

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; amending s.
30 430.502, F.S.; establishing an additional
31 Alzheimer's disease memory disorder clinic;

1 providing an appropriation; requiring the act
2 to comply with ss. 112.3189, 48.102, F.S.;
3 providing effective dates.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Section 400.0078, Florida Statutes, is
8 created to read:

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

13 Section 2. Paragraph (c) of subsection (1) of section
14 400.022, Florida Statutes, is amended to read:

15 400.022 Residents' rights.--

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

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

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

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

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

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

14 Section 3. Section 400.0225, Florida Statutes, is
15 created to read:

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

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

11 Section 4. Section 400.0231, Florida Statutes, is
12 renumbered as section 400.1415, Florida Statutes.

13 Section 5. Section 400.0255, Florida Statutes, is
14 amended to read:

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

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

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

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

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

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

31

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

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

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

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

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

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

1 (a) The transfer or discharge is necessary for the
2 resident's welfare and the resident's needs cannot be met in
3 the facility, and the circumstances are documented in the
4 resident's medical records by the resident's physician; or

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

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

1 to the resident's legal guardian or representative and to the
2 ~~local~~ district ombudsman council.

3 (9) A resident may request that the district ombudsman
4 council review any notice of discharge or transfer given to
5 the resident. When requested by a resident to review a notice
6 of discharge or transfer, the district ombudsman council shall
7 do so within 7 days after receipt of the request. The nursing
8 home administrator, or the administrator's designee, must
9 forward the request for review contained in the notice to the
10 district ombudsman council within 24 hours after such request
11 is submitted. Failure to forward the request within 24 hours
12 after the request is submitted shall toll the running of the
13 30-day advance notice period until the request has been
14 forwarded.

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

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

28 (c) If the resident fails to request a hearing within
29 10 days after ~~of~~ receipt of the facility notice of the
30 proposed discharge or transfer, the facility may transfer or
31

1 discharge the resident after 30 days from the date the
2 resident received the notice.

3 (11)(6) Notwithstanding paragraph (10)(b)(5)(b), an
4 emergency discharge or transfer may be implemented as
5 necessary pursuant to state or federal law during the period
6 of time after the notice is given and before the time a
7 hearing decision is rendered. Notice of an emergency discharge
8 or transfer to the resident, the resident's legal guardian or
9 representative, and the district ombudsman council if
10 requested pursuant to subsection (9) must be by telephone or
11 in person. This notice shall be given before the transfer, if
12 possible, or as soon thereafter as practicable. A district
13 ombudsman council conducting a review under this subsection
14 shall do so within 24 hours after receipt of the request. The
15 resident's file must be documented to show who was contacted,
16 whether the contact was by telephone or in person, and the
17 date and time of the contact. If the notice is not given in
18 writing, written notice meeting the requirements of subsection
19 (8)(4) must be given the next working day.

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

29 (13)(7) The following persons must be present at all
30 hearings ~~proceedings~~ authorized under this section:
31

1 (a) The resident, or the resident's legal
2 representative or designee.

3 (b) The facility administrator, or the facility's
4 legal representative or designee.

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

9 (14)~~(8)~~ In any hearing ~~proceeding~~ under this section,
10 the following information concerning the parties shall be
11 confidential and exempt from the provisions of s. 119.07(1):

12 (a) Names and addresses.

13 (b) Medical services provided.

14 (c) Social and economic conditions or circumstances.

15 (d) Evaluation of personal information.

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

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

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

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31

1 ~~(15)(9)~~(a) The department's Office of Appeals Hearings
2 shall conduct hearings under this section. The office shall
3 notify the facility of a resident's request for a hearing.

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

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

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

20 ~~(16)(12)~~ The department may adopt rules necessary to
21 administer ~~implement the provisions of~~ this section.

22 Section 6. Paragraph (g) is added to subsection (2) of
23 section 400.071, Florida Statutes, 1998 Supplement, present
24 subsections (8) and (9) are amended and renumbered as
25 subsections (9) and (10), respectively, and a new subsection
26 (8) is added to that section, to read:

27 400.071 Application for license.--

28 (2) The application shall be under oath and shall
29 contain the following:

30 (g) Copies of any civil verdict or judgment involving
31 the applicant rendered within the 10 years preceding the

1 application, relating to medical negligence, violation of
2 residents' rights, or wrongful death. As a condition of
3 licensure, the licensee agrees to provide to the agency copies
4 of any new verdict or judgment involving the applicant,
5 relating to such matters, within 30 days after filing with the
6 clerk of the court. The information required in this
7 paragraph shall be maintained in the facility's licensure file
8 and in an agency database that is available as a public
9 record.

