Statutes, is redesignated as subsection (4), and a new
22 subsection (3) is added to that section, to read:

23 400.241 Prohibited acts; penalties for violations.--

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

29 Section 19. Subsection (1) of section 468.1755,
30 Florida Statutes, 1998 Supplement, is amended to read:

31 468.1755 Disciplinary proceedings.--

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

3 (a) Violation of any provision of s. 455.624(1) or s.
4 468.1745(1).

5 (b) Attempting to procure a license to practice
6 nursing home administration by bribery, by fraudulent
7 misrepresentation, or through an error of the department or
8 the board.

9 (c) Having a license to practice nursing home
10 administration revoked, suspended, or otherwise acted against,
11 including the denial of licensure, by the licensing authority
12 of another state, territory, or country.

13 (d) Being convicted or found guilty, regardless of
14 adjudication, of a crime in any jurisdiction which relates to
15 the practice of nursing home administration or the ability to
16 practice nursing home administration. Any plea of nolo
17 contendere shall be considered a conviction for purposes of
18 this part.

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

26 (f) Authorizing the discharge or transfer of a
27 resident for a reason other than those provided in ss. 400.022
28 and 400.0255.

29 ~~(g)~~(f) Advertising goods or services in a manner which
30 is fraudulent, false, deceptive, or misleading in form or
31 content.

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

3 (i)~~(h)~~ A violation or repeated violations of this
4 part, part II of chapter 455, or any rules promulgated
5 pursuant thereto.

6 (j)~~(i)~~ Violation of a lawful order of the board or
7 department previously entered in a disciplinary hearing or
8 failing to comply with a lawfully issued subpoena of the board
9 or department.

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

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

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

1 named or identified by initials in any public court records or
2 documents and the proceedings shall be closed to the public.
3 The department shall be entitled to the summary procedure
4 provided in s. 51.011. A licensee affected under this
5 paragraph shall have the opportunity, at reasonable intervals,
6 to demonstrate that he or she can resume the competent
7 practice of nursing home administration with reasonable skill
8 and safety to patients.

9 (n)~~(m)~~ ~~Has~~ Willfully or repeatedly violating ~~violated~~
10 any of the provisions of the law, code or rules of the
11 licensing or supervising authority or agency of the state or
12 political subdivision thereof having jurisdiction of the
13 operation and licensing of nursing homes.

14 (o)~~(n)~~ Paying, giving, causing ~~Has paid, given, caused~~
15 to be paid or given, or offering ~~offered~~ to pay or to give to
16 any person a commission or other valuable consideration for
17 the solicitation or procurement, either directly or
18 indirectly, of nursing home usage.

19 (p)~~(o)~~ ~~Has~~ Willfully permitting ~~permitted~~ unauthorized
20 disclosure of information relating to a patient or his or her
21 records.

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

25 Section 20. Paragraph (b) of subsection (1) of section
26 394.4625, Florida Statutes, is amended to read:

27 394.4625 Voluntary admissions.--

28 (1) AUTHORITY TO RECEIVE PATIENTS.--

29 (b) A mental health overlay program or a mobile crisis
30 response service or a licensed professional who is authorized
31 to initiate an involuntary examination pursuant to s. 394.463

1 and is employed by a community mental health center or clinic
2 must, pursuant to district procedure approved by the
3 respective district administrator, conduct an initial
4 assessment of the ability of the following persons to give
5 express and informed consent to treatment before such persons
6 may be admitted voluntarily:

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

11 2. A person 60 years of age or older for whom transfer
12 is being sought from a nursing home pursuant to s.
13 400.0255(12)~~s. 400.0255(6)~~.

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

17 Section 21. Subsection (1) of section 400.063, Florida
18 Statutes, is amended to read:

19 400.063 Resident Protection Trust Fund.--

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

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

14 Section 22. For purposes of incorporating the
15 amendment to section 468.1755, Florida Statutes, in references
16 thereto, subsection (3) of section 468.1695, Florida Statutes,
17 is reenacted to read:

18 468.1695 Licensure by examination.--

19 (3) The department shall issue a license to practice
20 nursing home administration to any applicant who successfully
21 completes the examination in accordance with this section and
22 otherwise meets the requirements of this part. The department
23 shall not issue a license to any applicant who is under
24 investigation in this state or another jurisdiction for an
25 offense which would constitute a violation of s. 468.1745 or
26 s. 468.1755. Upon completion of the investigation, the
27 provisions of s. 468.1755 shall apply.

