

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

309-1989A-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 requiring a study of factors affecting
25 recruitment, training, employment, and
26 retention of qualified certified nursing
27 assistants; requiring a report; repealing s.
28 400.29, F.S., relating to an agency annual
29 report of nursing home facilities; providing an
30 appropriation; providing effective dates.

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

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3 Section 1. Section 400.0078, Florida Statutes, is
4 created to read:

5 400.0078 Statewide toll-free telephone number.--The
6 Office of State Long-Term Care Ombudsman shall establish a
7 statewide toll-free telephone number for receiving complaints
8 concerning nursing facilities.

9 Section 2. Paragraph (c) of subsection (1) of section
10 400.022, Florida Statutes, is amended to read:

11 400.022 Residents' rights.--

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

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

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

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

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

5
6 The facility must allow representatives of the State ~~Nursing~~
7 ~~Home and Long-Term Care Facility~~ Ombudsman Council to examine
8 a resident's clinical records with the permission of the
9 resident or the resident's legal representative and consistent
10 with state law.

11 Section 3. Section 400.0225, Florida Statutes, is
12 created to read:

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

1 survey. The agency, or its contractor, shall specify the
2 protocol for conducting and reporting the consumer
3 satisfaction surveys. Reports of consumer satisfaction surveys
4 shall protect the identity of individual respondents. The
5 agency shall contract for consumer satisfaction surveys and
6 report the results of those surveys in the consumer
7 information materials prepared and distributed by the agency.

8 Section 4. Section 400.0231, Florida Statutes, is
9 renumbered as section 400.1415, Florida Statutes.

10 Section 5. Section 400.0255, Florida Statutes, is
11 amended to read:

12 400.0255 Resident ~~hearings of facility decisions to~~
13 ~~transfer or discharge; requirements and procedures;~~
14 hearings.--

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

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

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

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

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

28 (3) When a resident is to be discharged or
29 transferred, the nursing home administrator employed by the
30 nursing home that is discharging or transferring the resident,
31 or an individual employed by the nursing home who is

1 designated by the nursing home administrator to act on behalf
2 of the administrator, must sign the notice of discharge or
3 transfer. Any notice indicating a medical reason for transfer
4 or discharge must be signed by the resident's attending
5 physician or the medical director of the facility.

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

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

14 (5)(2) A resident of any Medicaid or Medicare
15 certified facility may challenge a decision by the facility to
16 discharge or transfer the resident.

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

21 (7)(3) At least 30 days prior to any proposed transfer
22 or discharge, a facility must provide advance notice of the
23 proposed transfer or discharge to the resident and, if known,
24 to a family member or the resident's legal guardian or
25 representative, except, in the following circumstances, the
26 facility shall give notice as soon as practicable before the
27 transfer or discharge:

28 (a) The transfer or discharge is necessary for the
29 resident's welfare and the resident's needs cannot be met in
30 the facility, and the circumstances are documented in the
31 resident's medical records by the resident's physician; or

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

6 (8)~~(4)~~ The notice required by subsection (7)~~(3)~~ must
7 be in writing and must contain all information required by
8 state and federal law, rules, or regulations applicable to
9 Medicaid or Medicare cases. The agency shall develop a
10 standard document to be used by all facilities licensed under
11 this part for purposes of notifying residents of a discharge
12 or transfer. Such document must include a means for a resident
13 to request the district long-term care ombudsman council to
14 review the notice and request information about or assistance
15 with initiating a fair hearing with the department's Office of
16 Appeals Hearings. In addition to any other pertinent
17 information included, the form shall specify the reason
18 allowed under federal or state law that the resident is being
19 discharged or transferred, with an explanation to support this
20 action. Further, the form shall state the effective date of
21 the discharge or transfer and the location to which the
22 resident is being discharged or transferred. The form shall
23 clearly describe the resident's appeal rights and the
24 procedures for filing an appeal, including the right to
25 request the district ombudsman council to review the notice of
26 discharge or transfer. A copy of the notice must be placed in
27 the resident's clinical record, and a copy must be transmitted
28 to the resident's legal guardian or representative and to the
29 ~~local~~ district ombudsman council.

30 (9) A resident may request that the district ombudsman
31 council review any notice of discharge or transfer given to

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

11 (10)(5)(a) A resident is entitled to a fair hearing to
12 challenge a facility's proposed transfer or discharge. The
13 resident, or the resident's legal representative or designee,
14 may request a hearing at any time within 90 days after ~~of~~ the
15 resident's receipt of the facility's notice of the proposed
16 discharge or transfer.

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

24 (c) If the resident fails to request a hearing within
25 10 days after ~~of~~ receipt of the facility notice of the
26 proposed discharge or transfer, the facility may transfer or
27 discharge the resident after 30 days from the date the
28 resident received the notice.

29 (11)(6) Notwithstanding paragraph (10)(b)(5) ~~(b)~~, an
30 emergency discharge or transfer may be implemented as
31 necessary pursuant to state or federal law during the period

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

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

24 (13)(7) The following persons must be present at all
25 hearings ~~proceedings~~ authorized under this section:

26 (a) The resident, or the resident's legal
27 representative or designee.