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

13 (9)(8) The agency may not issue a license to a nursing
14 home that fails to receive a certificate of need under the
15 provisions of ss. 408.031-408.045. It is the intent of the
16 Legislature that, in reviewing a certificate-of-need
17 application to add beds to an existing nursing home facility,
18 preference be given to the application of a licensee who has
19 been awarded a Gold Seal as provided for in s. 400.235, if the
20 applicant otherwise meets the review criteria specified in s.
21 408.035.

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

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

31

1 400.118 Quality assurance; early warning system;
2 monitoring; rapid response teams.--

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

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

1 long-term care ombudsman council or human rights advocacy
2 committee.

3 (b) Findings of a monitoring visit, both positive and
4 negative, shall be provided orally and in writing to the
5 facility administrator or, in the absence of the facility
6 administrator, to the administrator on duty or the director of
7 nursing. The quality-of-care monitor may recommend to the
8 facility administrator procedural and policy changes and staff
9 training, as needed, to improve the care or quality of life of
10 facility residents. Conditions observed by the quality-of-care
11 monitor which threaten the health or safety of a resident
12 shall be reported immediately to the agency area office
13 supervisor for appropriate regulatory action and, as
14 appropriate or as required by law, to law enforcement, adult
15 protective services, or other responsible agencies.

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

1 testifying as to matters within his or her knowledge, but such
2 witness may not be asked about his or her participation in
3 such activities. The exclusion from the discovery or
4 introduction of evidence in any civil or administrative action
5 provided for herein shall not apply when the quality-of-care
6 monitor makes a report to the appropriate authorities
7 regarding a threat to the health or safety of a resident.

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

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

17 400.121 Denial, suspension, revocation of license;
18 moratorium on admissions; administrative fines; procedure.--

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

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

1 400.141 Administration and management of nursing home
2 facilities.--Every licensed facility shall comply with all
3 applicable standards and rules of the agency and shall:

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

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

10 ~~(3)(2)~~ Have available the regular, consultative, and
11 emergency services of physicians licensed by the state.

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

24 (5) Provide for resident use of a community pharmacy
25 as specified in s. 400.022(1)(q). Any other law to the
26 contrary notwithstanding, a registered pharmacist licensed in
27 Florida may repackage a nursing facility resident's bulk
28 prescription medication that has been packaged by another
29 pharmacist licensed in any state in the United States into a
30 unit dose system compatible with the system used by the
31 nursing facility, if such resident has bulk prescription

1 medication benefits covered under a qualified pension plan as
2 specified in s. 4972 of the Internal Revenue Code, a federal
3 retirement program as specified under the Code of Federal
4 Regulations, 5 C.F.R. 831, or a long-term-care policy as
5 defined in s. 627.9404(1). A pharmacist who repackages and
6 relabels prescription medication, as authorized under this
7 subsection, may charge a reasonable fee for costs resulting
8 from the implementation of this provision. A pharmacist who
9 correctly repackages and relabels the medication and the
10 nursing facility that correctly administers such repackaged
11 medication under the provisions of this subsection are not
12 liable in any civil or administrative action arising from the
13 repackaging. In order to be eligible for the repackaging, a
14 nursing facility resident for whom the medication is to be
15 repackaged must sign an informed-consent form provided by the
16 facility which includes an explanation of the repackaging
17 process and which notifies the resident of the immunity from
18 liability.

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

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

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

29 (8)(6) Maintain the facility premises and equipment
30 and conduct its operations in a safe and sanitary manner.

31

1 (9)~~(7)~~ If the licensee furnishes food service, provide
2 a wholesome and nourishing diet sufficient to meet generally
3 accepted standards of proper nutrition for its residents and
4 provide such therapeutic diets as may be prescribed by
5 attending physicians. In making rules to implement this
6 subsection, the agency shall be guided by standards
7 recommended by nationally recognized professional groups and
8 associations with knowledge of dietetics.

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

18 (11)~~(9)~~ Keep such fiscal records of its operations and
19 conditions as may be necessary to provide information pursuant
20 to this part.

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

31

1 (13) Publicly display a poster provided by the agency
2 containing the names, addresses, and telephone numbers for the
3 state's abuse hotline, the State Long-Term Care Ombudsman, the
4 Agency for Health Care Administration consumer hotline, the
5 Advocacy Center for Persons with Disabilities, the Statewide
6 Human Rights Advocacy Committee, and the Medicaid Fraud
7 Control Unit, with a clear description of the assistance to be
8 expected from each.