28 Section 23. For the purpose of incorporating the
29 amendment to section 468.1755, Florida Statutes, in references
30 thereto, section 468.1735, Florida Statutes, is reenacted to
31 read:

1 468.1735 Provisional license.--The board may establish
2 by rule requirements for issuance of a provisional license. A
3 provisional license shall be issued only to fill a position of
4 nursing home administrator that unexpectedly becomes vacant
5 due to illness, sudden death of the administrator, or
6 abandonment of position and shall be issued for one single
7 period as provided by rule not to exceed 6 months. The
8 department shall not issue a provisional license to any
9 applicant who is under investigation in this state or another
10 jurisdiction for an offense which would constitute a violation
11 of s. 468.1745 or s. 468.1755. Upon completion of the
12 investigation, the provisions of s. 468.1755 shall apply. The
13 provisional license may be issued to a person who does not
14 meet all of the licensing requirements established by this
15 part, but the board shall by rule establish minimal
16 requirements to ensure protection of the public health,
17 safety, and welfare. The provisional license shall be issued
18 to the person who is designated as the responsible person next
19 in command in the event of the administrator's departure. The
20 board may set an application fee not to exceed \$500 for a
21 provisional license.

22 Section 24. Section 468.1756, Florida Statutes, 1998
23 Supplement, is amended to read:

24 468.1756 Statute of limitations.--An administrative
25 complaint may only be filed pursuant to s. 455.621 for an act
26 listed in s. 468.1755(1)(c)-(q)~~paragraphs (1)(c)-(p) of s.~~
27 ~~468.1755~~ within 4 years from the time of the incident giving
28 rise to the complaint, or within 4 years from the time the
29 incident is discovered or should have been discovered.

30 Section 25. Patient care targets.--Effective July 1,
31 1999, there is appropriated, unless otherwise provided for in

1 the General Appropriations Act, \$18,422,000 from the General
2 Revenue Fund and \$23,275,600 from the Medical Care Trust Fund
3 to the Agency for Health Care Administration in order to allow
4 nursing facilities the ability to recruit and retain qualified
5 staff and to provide appropriate care. The Agency for Health
6 Care Administration shall adjust target limitations in the
7 patient-care component of the per diem rate to allow these
8 additional funds to be reimbursed through the per diem rate.

9 Section 26. 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 to 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 27. Section 400.174, Florida Statutes, is
18 created to read:

19 400.174 Immunizations required; exemptions.--

20 (1) Each nursing home is required to annually immunize
21 its residents and all employees against the influenzae virus
22 and pneumococcal disease. An immunization provided by a
23 nursing home to its residents or its employees shall be
24 administered prior to November 30, for persons residing in the
25 facility or employed by the facility prior to that date.
26 Persons who become residents of the facility or who are
27 employed by the facility after November 30, but before March
28 31 of the following year, must be immunized within 3 days
29 after becoming a resident or an employee. Any resident or
30 employee who provides documentation that he or she has been
31 immunized as required under this section is deemed to have met

1 the requirements of this section. Immunizations performed and
2 documented in compliance with this section must conform to the
3 current recommendations as established by the Advisory
4 Committee on Immunization Practices of the Centers for Disease
5 Control and Prevention. The agency shall prescribe, by rule,
6 an appropriate method for documenting a nursing home's
7 compliance with this section.

8 (2) A nursing home administering an immunization as
9 required by this section must obtain the written, informed
10 consent of the resident or employee immunized. A resident or
11 employee is exempt from being immunized as required under this
12 section if the vaccine is medically contraindicated for that
13 person as described in the product labelling approved by the
14 Food and Drug Administration. A resident or employee may not
15 be compelled to receive the immunizations required by this
16 section if such immunization is against the individual's
17 religious beliefs.

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

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

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

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

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

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

31

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. Section 408.909, Florida Statutes, is
24 created to read:

25 408.909 Implementation of a teaching-nursing-home
26 pilot project.--

27 (1) As used in this section, the term "teaching
28 nursing home" means a nursing home facility licensed under
29 chapter 400 which contains a minimum of 400 licensed nursing
30 home beds; has access to a resident senior population of
31 sufficient size to support education, training, and research

1 relating to geriatric care; and has a contractual relationship
2 with a federally funded, accredited geriatric research center
3 in this state.

4 (2)(a) The Agency for Health Care Administration shall
5 implement a comprehensive multidisciplinary program of
6 geriatric education and research as a pilot project in a
7 nursing home facility designated by the agency as a teaching
8 nursing home. The program must be established as a pilot
9 project and must be administered at the nursing home facility
10 and other appropriate settings.

11 (b) The agency shall develop criteria for designating
12 teaching nursing homes in consultation with advocates of the
13 elderly, advocates of persons with disabilities,
14 representatives of the nursing home industry, and
15 representatives of the State University System.

16 (3) For a nursing home to be designated as a teaching
17 nursing home, the nursing home licensee must, at a minimum:

18 (a) Provide a comprehensive program of integrated
19 senior services that include institutional services and
20 community-based services;

21 (b) Participate in a nationally recognized
22 accreditation program and hold a valid accreditation, such as
23 the accreditation awarded by the Joint Commission on
24 Accreditation of the Healthcare Organizations;

25 (c) Have been in business in this state for at least
26 10 consecutive years;

27 (d) Demonstrate an active program in multidisciplinary
28 education and research which relates to gerontology;

29 (e) Have a formalized contractual relationship with at
30 least one accredited health-profession education program
31 located in this state;

1 (f) Have a formalized contractual relationship with an
2 accredited hospital that is designated by law as a teaching
3 hospital; and

4 (g) Have senior staff members who hold formal faculty
5 appointments at universities that have at least one accredited
6 health-profession education program.