28 (b) The facility administrator, or the facility's
29 legal representative or designee.

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

4 ~~(14)(8)~~ In any hearing ~~proceeding~~ under this section,
5 the following information concerning the parties shall be
6 confidential and exempt from the provisions of s. 119.07(1):

7 (a) Names and addresses.

8 (b) Medical services provided.

9 (c) Social and economic conditions or circumstances.

10 (d) Evaluation of personal information.

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

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

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

25 ~~(15)(9)~~(a) The department's Office of Appeals Hearings
26 shall conduct hearings under this section. The office shall
27 notify the facility of a resident's request for a hearing.

28 (b) The department shall, by rule, establish
29 procedures to be used for fair hearings requested by
30 residents. These procedures shall be equivalent to the
31 procedures used for fair hearings for other Medicaid cases,

1 chapter 10-2, part VI, Florida Administrative Code. The
2 burden of proof must be clear and convincing evidence. A
3 hearing decision must be rendered within 90 days after of
4 receipt of the request for hearing.

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

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

13 (16)~~(12)~~ The department may adopt rules necessary to
14 administer ~~implement the provisions of~~ this section.

15 Section 6. Paragraph (g) is added to subsection (2) of
16 section 400.071, Florida Statutes, 1998 Supplement, present
17 subsections (8) and (9) are amended and renumbered as
18 subsections (9) and (10), respectively, and a new subsection
19 (8) is added to that section, to read:

20 400.071 Application for license.--

21 (2) The application shall be under oath and shall
22 contain the following:

23 (g) Copies of any civil verdict or judgment involving
24 the applicant rendered within the 10 years preceding the
25 application, relating to medical negligence, violation of
26 residents' rights, or wrongful death. As a condition of
27 licensure, the licensee agrees to provide to the agency copies
28 of any new verdict or judgment involving the applicant,
29 relating to such matters, within 30 days after filing with the
30 clerk of the court. The information required in this
31 paragraph shall be maintained in the facility's licensure file

1 and in an agency database that is available as a public
2 record.

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

6 (9)~~(8)~~ The agency may not issue a license to a nursing
7 home that fails to receive a certificate of need under the
8 provisions of ss. 408.031-408.045. It is the intent of the
9 Legislature that, in reviewing a certificate-of-need
10 application to add beds to an existing nursing home facility,
11 preference be given to the application of a licensee who has
12 been awarded a Gold Seal as provided for in s. 400.235, if the
13 applicant otherwise meets the review criteria specified in s.
14 408.035.

15 (10)~~(9)~~ The agency may develop an abbreviated survey
16 for licensure renewal applicable to a licensee that has
17 continuously operated as a nursing facility since 1991 or
18 earlier, ~~and~~ has operated under the same management for at
19 least the preceding 30 months, and has had during the
20 preceding 30 months no class I or class II deficiencies
21 ~~maintained a superior rating during that period.~~

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

24 400.118 Quality assurance; early warning system;
25 monitoring; rapid response teams.--

26 (1) The agency shall establish an early warning system
27 to detect conditions in nursing facilities that could be
28 detrimental to the health, safety, and welfare of residents.
29 The early warning system shall include, but not be limited to,
30 analysis of financial and quality-of-care indicators that
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1 would predict the need for the agency to take action pursuant
2 to the authority set forth in this part.

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

27 (b) Findings of a monitoring visit, both positive and
28 negative, shall be provided orally and in writing to the
29 facility administrator or, in the absence of the facility
30 administrator, to the administrator on duty or the director of
31 nursing. The quality-of-care monitor may recommend to the

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

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

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

8 Section 8. Subsection (6) is added to section 400.121,
9 Florida Statutes, 1998 Supplement, to read:

10 400.121 Denial, suspension, revocation of license;
11 moratorium on admissions; administrative fines; procedure.--

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

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

25 400.141 Administration and management of nursing home
26 facilities.--Every licensed facility shall comply with all
27 applicable standards and rules of the agency and shall:

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

30 (2) Appoint a medical director licensed pursuant to
31 chapter 458 or chapter 459. The agency may establish by rule

1 more specific criteria for the appointment of a medical
2 director.

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

5 ~~(4)(3)~~ Provide for the access of the facility
6 residents to dental and other health-related services,
7 recreational services, rehabilitative services, and social
8 work services appropriate to their needs and conditions and
9 not directly furnished by the licensee. When a geriatric
10 outpatient nurse clinic is conducted in accordance with rules
11 adopted by the agency, outpatients attending such clinic shall
12 not be counted as part of the general resident population of
13 the nursing home facility, nor shall the nursing staff of the
14 geriatric outpatient clinic be counted as part of the nursing
15 staff of the facility, until the outpatient clinic load
16 exceeds 15 a day.