9
10 A facility that has been awarded a Gold Seal under the
11 program established in s. 400.235 may develop a plan to
12 provide certified nursing assistant training as prescribed by
13 federal regulations and state rules and may apply to the
14 agency for approval of its program.

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

17 400.162 Property and personal affairs of residents.--

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

1 provided to every employee and to each resident at admission.
2 Facility policies must include provisions related to reporting
3 theft or loss of a resident's property to law enforcement and
4 any facility waiver of liability for loss or theft. The
5 facility shall post notice of these policies and procedures,
6 and any revision thereof, in places accessible to residents.

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

9 400.19 Right of entry and inspection.--

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

1 connection with the application; to discover, investigate, and
2 determine the existence of abuse or neglect; or to elicit,
3 receive, respond to, and resolve complaints. The agency shall,
4 within 60 days after receipt of a complaint made by a resident
5 or the resident's representative, complete its investigation
6 and provide to the complainant its findings and resolution.

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

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

26 400.191 Availability, distribution, and posting of
27 reports and records.--

28 (1) The agency shall provide information to the public
29 about all of the licensed nursing home facilities operating in
30 the state.The agency shall, within 60 days after ~~from the~~
31 ~~date of~~ an annual inspection visit or within 30 days after

1 ~~from the date of~~ any interim visit to a facility, send copies
2 of the inspection reports to the district long-term care
3 ombudsman council, the agency's local office, and a public
4 library or the county seat for the county in which the
5 facility is located., ~~forward the results of all inspections~~
6 ~~of nursing home facilities to:~~

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

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

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

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

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

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

22 2. Whether such nursing home facilities are
23 proprietary or nonproprietary.

24 3. The licensure status of each facility.

25 4. The ownership history of each facility.

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

29 6. Performance, regulatory, and enforcement
30 information about the corporation as well as the facility.

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

- 1 8. The number of private and semiprivate rooms in each
2 facility.
- 3 9. The religious affiliation, if any, of each
4 facility.
- 5 10. The languages spoken by the administrator and
6 staff of each facility.
- 7 11. Whether or not each facility accepts Medicare or
8 Medicaid recipients.
- 9 12. Recreational and other programs available at each
10 facility.
- 11 13. For nursing homes certified for Medicare or
12 Medicaid, information from the Minimum Data Set system of the
13 federal Health Care Financing Administration about the
14 clinical performance of each facility, including information
15 related to the nursing home quality indicators.
- 16 14. Information about the licensure status and
17 regulatory history of each facility.
- 18 15. Special care units or programs offered at each
19 facility.
- 20 16. Whether the facility is a part of a retirement
21 community that offers other services pursuant to part III,
22 part IV, or part V.
- 23 17. The results of consumer and family satisfaction
24 surveys for each facility.
- 25 18. The licensure status and rating history for the
26 past 5 years for each facility.
- 27 19. Survey and deficiency information contained on the
28 Online Survey Certification and Reporting (OSCAR) system of
29 the federal Health Care Financing Administration, including
30 annual survey, revisit, and complaint survey information, for
31 each facility for the past 3 years. For noncertified nursing

1 homes, state survey and deficiency information, including
2 annual survey, revisit, and complaint survey information for
3 the past 3 years, shall be provided.

4 (b) The agency shall provide the following information
5 in printed form:

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

8 2. Whether such nursing home facilities are
9 proprietary or nonproprietary and their current ownership.

10 3. The licensure status of each facility.

11 4. The total number of beds, and of private and
12 semiprivate rooms, in each facility.

13 5. The religious affiliation, if any, of each
14 facility.

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

17 7. Whether or not each facility accepts Medicare or
18 Medicaid recipients.

19 8. Recreational programs, special care units, and
20 other programs available at each facility.

21 9. A summary of information from the Minimum Data Set
22 system of the federal Health Care Financing Administration
23 about the clinical performance of each facility.

24 10. Information about the licensure status and
25 regulatory history of each facility.

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

28 12. The Internet address for the site where more
29 detailed information can be seen.

30
31

1 13. A statement advising consumers that each facility
2 will have its own policies and procedures related to
3 protecting resident property.

4 ~~(3)(2)~~ Each nursing home facility licensee shall
5 maintain as public information, available upon request,
6 records of all cost and inspection reports pertaining to that
7 facility that have been filed with, or issued by, any
8 governmental agency. Copies of such reports shall be retained
9 in such records for not less than 5 years from the date the
10 reports are filed or issued.

11 ~~(4)(3)~~ Any records of a nursing home facility
12 determined by the agency to be necessary and essential to
13 establish lawful compliance with any rules or standards shall
14 be made available to the agency on the premises of the
15 facility.