7 (4) A teaching nursing home may be affiliated with a
8 medical school within the state and a federally funded center
9 of excellence in geriatric research and education. The purpose
10 of such affiliations is to foster the development of methods
11 for improving and expanding the capability of health care
12 facilities to respond to the medical, psychological, and
13 social needs of frail elderly persons by providing the most
14 effective and appropriate services. A teaching nursing home
15 shall serve as a resource for research and for training health
16 care professionals in providing health care services in
17 institutional settings to frail elderly persons.

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

21 (6) In order for a nursing home to qualify as a
22 teaching nursing home under this section and to be entitled to
23 the benefits provided under this section, the nursing home
24 must:

25 (a) Be primarily operated and established to offer,
26 afford, and render a comprehensive multidisciplinary program
27 of geriatric education and research to residents of the state;
28 and

29 (b) Certify to the Agency for Health Care
30 Administration, each school year, the name, address, and
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1 educational history of each trainee approved and accepted for
2 enrollment in the institution.

3 (7) A teaching nursing home may not spend any of the
4 funds received under this section for any purpose other than
5 operating and maintaining a teaching nursing home and
6 conducting geriatric research. In addition, a teaching nursing
7 home may not spend any funds received under this section for
8 constructing any building of any kind, nature, or description
9 or for maintaining or operating, in any form or manner, a
10 nursing home or health care facility.

11 Section 31. Present subsection (7) of section 430.703,
12 Florida Statutes, is renumbered as subsection (8), and a new
13 subsection (7) is added to that section to read:

14 430.703 Definitions.--As used in this act, the term:

15 (7) "Other qualified provider" means an entity
16 licensed under chapter 400 that meets all the financial and
17 quality assurance requirements established by the agency and
18 the department and can demonstrate a long-term-care continuum.

19 Section 32. Subsection (1) of section 430.707, Florida
20 Statutes, 1998 Supplement, is amended to read:

21 430.707 Contracts.--

22 (1) The department, in consultation with the agency,
23 shall select and contract with managed care organizations and
24 other qualified providers to provide long-term care within
25 community diversion pilot project areas.

26 Section 33. The sum of \$100,000 is appropriated from
27 the Health Care Trust Fund to the Department of Elderly
28 Affairs for fiscal year 1999-2000 to fund the responsibilities
29 of the Office of State Long-Term-Care Ombudsman and establish
30 a statewide toll-free telephone number pursuant to section
31 400.0078, Florida Statutes, as created by this act.

1 Section 34. This act shall take effect July 1, 1999,
2 except that this section and section 13 shall take effect upon
3 becoming a law.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bills 834, 1140, 1612

4 Combines and modifies the provisions contained in Senate Bills
5 834, 1140, and 1612. The bill requires the State Long-Term
6 Care Ombudsman to establish a toll-free telephone number and
7 revises guidelines as to which and under what circumstances a
8 nursing home resident may be discharged or transferred. Local
9 ombudsmen are authorized, upon request, to assist nursing home
10 residents with review of a notice of discharge or transfer.
11 Additionally, the bill requires the Agency for Health Care
12 Administration to develop and contract for consumer
13 satisfaction surveys and to publish, electronically and in
14 print, certain specified information about nursing homes to
15 assist consumers in evaluating and choosing a nursing home;
16 authorizes the agency to require additional staffing in
17 nursing homes; provides for expedited employee screening
18 through employer direct access to specified personnel
19 screening databases and provides for applicant notification of
20 approval or denial of a request for exemption from employment
21 disqualification within 30 days of submission of all required
22 documentation; requires the agency to establish an early
23 warning system and rapid response teams to detect and remedy
24 problems in nursing homes; provides for a quality-of-care
25 monitoring program for nursing homes; provides for repackaging
26 of pharmaceuticals in nursing homes for certain nursing home
27 residents under certain circumstances; and abolishes the
28 Nursing Home Advisory Committee and repeals the nursing home
29 rating system.

30 The bill creates the "Gold Seal Program" for recognition of
31 excellence in nursing homes and creates a panel to manage the
program in the Executive Office of the Governor. Studies are
provided for that require a panel that is created to examine
specific aspects of Medicaid reimbursement of nursing home
facilities and explore how such reimbursement may be used to
improve quality of patient care, including recruitment and
retention of mature persons to work as certified nursing
assistants in nursing homes, and require the Department of
Elderly Affairs to research and make recommendations to the
Legislature on how to improve training, retention, and
availability of certified nursing assistants. Nursing homes
are required to immunize their residents and employees against
influenzae and pneumococcal diseases, subject to obtaining
written informed consent, a medical safety exemption, and a
religious-belief exemption. Provides participation in the
long-term care community diversion pilot project is expanded
to allow long-term care facilities licensed under chapter 400,
F.S., to contract to offer services under the project.

The maximum allowable fine for all classes of deficiencies is
increased. Appropriations are provided.