17 (5) Provide for resident use of a community pharmacy
18 as specified in s. 400.022(1)(q). Any other law to the
19 contrary notwithstanding, a registered pharmacist licensed in
20 Florida may repackage a nursing facility resident's bulk
21 prescription medication that has been packaged by another
22 pharmacist licensed in any state in the United States into a
23 unit dose system compatible with the system used by the
24 nursing facility, if such resident has bulk prescription
25 medication benefits covered under a qualified pension plan as
26 specified in s. 4972 of the Internal Revenue Code, a federal
27 retirement program as specified under the Code of Federal
28 Regulations, 5 C.F.R. 831, or a long-term-care policy as
29 defined in s. 627.9404(1). A pharmacist who correctly
30 repackages and relabels the medication and the nursing
31 facility that correctly administers such repackaged medication

1 under the provisions of this subsection are not liable in any
2 civil or administrative action arising from the repackaging.
3 In order to be eligible for the repackaging, a nursing
4 facility resident for whom the medication is to be repackaged
5 must sign an informed-consent form provided by the facility
6 which includes an explanation of the repackaging process and
7 which notifies the resident of the immunity from liability.
8 (6)(4) Be allowed and encouraged by the agency to
9 provide other needed services under certain conditions. If the
10 facility has a standard licensure status, and has had no class
11 I or class II deficiencies during the past 2 years or has been
12 awarded a Gold Seal under the program established in s.
13 400.235, it may ~~is rated superior or standard,~~ be encouraged
14 by the agency to provide services, including, but not limited
15 to, respite and adult day services, which enable individuals
16 to move in and out of the facility. A facility is not subject
17 to any additional licensure requirements for providing these
18 services. Respite care may be offered to persons in need of
19 short-term or temporary nursing home services. Respite care
20 must be provided in accordance with this part and rules
21 adopted by the agency. However, the agency shall, by rule,
22 adopt modified requirements for resident assessment, resident
23 care plans, resident contracts, physician orders, and other
24 provisions, as appropriate, for short-term or temporary
25 nursing home services. The agency shall allow for shared
26 programming and staff in a facility which meets minimum
27 standards and offers services pursuant to this subsection,
28 but, if the facility is cited for deficiencies in patient
29 care, may require additional staff and programs appropriate to
30 the needs of service recipients. A person who receives respite
31 care may not be counted as a resident of the facility for

1 purposes of the facility's licensed capacity unless that
2 person receives 24-hour respite care. A person receiving
3 either respite care for 24 hours or longer or adult day
4 services must be included when calculating minimum staffing
5 for the facility. Any costs and revenues generated by a
6 nursing home facility from nonresidential programs or services
7 shall be excluded from the calculations of Medicaid per diems
8 for nursing home institutional care reimbursement.

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

18 (8)(6) Maintain the facility premises and equipment
19 and conduct its operations in a safe and sanitary manner.

20 (9)(7) If the licensee furnishes food service, provide
21 a wholesome and nourishing diet sufficient to meet generally
22 accepted standards of proper nutrition for its residents and
23 provide such therapeutic diets as may be prescribed by
24 attending physicians. In making rules to implement this
25 subsection, the agency shall be guided by standards
26 recommended by nationally recognized professional groups and
27 associations with knowledge of dietetics.

28 (10)(8) Keep full records of resident admissions and
29 discharges; medical and general health status, including
30 medical records, personal and social history, and identity and
31 address of next of kin or other persons who may have

1 responsibility for the affairs of the residents; and
2 individual resident care plans including, but not limited to,
3 prescribed services, service frequency and duration, and
4 service goals. The records shall be open to inspection by the
5 agency.

6 (11)~~(9)~~ Keep such fiscal records of its operations and
7 conditions as may be necessary to provide information pursuant
8 to this part.

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

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

27
28 A facility that has been awarded a Gold Seal under the
29 program established in s. 400.235 may develop a plan to
30 provide certified nursing assistant training as prescribed by
31

1 federal regulations and state rules and may apply to the
2 agency for approval of its program.

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

5 400.162 Property and personal affairs of residents.--

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

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

28 400.19 Right of entry and inspection.--

29 (1) The agency and any duly designated officer or
30 employee thereof or a member of the State Long-Term Care
31 Ombudsman Council or the district long-term care ombudsman

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

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

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

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

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

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

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

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

31

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

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

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

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

11 2. Whether such nursing home facilities are
12 proprietary or nonproprietary.

13 3. The licensure status of each facility.

14 4. The ownership history of each facility.

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

18 6. Performance, regulatory, and enforcement
19 information about the corporation as well as the facility.

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

21 8. The number of private and semiprivate rooms in each
22 facility.

23 9. The religious affiliation, if any, of each
24 facility.

25 10. The languages spoken by the administrator and
26 staff of each facility.

27 11. Whether or not each facility accepts Medicare or
28 Medicaid recipients.

29 12. Recreational and other programs available at each
30 facility.

31

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

6 14. Information about the licensure status and
7 regulatory history of each facility.

8 15. Special care units or programs offered at each
9 facility.

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

13 17. The results of consumer and family satisfaction
14 surveys for each facility.

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

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

25 (b) The agency shall provide the following information
26 in printed form:

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

29 2. Whether such nursing home facilities are
30 proprietary or nonproprietary and their current ownership.

31 3. The licensure status of each facility.