16 ~~(5)(4)~~ Every nursing home facility licensee shall:

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

26 (b) Upon request, provide to any person who has
27 completed a written application with an intent to be admitted
28 to, or to any resident of, such nursing home, or to any
29 relative, spouse, or guardian of such person, a copy of the
30 last inspection report pertaining to the nursing home and
31 issued by the agency, provided the person requesting the

1 report agrees to pay a reasonable charge to cover copying
2 costs.

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

6 400.215 Personnel screening requirement.--

7 (2) Employers and employees shall comply with the
8 requirements of s. 435.05.

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

28 (b) Employees qualified under the provisions of
29 paragraph (a) who have not maintained continuous residency
30 within the state for the 5 years immediately preceding the
31 date of request for background screening must complete level 2

1 screening, as provided in chapter 435. Such employees may work
2 in a conditional status up to 180 days pending the receipt of
3 written findings evidencing the completion of level 2
4 screening. Level 2 screening shall not be required of
5 employees or prospective employees who attest in writing under
6 penalty of perjury that they meet the residency requirement.
7 Completion of level 2 screening shall require the employee or
8 prospective employee to furnish to the nursing facility a full
9 set of fingerprints to enable a criminal background
10 investigation to be conducted. The nursing facility shall
11 submit the completed fingerprint card to the agency. The
12 agency shall establish a record of the request in the database
13 provided for in paragraph (c) and forward the request to the
14 Department of Law Enforcement, which is authorized to submit
15 the fingerprints to the Federal Bureau of Investigation for a
16 national criminal history records check. The results of the
17 national criminal history records check shall be returned to
18 the agency, which shall maintain the results in the database
19 provided for in paragraph (c). The agency shall notify the
20 administrator of the requesting nursing facility or the
21 administrator of any other facility licensed under chapter
22 393, chapter 394, chapter 395, chapter 397, or this chapter,
23 as requested by such facility, as to whether or not the
24 employee has qualified under level 1 or level 2 screening. An
25 employee or prospective employee who has qualified under level
26 2 screening and has maintained such continuous residency
27 within the state shall not be required to complete a
28 subsequent level 2 screening as a condition of employment at
29 another facility.

30 (c) The agency shall establish and maintain a database
31 of background screening information which shall include the

1 results of both level 1 and level 2 screening and central
2 abuse registry and tracking system checks. The Department of
3 Law Enforcement shall timely provide to the agency,
4 electronically, the results of each statewide screening for
5 incorporation into the database. The Department of Children
6 and Family Services shall provide the agency with electronic
7 access to the central abuse registry and tracking system. The
8 agency shall search the registry to identify any confirmed
9 report and shall access such report for incorporation into the
10 database. The agency shall, upon request from any facility,
11 agency, or program required by or authorized by law to screen
12 its employees or applicants, notify the administrator of the
13 facility, agency, or program of the qualifying or
14 disqualifying status of the employee or applicant named in the
15 request.

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

18 (e) Notwithstanding the confidentiality provisions of
19 s. 415.107, the agency shall provide, by August 15, 1999, a
20 direct-access electronic-screening capability to all enrolled
21 facilities or agencies required by law to restrict employment
22 to only those applicants who do not have a disqualifying
23 report in the central abuse registry and tracking system. The
24 agency shall, upon request, provide to such facility or agency
25 a user code by which the facility or agency may query the
26 listing of all persons disqualified because of a confirmed
27 classification. The direct-access screening system must allow
28 for the electronic matching of an applicant's identifying
29 information, including name, date of birth, race, sex, and
30 social security number, against the listing of disqualified
31 persons. The agency may charge a fee for issuing the user code

1 which is sufficient to cover the cost of establishing and
2 maintaining the direct-access screening system. The
3 direct-access screening system must provide the user with
4 immediate electronic notification of applicant clearance or
5 disqualification only. The system must also maintain, for
6 appropriate entry into the agency screening database, an
7 electronic record of the inquiry on behalf of the applicant.

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

13 (b) As provided in s. 435.07, the Department of Health
14 may grant an exemption from disqualification to an employee or
15 prospective employee who is subject to this section and who
16 has received a professional license or certification from the
17 Department of Health.

18 (c) An applicant requesting exemption from
19 disqualification as specified in paragraphs (a) and (b) shall
20 be notified by the agency or the department, as appropriate,
21 of a decision to approve or deny the request within 30 days
22 after the date the agency or department receives all required
23 documentation.