1 4. The total number of beds, and of private and
2 semiprivate rooms, in each facility.

3 5. The religious affiliation, if any, of each
4 facility.

5 6. The languages spoken by the administrator and staff
6 of each facility.

7 7. Whether or not each facility accepts Medicare or
8 Medicaid recipients.

9 8. Recreational programs, special care units, and
10 other programs available at each facility.

11 9. A summary of information from the Minimum Data Set
12 system of the federal Health Care Financing Administration
13 about the clinical performance of each facility.

14 10. Information about the licensure status and
15 regulatory history of each facility.

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

18 12. The Internet address for the site where more
19 detailed information can be seen.

20 13. A statement advising consumers that each facility
21 will have its own policies and procedures related to
22 protecting resident property.

23 ~~(3)(2)~~ Each nursing home facility licensee shall
24 maintain as public information, available upon request,
25 records of all cost and inspection reports pertaining to that
26 facility that have been filed with, or issued by, any
27 governmental agency. Copies of such reports shall be retained
28 in such records for not less than 5 years from the date the
29 reports are filed or issued.

30 ~~(4)(3)~~ Any records of a nursing home facility
31 determined by the agency to be necessary and essential to

1 establish lawful compliance with any rules or standards shall
2 be made available to the agency on the premises of the
3 facility.

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

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

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

22 Section 13. Subsections (2) and (4) of section
23 400.215, Florida Statutes, 1998 Supplement, are amended to
24 read:

25 400.215 Personnel screening requirement.--

26 (2) Employers and employees shall comply with the
27 requirements of s. 435.05.

28 (a) Notwithstanding the provisions of s. 435.05(1),
29 facilities must have in their possession evidence that level 1
30 screening has been completed before allowing an employee to
31 begin working with patients as provided in subsection (1). All

1 information necessary for conducting background screening
2 using level 1 standards as specified in s. 435.03(1) and for
3 conducting a search of the central abuse registry and tracking
4 system as specified in s. 435.03(3)(a) shall be submitted by
5 the nursing facility to the agency. Results of the background
6 screening and the abuse registry check shall be provided by
7 the agency to the requesting nursing facility. An applicant
8 who has been qualified under a level 1 criminal screening and
9 who, under penalty of perjury, attests to not having been
10 classified in the central abuse registry and tracking system
11 as a perpetrator in a confirmed report of abuse, neglect, or
12 exploitation may be allowed to work on a probationary status
13 in the nursing facility, under supervision, for a period not
14 to exceed 30 days, pending the results of an abuse registry
15 screening.

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

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

18 (c) The agency shall establish and maintain a database
19 of background screening information which shall include the
20 results of both level 1 and level 2 screening and central
21 abuse registry and tracking system checks. The Department of
22 Law Enforcement shall timely provide to the agency,
23 electronically, the results of each statewide screening for
24 incorporation into the database. The Department of Children
25 and Family Services shall provide the agency with electronic
26 access to the central abuse registry and tracking system. The
27 agency shall search the registry to identify any confirmed
28 report and shall access such report for incorporation into the
29 database. The agency shall, upon request from any facility,
30 agency, or program required by or authorized by law to screen
31 its employees or applicants, notify the administrator of the

1 facility, agency, or program of the qualifying or
2 disqualifying status of the employee or applicant named in the
3 request.

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

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

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

1 (b) As provided in s. 435.07, the Department of Health
2 may grant an exemption from disqualification to an employee or
3 prospective employee who is subject to this section and who
4 has received a professional license or certification from the
5 Department of Health.

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

12 Section 14. Section 400.23, Florida Statutes, 1998
13 Supplement, is amended to read:

14 400.23 Rules; ~~criteria; Nursing Home Advisory~~
15 ~~Committee; evaluation and~~ deficiencies; licensure status
16 ~~rating system; fee for review of plans.--~~

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

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

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

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

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

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

12 (e) A uniform accounting system.

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

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

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

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

27 (b) The agency shall adopt rules to allow properly
28 trained staff of a nursing facility, in addition to certified
29 nursing assistants and licensed nurses, to assist residents
30 with eating. The rules shall specify the minimum training
31 requirements and shall specify the physiological conditions or

1 disorders of residents which would necessitate that the eating
2 assistance be provided by nursing personnel of the facility.

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

8 (5)~~(4)~~ The agency, in collaboration with the Division
9 of Children's Medical Services ~~Program Office~~ of the
10 Department of Health ~~and Rehabilitative Services~~, must, no
11 later than December 31, 1993, adopt rules for minimum
12 standards of care for persons under 21 years of age who reside
13 in nursing home facilities. The rules must include a
14 methodology for reviewing a nursing home facility under ss.
15 408.031-408.045 which serves only persons under 21 years of
16 age.

17 (6)~~(5)~~ Prior to conducting a survey of the facility,
18 the survey team shall obtain a copy of the district nursing
19 ~~home and long-term care facility~~ ombudsman council report on
20 the facility. Problems noted in the report shall be
21 incorporated into and followed up through the agency's
22 inspection process. This procedure does not preclude the
23 district nursing home and long-term care facility ombudsman
24 council from requesting the agency to conduct a followup visit
25 to the facility.

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

30 ~~(a) One researcher from a university center on aging.~~
31

1 ~~(b) Two representatives from the Florida Health Care~~
2 ~~Association.~~

3 ~~(c) Two representatives from the Florida Association~~
4 ~~of Homes for the Aging.~~

5 ~~(d) One representative from the Department of Elderly~~
6 ~~Affairs.~~

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

10 ~~(f) One representative from the Florida American~~
11 ~~Medical Directors Association.~~

12 ~~(g) One representative from the Florida Association of~~
13 ~~Directors of Nursing Administrators.~~

14 ~~(h) One representative from the Agency for Health Care~~
15 ~~Administration.~~

16 ~~(i) One representative from the nursing home industry~~
17 ~~at large who owns or operates a licensed nursing home facility~~
18 ~~in the state and is not a member of any state nursing home~~
19 ~~association.~~

20
21 ~~At least one member shall be over 60 years of age.~~

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

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

31

1 ~~(b) Assist in developing surveyor guidelines and~~
2 ~~training to ensure the equitable application of the nursing~~
3 ~~home rating system.~~

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

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

8 ~~(e) Advise the agency of proposed changes in statutes~~
9 ~~and rules necessary to ensure adequate care and services and~~
10 ~~the promotion and protection of residents' rights in long-term~~
11 ~~care facilities.~~

12 ~~(7)(8)~~ The agency shall, at least every 15 months,
13 evaluate all nursing home facilities and make a determination
14 as to the degree of compliance by each licensee with the
15 established rules adopted under this part as a basis for
16 assigning a licensure status rating to that facility. The
17 agency shall base its evaluation on the most recent inspection
18 report, taking into consideration findings from other official
19 reports, surveys, interviews, investigations, and inspections.
20 The agency shall assign a licensure status of standard or
21 conditional ~~one of the following ratings~~ to each nursing home~~+~~
22 ~~standard, conditional, or superior.~~

23 (a) A standard licensure status rating means that a
24 facility has no class I or class II deficiencies, has
25 corrected all class III deficiencies within the time
26 established by the agency, and is in substantial compliance at
27 the time of the survey with criteria established under this
28 part, with rules adopted by the agency, and, if applicable,
29 with rules adopted under the Omnibus Budget Reconciliation Act
30 of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV
31

1 (Medicare, Medicaid, and Other Health-Related Programs),
2 Subtitle C (Nursing Home Reform), as amended.

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

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

- 30 1. ~~Nursing service.~~
31 2. ~~Dietary or nutritional services.~~

1 ~~3. Physical environment.~~
2 ~~4. Housekeeping and maintenance.~~
3 ~~5. Restorative therapies and self-help activities.~~
4 ~~6. Social services.~~
5 ~~7. Activities and recreational therapy.~~
6 ~~(d) In order to facilitate the development of special~~
7 ~~programs or facilitywide initiatives and promote creativity~~
8 ~~based on the needs and preferences of residents, the areas~~
9 ~~listed in paragraph (c) may be grouped or addressed~~
10 ~~individually by the licensee. However, a facility may not~~
11 ~~qualify for a superior rating if fewer than three programs or~~
12 ~~initiatives are developed to encompass the required areas.~~
13 ~~(c)(e)~~ In determining the rating and evaluating the
14 overall quality of care and services and determining whether
15 the facility will receive a conditional or standard license,
16 the agency shall consider the needs and limitations of
17 residents in the facility and the results of interviews and
18 surveys of a representative sampling of residents, families of
19 residents, ombudsman council members in the district in which
20 the facility is located, guardians of residents, and staff of
21 the nursing home facility.
22 ~~(d)(f)~~ The current licensure status rating of each
23 facility must be indicated in bold print on the face of the
24 license. A list of the deficiencies of the facility shall be
25 posted in a prominent place that is in clear and unobstructed
26 public view at or near the place where residents are being
27 admitted to that facility. Licensees receiving a conditional
28 licensure status rating for a facility shall prepare, within
29 10 working days after receiving notice of deficiencies, a plan
30 for correction of all deficiencies and shall submit the plan
31 to the agency for approval. Correction of all deficiencies,

1 within the period approved by the agency, shall result in
2 termination of the conditional licensure status rating.
3 Failure to correct the deficiencies within a reasonable period
4 approved by the agency shall be grounds for the imposition of
5 sanctions pursuant to this part.

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

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

16 1. Establish uniform procedures for the evaluation of
17 facilities.

18 2. Provide criteria in the areas referenced in
19 paragraph (c).

20 3. Address other areas necessary for carrying out the
21 intent of this section.