24 Section 14. Section 400.23, Florida Statutes, 1998
25 Supplement, is amended to read:

26 400.23 Rules; ~~criteria; Nursing Home Advisory~~
27 ~~Committee; evaluation and~~ deficiencies; licensure status
28 ~~rating system; fee for review of plans.--~~

29 (1) It is the intent of the Legislature that rules
30 published and enforced pursuant to this part shall include
31 criteria by which a reasonable and consistent quality of

1 resident care may be ensured and the results of such resident
2 care can be demonstrated and by which safe and sanitary
3 nursing homes can be provided. It is further intended that
4 reasonable efforts be made to accommodate the needs and
5 preferences of residents to enhance the quality of life in a
6 nursing home. In addition, efforts shall be made to minimize
7 the paperwork associated with the reporting and documentation
8 requirements of these rules.

9 (2) Pursuant to the intention of the Legislature, the
10 agency, in consultation with the Department of Health ~~and~~
11 ~~Rehabilitative Services~~ and the Department of Elderly Affairs,
12 shall adopt and enforce rules to implement this part, which
13 shall include reasonable and fair criteria in relation to:

14 (a) The location and construction of the facility;
15 including fire and life safety, plumbing, heating, lighting,
16 ventilation, and other housing conditions which will ensure
17 the health, safety, and comfort of residents, including an
18 adequate call system. The agency shall establish standards
19 for facilities and equipment to increase the extent to which
20 new facilities and a new wing or floor added to an existing
21 facility after July 1, 1999, are structurally capable of
22 serving as shelters only for residents, staff, and families of
23 residents and staff, and equipped to be self-supporting during
24 and immediately following disasters. The agency ~~for Health~~
25 ~~Care Administration~~ shall work with facilities licensed under
26 this part and report to the Governor and Legislature by April
27 1, 1999, its recommendations for cost-effective renovation
28 standards to be applied to existing facilities. In making such
29 rules, the agency shall be guided by criteria recommended by
30 nationally recognized reputable professional groups and
31 associations with knowledge of such subject matters. The

1 agency shall update or revise such criteria as the need
2 arises. All nursing homes must comply with those lifesafety
3 code requirements and building code standards applicable at
4 the time of approval of their construction plans. The agency
5 may require alterations to a building if it determines that an
6 existing condition constitutes a distinct hazard to life,
7 health, or safety. The agency shall adopt fair and reasonable
8 rules setting forth conditions under which existing facilities
9 undergoing additions, alterations, conversions, renovations,
10 or repairs shall be required to comply with the most recent
11 updated or revised standards.

12 (b) The number and qualifications of all personnel,
13 including management, medical, nursing, and other professional
14 personnel, and nursing assistants, orderlies, and support
15 personnel, having responsibility for any part of the care
16 given residents.

17 (c) All sanitary conditions within the facility and
18 its surroundings, including water supply, sewage disposal,
19 food handling, and general hygiene which will ensure the
20 health and comfort of residents.

21 (d) The equipment essential to the health and welfare
22 of the residents.

23 (e) A uniform accounting system.

24 (f) The care, treatment, and maintenance of residents
25 and measurement of the quality and adequacy thereof, based on
26 rules developed under this chapter and the Omnibus Budget
27 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
28 1987), Title IV (Medicare, Medicaid, and Other Health-Related
29 Programs), Subtitle C (Nursing Home Reform), as amended.

30 (g) The preparation and annual update of a
31 comprehensive emergency management plan. The agency shall

1 adopt rules establishing minimum criteria for the plan after
2 consultation with the Department of Community Affairs. At a
3 minimum, the rules must provide for plan components that
4 address emergency evacuation transportation; adequate
5 sheltering arrangements; postdisaster activities, including
6 emergency power, food, and water; postdisaster transportation;
7 supplies; staffing; emergency equipment; individual
8 identification of residents and transfer of records; and
9 responding to family inquiries. The comprehensive emergency
10 management plan is subject to review and approval by the local
11 emergency management agency. During its review, the local
12 emergency management agency shall ensure that the following
13 agencies, at a minimum, are given the opportunity to review
14 the plan: the Department of Elderly Affairs, the Department
15 of Health ~~and Rehabilitative Services~~, the Agency for Health
16 Care Administration, and the Department of Community Affairs.
17 Also, appropriate volunteer organizations must be given the
18 opportunity to review the plan. The local emergency
19 management agency shall complete its review within 60 days and
20 either approve the plan or advise the facility of necessary
21 revisions.