22 ~~(i) A license rated superior shall continue until it~~
23 ~~is replaced by a rating based on a later survey. A superior~~
24 ~~rating may be revoked at any time for failure to maintain~~
25 ~~substantial compliance with criteria established under this~~
26 ~~part, with rules adopted by the agency, or, if applicable,~~
27 ~~with rules adopted under the Omnibus Budget Reconciliation Act~~
28 ~~of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV~~
29 ~~(Medicare, Medicaid, and Other Health-Related Programs),~~
30 ~~Subtitle C (Nursing Home Reform), as amended, or for failure~~
31

1 ~~to exceed the criteria specified for any area as listed in~~
2 ~~paragraph (c).~~

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

9 (8)~~(9)~~ The agency shall adopt rules to provide that,
10 when the criteria established under subsection (2) are not
11 met, such deficiencies shall be classified according to the
12 nature of the deficiency. The agency shall indicate the
13 classification on the face of the notice of deficiencies as
14 follows:

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

27 (b) Class II deficiencies are those which the agency
28 determines have a direct or immediate relationship to the
29 health, safety, or security of the nursing home facility
30 residents, other than class I deficiencies. A class II
31 deficiency is subject to a civil penalty in an amount not less

1 than \$1,000 and not exceeding \$10,000~~\$5,000~~ for each and
2 every deficiency. A citation for a class II deficiency shall
3 specify the time within which the deficiency is required to be
4 corrected. If a class II deficiency is corrected within the
5 time specified, no civil penalty shall be imposed, unless it
6 is a repeated offense.

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

18 (9)~~(10)~~ Civil penalties paid by any licensee under
19 subsection (8)~~(9)~~ shall be deposited in the Health Care Trust
20 Fund and expended as provided in s. 400.063.

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

31

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

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

21 Section 15. Section 400.232, Florida Statutes, is
22 created to read:

23 400.232 Review and approval of plans; fees and
24 costs.--

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

1 specifications, it shall set forth in writing the reasons for
2 disapproval. Conferences and consultations may be provided as
3 necessary.

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

20 Section 16. Section 400.235, Florida Statutes, is
21 created to read:

22 400.235 Nursing home quality and licensure status;
23 Gold Seal Program.--

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

30 (2) The Legislature intends to develop an award and
31 recognition program for nursing facilities that demonstrate

1 excellence in long-term care over a sustained period. This
2 program shall be known as the Gold Seal Program.

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

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

1 at which the member is employed or involving any facility
2 under common ownership with the facility at which the member
3 is employed.

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

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

12 (a) Accidents.

13 (b) Behavioral/emotional patterns.

14 (c) Clinical management.

15 (d) Cognitive patterns.

16 (e) Elimination/continence.

17 (f) Infection control.

18 (g) Nutrition and eating.

19 (h) Physical functioning.

20 (i) Psychotropic drug use.

21 (j) Quality of life.

22 (k) Sensory functioning and communication.

23 (l) Skin care.

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

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

28 (b) Evidence financial soundness and stability
29 according to standards adopted by the agency in administrative
30 rule.

31

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

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

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

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

23 (g) Provide targeted inservice training to meet
24 training needs identified by internal or external quality
25 assurance efforts.

26 (h) Evidence superior levels of clinical outcomes as
27 measured in the Minimum Data Set system of the federal Health
28 Care Financing Administration. Facilities that are not
29 certified for Medicare or Medicaid are not required to
30 complete the Minimum Data Set in order to qualify for the Gold
31 Seal Program. Such facilities may demonstrate superior levels

1 of performance with an alternate assessment as approved by the
2 panel.

3
4 A facility assigned a conditional licensure status may not
5 qualify for consideration for the Gold Seal Program until
6 after it has operated for 30 months with no class I or class
7 II deficiencies and has completed a regularly scheduled
8 relicensure survey.

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

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

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

31

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

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

10 408.035 Review criteria.--

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

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

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

21 400.241 Prohibited acts; penalties for violations.--

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

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

29 468.1755 Disciplinary proceedings.--

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

1 (a) Violation of any provision of s. 455.624(1) or s.
2 468.1745(1).

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

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

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

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

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

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

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

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

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

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

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

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

1 The department shall be entitled to the summary procedure
2 provided in s. 51.011. A licensee affected under this
3 paragraph shall have the opportunity, at reasonable intervals,
4 to demonstrate that he or she can resume the competent
5 practice of nursing home administration with reasonable skill
6 and safety to patients.

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

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

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

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

23 Section 20. Paragraph (b) of subsection (1) of section
24 394.4625, Florida Statutes, is amended to read:

25 394.4625 Voluntary admissions.--

26 (1) AUTHORITY TO RECEIVE PATIENTS.--

27 (b) A mental health overlay program or a mobile crisis
28 response service or a licensed professional who is authorized
29 to initiate an involuntary examination pursuant to s. 394.463
30 and is employed by a community mental health center or clinic
31 must, pursuant to district procedure approved by the

1 respective district administrator, conduct an initial
2 assessment of the ability of the following persons to give
3 express and informed consent to treatment before such persons
4 may be admitted voluntarily:

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

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

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

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

17 400.063 Resident Protection Trust Fund.--

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

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

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

16 468.1695 Licensure by examination.--

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

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

30 468.1735 Provisional license.--The board may establish
31 by rule requirements for issuance of a provisional license. A

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

20 Section 24. Section 468.1756, Florida Statutes, 1998
21 Supplement, is amended to read:

22 468.1756 Statute of limitations.--An administrative
23 complaint may only be filed pursuant to s. 455.621 for an act
24 listed in s. 468.1755(1)(c)-(q)~~paragraphs (1)(c)-(p) of s.~~
25 ~~468.1755~~ within 4 years from the time of the incident giving
26 rise to the complaint, or within 4 years from the time the
27 incident is discovered or should have been discovered.

28 Section 25. Patient care targets.--The Legislature may
29 appropriate funds in any fiscal year to the Agency for Health
30 Care Administration in order to allow nursing facilities the
31 ability to recruit and retain qualified staff and to provide

1 appropriate care. The Agency for Health Care Administration
2 shall adjust target limitations in the patient-care component
3 of the per diem rate to allow these additional funds to be
4 reimbursed through the per diem rate.

5 Section 26. Panel on Medicaid reimbursement.--

6 (1) There is created a panel on Medicaid reimbursement
7 to study the state's Medicaid reimbursement plan for nursing
8 home facilities and to recommend changes to accomplish the
9 following goals:

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

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

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

19 (2) The panel shall be administratively attached to
20 and supported by the Agency for Health Care Administration and
21 shall be composed of the following members: the Director for
22 Medicaid of the Agency for Health Care Administration and two
23 agency staff persons competent in the technical and policy
24 aspects of Medicaid reimbursement; one representative from the
25 Governor's Office of Planning and Budgeting; one
26 representative from the Florida Association of Homes for the
27 Aging; one representative from the Florida Health Care
28 Association; one representative from the Department of Elderly
29 Affairs, and one consumer representative appointed by the
30 secretary of that department; and a consumer's advocate for
31 senior citizens and two persons with expertise in the field of

1 quality management, financing, or public sector
2 accountability, appointed by the Governor.

3 (3) The panel shall hold its first meeting by August
4 1, 1999, and shall report its preliminary findings and
5 recommendations to the Legislature no later than December 31,
6 1999, by submitting a copy of its report to the President of
7 the Senate, the Speaker of the House of Representatives, and
8 the majority and minority offices of each chamber. The panel
9 shall report its final findings and recommendations to those
10 persons and offices no later than December 8, 2000. The panel
11 shall cease to exist and its operation shall terminate on
12 January 1, 2001.

13 Section 27. Study of certified nursing assistant
14 training, employment, and retention.--The Department of
15 Elderly Affairs, in consultation with the nursing home
16 industry, consumer advocates, the Department of Health, the
17 Agency for Health Care Administration, the Department of Labor
18 and Employment Security, and the Department of Education,
19 shall conduct, or contract for, a study of the major factors
20 affecting the recruitment, training, employment, and retention
21 of qualified certified nursing assistants within the nursing
22 home industry. The Department of Elderly Affairs shall, by
23 January 15, 2000, provide to the Speaker of the House of
24 Representatives and the President of the Senate the results of
25 the study, along with recommendations to improve the quality
26 and availability of certified nursing assistants employed by
27 nursing facilities. The study shall include a one-time review
28 of the performance of certified nursing assistant training
29 programs and shall compare the types of training programs as
30 to admission criteria, program requirements, graduation rates,
31 job placement, and job retention in nursing homes relative to

1 job retention in other health care environments and other job
2 classifications for which certified nursing assistants may
3 qualify. The study shall identify factors likely to improve
4 the rates of employment and retention of certified nursing
5 assistants in nursing homes. The study shall also include an
6 assessment of the extent and impact of certified nursing
7 assistant shortages within the major regional job markets of
8 the state. The study shall include an assessment of the
9 following factors:

10 (1) The extent and characteristics of the shortage
11 within the various regions of the state.

12 (2) The causes of the shortage, including, but not
13 restricted to, salary and benefits, working conditions, career
14 development, and the availability of certified nursing
15 assistant training programs.

16 (3) The impact of labor shortages on the ability of
17 nursing homes to hire sufficient staff to meet both the
18 minimum staffing standards required by agency rule and the
19 facility-specific staffing standards based on the needs of
20 residents.

21 (4) The impact of the labor shortage on the increased
22 use of temporary nursing pool agencies by nursing homes; the
23 influences of this trend on the quality and cost of services
24 provided; and the benefits of additional regulation of such
25 nursing pool agencies in light of the shortage.

26 (5) Comparisons of the extent and effect of the
27 shortage of certified nursing assistants in Florida to the
28 experiences of other states and with respect to national
29 trends.

30 (6) The need for and feasibility of various measures
31 to enhance the image of certified nursing assistants,

1 including enhanced recruitment efforts directed towards
2 students at the junior high school and senior high school
3 levels, local education outreach, and job placement programs.

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

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

11 (9) The desirability of demonstration projects to test
12 innovative models and methods for the purpose of addressing
13 the need for more and better-qualified certified nursing
14 assistants in nursing homes.