22 (3)(a) The agency shall adopt rules providing for the
23 minimum staffing requirements for nursing homes. These
24 requirements shall include, for each nursing home facility, a
25 minimum certified nursing assistant staffing and a minimum
26 licensed nursing staffing per resident per day, including
27 evening and night shifts and weekends. Agency rules shall
28 specify requirements for documentation of compliance with
29 staffing standards, sanctions for violation of such standards,
30 and requirements for daily posting of the names of staff on
31 duty for the benefit of facility residents and the public. The

1 agency shall recognize the use of licensed nurses for
2 compliance with minimum staffing requirements for certified
3 nursing assistants, provided that the facility otherwise meets
4 the minimum staffing requirements for licensed nurses and that
5 the licensed nurses so recognized are performing the duties of
6 a certified nursing assistant.

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

14 (4)(3) Rules developed pursuant to this section shall
15 not restrict the use of shared staffing and shared programming
16 in facilities which are part of retirement communities that
17 provide multiple levels of care and otherwise meet the
18 requirement of law or rule.

19 (5)(4) The agency, in collaboration with the Division
20 of Children's Medical Services Program Office of the
21 Department of Health ~~and Rehabilitative Services~~, must, no
22 later than December 31, 1993, adopt rules for minimum
23 standards of care for persons under 21 years of age who reside
24 in nursing home facilities. The rules must include a
25 methodology for reviewing a nursing home facility under ss.
26 408.031-408.045 which serves only persons under 21 years of
27 age.

28 (6)(5) Prior to conducting a survey of the facility,
29 the survey team shall obtain a copy of the district ~~nursing~~
30 ~~home and long-term care facility~~ ombudsman council report on
31 the facility. Problems noted in the report shall be

1 incorporated into and followed up through the agency's
2 inspection process. This procedure does not preclude the
3 district nursing home and long-term care facility ombudsman
4 council from requesting the agency to conduct a followup visit
5 to the facility.

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

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

11 ~~(b) Two representatives from the Florida Health Care~~
12 ~~Association.~~

13 ~~(c) Two representatives from the Florida Association~~
14 ~~of Homes for the Aging.~~

15 ~~(d) One representative from the Department of Elderly~~
16 ~~Affairs.~~

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

20 ~~(f) One representative from the Florida American~~
21 ~~Medical Directors Association.~~

22 ~~(g) One representative from the Florida Association of~~
23 ~~Directors of Nursing Administrators.~~

24 ~~(h) One representative from the Agency for Health Care~~
25 ~~Administration.~~

26 ~~(i) One representative from the nursing home industry~~
27 ~~at large who owns or operates a licensed nursing home facility~~
28 ~~in the state and is not a member of any state nursing home~~
29 ~~association.~~

30
31 ~~At least one member shall be over 60 years of age.~~

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

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

10 ~~(b) Assist in developing surveyor guidelines and~~
11 ~~training to ensure the equitable application of the nursing~~
12 ~~home rating system.~~

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

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

17 ~~(e) Advise the agency of proposed changes in statutes~~
18 ~~and rules necessary to ensure adequate care and services and~~
19 ~~the promotion and protection of residents' rights in long-term~~
20 ~~care facilities.~~

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

1 (a) A standard licensure status rating means that a
2 facility has no class I or class II deficiencies, has
3 corrected all class III deficiencies within the time
4 established by the agency, and is in substantial compliance at
5 the time of the survey with criteria established under this
6 part, with rules adopted by the agency, and, if applicable,
7 with rules adopted under the Omnibus Budget Reconciliation Act
8 of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV
9 (Medicare, Medicaid, and Other Health-Related Programs),
10 Subtitle C (Nursing Home Reform), as amended.

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

27 ~~(c) A superior rating means that a facility has no~~
28 ~~class I or class II deficiencies and has corrected all class~~
29 ~~III deficiencies within the time established by the agency and~~
30 ~~is in substantial compliance with the criteria established~~
31 ~~under this part and the rules adopted by the agency and, if~~

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

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

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

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

30 ~~(d)(f)~~ The current licensure status ~~rating~~ of each
31 facility must be indicated in bold print on the face of the

1 license. A list of the deficiencies of the facility shall be
2 posted in a prominent place that is in clear and unobstructed
3 public view at or near the place where residents are being
4 admitted to that facility. Licensees receiving a conditional
5 licensure status ~~rating~~ for a facility shall prepare, within
6 10 working days after receiving notice of deficiencies, a plan
7 for correction of all deficiencies and shall submit the plan
8 to the agency for approval. Correction of all deficiencies,
9 within the period approved by the agency, shall result in
10 termination of the conditional licensure status ~~rating~~.
11 Failure to correct the deficiencies within a reasonable period
12 approved by the agency shall be grounds for the imposition of
13 sanctions pursuant to this part.

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

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

- 24 1. Establish uniform procedures for the evaluation of
25 facilities.
- 26 2. Provide criteria in the areas referenced in
27 paragraph (c).
- 28 3. Address other areas necessary for carrying out the
29 intent of this section.

30 ~~(i) A license rated superior shall continue until it
31 is replaced by a rating based on a later survey. A superior~~

1 ~~rating may be revoked at any time for failure to maintain~~
2 ~~substantial compliance with criteria established under this~~
3 ~~part, with rules adopted by the agency, or, if applicable,~~
4 ~~with rules adopted under the Omnibus Budget Reconciliation Act~~
5 ~~of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV~~
6 ~~(Medicare, Medicaid, and Other Health-Related Programs),~~
7 ~~Subtitle C (Nursing Home Reform), as amended, or for failure~~
8 ~~to exceed the criteria specified for any area as listed in~~
9 ~~paragraph (c).~~

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

16 ~~(8)(9)~~ The agency shall adopt rules to provide that,
17 when the criteria established under subsection (2) are not
18 met, such deficiencies shall be classified according to the
19 nature of the deficiency. The agency shall indicate the
20 classification on the face of the notice of deficiencies as
21 follows:

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

1 every deficiency. A fine may be levied notwithstanding the
2 correction of the deficiency.

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

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

25 (9)~~(10)~~ Civil penalties paid by any licensee under
26 subsection (8)~~(9)~~ shall be deposited in the Health Care Trust
27 Fund and expended as provided in s. 400.063.

28 ~~(11) The agency shall approve or disapprove the plans
29 and specifications within 60 days after receipt of the final
30 plans and specifications. The agency may be granted one
31 15-day extension for the review period, if the director of the~~

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

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

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

27 Section 15. Section 400.232, Florida Statutes, is
28 created to read:

29 400.232 Review and approval of plans; fees and
30 costs.--

31

1 (1) The agency shall approve or disapprove the plans
2 and specifications within 60 days after receipt of the final
3 plans and specifications. The agency may be granted one
4 15-day extension for the review period, if the director of the
5 agency so approves. If the agency fails to act within the
6 specified time, it shall be deemed to have approved the plans
7 and specifications. When the agency disapproves plans and
8 specifications, it shall set forth in writing the reasons for
9 disapproval. Conferences and consultations may be provided as
10 necessary.

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

28 Section 16. Section 400.235, Florida Statutes, is
29 created to read:

30 400.235 Nursing home quality and licensure status;
31 Gold Seal Program.--

1 (1) To protect the health and welfare of persons
2 receiving care in nursing facilities, it is the intent of the
3 Legislature to develop a regulatory framework that promotes
4 the stability of the industry and facilitates the physical,
5 social, and emotional well-being of nursing facility
6 residents.

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

11 (3)(a) The Gold Seal Program shall be developed and
12 implemented by the Governor's Panel on Excellence in Long-Term
13 Care, which shall operate under the authority of the Executive
14 Office of the Governor. The panel shall be composed of three
15 persons appointed by the Governor, to include a consumer
16 advocate for senior citizens and two persons with expertise in
17 the fields of quality management, service-delivery excellence,
18 or public-sector accountability; three persons appointed by
19 the Secretary of the Department of Elderly Affairs, to include
20 an active member of a nursing facility family and resident
21 care council and a member of the University Consortium on
22 Aging; the State Long-Term Care Ombudsman; one person
23 appointed by the Florida Life Care Residents Association; one
24 person appointed by the Secretary of the Department of Health;
25 two persons appointed by the director of the Agency for Health
26 Care Administration, to include the director of health
27 purchasing; one person appointed by the Florida Association of
28 Homes for the Aging; and one person appointed by the Florida
29 Health Care Association. All members of the panel shall be
30 appointed by October 1, 1999, and the panel shall hold its
31 organizational meeting by December 10, 1999. Vacancies on the

1 panel shall be filled in the same manner as the original
2 appointments. A member may not serve for more than 4
3 consecutive years after the date of appointment.

4 (b) Members of the Governor's Panel on Excellence in
5 Long-Term Care may not have any ownership interest in a
6 nursing facility. Any member of the panel who is employed by a
7 nursing facility in any capacity may not participate in
8 reviewing or voting on recommendations involving the facility
9 at which the member is employed or involving any facility
10 under common ownership with the facility at which the member
11 is employed.

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

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

20 (a) Accidents.

21 (b) Behavioral/emotional patterns.

22 (c) Clinical management.

23 (d) Cognitive patterns.

24 (e) Elimination/continence.

25 (f) Infection control.

26 (g) Nutrition and eating.