15 Section 28. Section 400.29, Florida Statutes, is
16 repealed.

17 Section 29. Section 408.909, Florida Statutes, is
18 created to read:

19 408.909 Implementation of a teaching-nursing-home
20 pilot project.--

21 (1) As used in this section, the term "teaching
22 nursing home" means a nursing home facility licensed under
23 chapter 400 which contains a minimum of 400 licensed nursing
24 home beds; has access to a resident senior population of
25 sufficient size to support education, training, and research
26 relating to geriatric care; and has a contractual relationship
27 with a federally funded, accredited geriatric research center
28 in this state.

29 (2)(a) The Agency for Health Care Administration shall
30 implement a comprehensive multidisciplinary program of
31 geriatric education and research as a pilot project in a

1 nursing home facility designated by the agency as a teaching
2 nursing home. The program must be established as a pilot
3 project and must be administered at the nursing home facility
4 and other appropriate settings.

5 (b) The agency shall develop criteria for designating
6 teaching nursing homes in consultation with advocates of the
7 elderly, advocates of persons with disabilities,
8 representatives of the nursing home industry, and
9 representatives of the State University System.

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

12 (a) Provide a comprehensive program of integrated
13 senior services that include institutional services and
14 community-based services;

15 (b) Participate in a nationally recognized
16 accreditation program and hold a valid accreditation, such as
17 the accreditation awarded by the Joint Commission on
18 Accreditation of the Healthcare Organizations;

19 (c) Have been in business in this state for at least
20 10 consecutive years;

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

23 (e) Have a formalized contractual relationship with at
24 least one accredited health-profession education program
25 located in this state;

26 (f) Have a formalized contractual relationship with an
27 accredited hospital that is designated by law as a teaching
28 hospital; and

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

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

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

15 (6) In order for a nursing home to qualify as a
16 teaching nursing home under this section and to be entitled to
17 the benefits provided under this section, the nursing home
18 must:

19 (a) Be primarily operated and established to offer,
20 afford, and render a comprehensive multidisciplinary program
21 of geriatric education and research to residents of the state;
22 and

23 (b) Certify to the Agency for Health Care
24 Administration, each school year, the name, address, and
25 educational history of each trainee approved and accepted for
26 enrollment in the institution.

27 (7) A teaching nursing home may not spend any of the
28 funds received under this section for any purpose other than
29 operating and maintaining a teaching nursing home and
30 conducting geriatric research. In addition, a teaching nursing
31 home may not spend any funds received under this section for

1 constructing any building of any kind, nature, or description
2 or for maintaining or operating, in any form or manner, a
3 nursing home or health care facility.

4 Section 30. The sum of \$100,000 is appropriated from
5 the Health Care Trust Fund to the Department of Elderly
6 Affairs for Fiscal Year 1999-2000 to fund the responsibilities
7 of the Office of State Long-Term-Care Ombudsman and establish
8 a statewide toll-free telephone number pursuant to section
9 400.0078, Florida Statutes, as created by this act. Eighteen
10 positions and the sum of \$425,123 from recurring General
11 Revenue Funds, \$72,691 from nonrecurring General Revenue Funds
12 and \$882,484 from the Administrative Trust Fund is
13 appropriated to the Agency for Health Care Administration for
14 Fiscal Year 1999-2000 to implement the provisions of this act.
15 The sum of \$26,000 from the General Revenue Fund is
16 appropriated to the Executive Office of the Governor for
17 Fiscal Year 1999-2000 for the Governor's Panel on Excellence
18 in Long-Term Care.

19 Section 31. This act shall take effect July 1, 1999,
20 except that this section and section 13 shall take effect upon
21 becoming a law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 0834 & 1140 & 1612

- 4 Removes the provision that a facility may not cite a lack of
5 Medicaid-certified beds as a reason for a transfer or
6 discharge of a resident if the facility's current Medicaid
7 census is less than the percentage of Medicaid compliance
8 specified in its certificate of need. Also removes language
9 that allowed a facility to transfer or discharge a resident
10 when that facility does not have Medicaid conditions on its
11 certificate of need.
- 12 Corrects a conforming reference, s. 400.0255(11), relating to
13 voluntary admission of mental health patients to treatment.
- 14 Removes the appropriation of \$41,697,600 to the Agency for
15 Health Care Administration and inserts language that specifies
16 that the Legislature may appropriate funds in any fiscal year
17 to the Agency for Health Care Administration to adjust target
18 limitations in the patient care component of the per diem to
19 allow nursing facilities the ability to recruit and retain
20 qualified staff.
- 21 Removes the provision that required nursing homes to annually
22 immunize its residents and employees against influenzae and
23 pneumococcal diseases.
- 24 Removes the provision that required the Department of Elderly
25 Affairs to contract with other qualified providers, in
26 addition to managed care organizations, to provide long-term
27 care within the community diversion pilot project areas.
- 28 Provides an appropriation of 18 positions and \$425,123 from
29 recurring General Revenue Funds, \$72,691 from non-recurring
30 General Revenue Funds and \$882,484 from the Administrative
31 Trust Fund to the Agency for Health Care Administration; and
provides \$26,000 in General Revenue Funds to the Executive
Office of the Governor for the Governor's Panel on Excellence
in Long-Term Care.