27 (h) Physical functioning.

28 (i) Psychotropic drug use.

29 (j) Quality of life.

30 (k) Sensory functioning and communication.

31 (l) Skin care.

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

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

5 (b) Evidence financial soundness and stability
6 according to standards adopted by the agency in administrative
7 rule.

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

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

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

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

30
31

1 (g) Provide targeted inservice training to meet
2 training needs identified by internal or external quality
3 assurance efforts.

4 (h) Evidence superior levels of clinical outcomes as
5 measured in the Minimum Data Set system of the federal Health
6 Care Financing Administration. Facilities that are not
7 certified for Medicare or Medicaid are not required to
8 complete the Minimum Data Set in order to qualify for the Gold
9 Seal Program. Such facilities may demonstrate superior levels
10 of performance with an alternate assessment as approved by the
11 panel.

12
13 A facility assigned a conditional licensure status may not
14 qualify for consideration for the Gold Seal Program until
15 after it has operated for 30 months with no class I or class
16 II deficiencies and has completed a regularly scheduled
17 relicensure survey.

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

26 (7) A facility must be licensed and operating for 30
27 months before it is eligible to apply for the Gold Seal
28 Program. The agency shall establish by rule the frequency of
29 review for designation as a Gold Seal Program facility and
30 under what circumstances a facility may be denied the
31 privilege of using this designation. The designation of a

1 facility as a Gold Seal Program facility is not transferable
2 to another license, except when an existing facility is being
3 relicensed in the name of an entity related to the current
4 licenseholder by common ownership or control and there will be
5 no change in the management, operation, or programs at the
6 facility as a result of the relicensure.

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

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

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

18 408.035 Review criteria.--

19 (1) The agency shall determine the reviewability of
20 applications and shall review applications for
21 certificate-of-need determinations for health care facilities
22 and health services in context with the following criteria:

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

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

29 400.241 Prohibited acts; penalties for violations.--

30 (3) It is unlawful for any person, long-term-care
31 facility, or other entity to willfully interfere with the

1 unannounced inspections mandated by s. 400.19(3). Alerting or
2 advising a facility of the actual or approximate date of such
3 inspection shall be a per se violation of this subsection.

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

6 468.1755 Disciplinary proceedings.--

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

9 (a) Violation of any provision of s. 455.624(1) or s.
10 468.1745(1).

11 (b) Attempting to procure a license to practice
12 nursing home administration by bribery, by fraudulent
13 misrepresentation, or through an error of the department or
14 the board.

15 (c) Having a license to practice nursing home
16 administration revoked, suspended, or otherwise acted against,
17 including the denial of licensure, by the licensing authority
18 of another state, territory, or country.

19 (d) Being convicted or found guilty, regardless of
20 adjudication, of a crime in any jurisdiction which relates to
21 the practice of nursing home administration or the ability to
22 practice nursing home administration. Any plea of nolo
23 contendere shall be considered a conviction for purposes of
24 this part.

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

1 (f) Authorizing the discharge or transfer of a
2 resident for a reason other than those provided in ss. 400.022
3 and 400.0255.

4 ~~(g)~~ Advertising goods or services in a manner which
5 is fraudulent, false, deceptive, or misleading in form or
6 content.

7 ~~(h)~~ Fraud or deceit, negligence, incompetence, or
8 misconduct in the practice of nursing home administration.

9 (i) ~~(h)~~ A violation or repeated violations of this
10 part, part II of chapter 455, or any rules promulgated
11 pursuant thereto.

12 ~~(j)~~ (i) Violation of a lawful order of the board or
13 department previously entered in a disciplinary hearing or
14 failing to comply with a lawfully issued subpoena of the board
15 or department.

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

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

21 ~~(m)~~ (l) Being unable to practice nursing home
22 administration with reasonable skill and safety to patients by
23 reason of illness, drunkenness, use of drugs, narcotics,
24 chemicals, or any other material or substance or as a result
25 of any mental or physical condition. In enforcing this
26 paragraph, upon a finding of the secretary or his or her
27 designee that probable cause exists to believe that the
28 licensee is unable to serve as a nursing home administrator
29 due to the reasons stated in this paragraph, the department
30 shall have the authority to issue an order to compel the
31 licensee to submit to a mental or physical examination by a

1 physician designated by the department. If the licensee
2 refuses to comply with such order, the department's order
3 directing such examination may be enforced by filing a
4 petition for enforcement in the circuit court where the
5 licensee resides or serves as a nursing home administrator.
6 The licensee against whom the petition is filed shall not be
7 named or identified by initials in any public court records or
8 documents and the proceedings shall be closed to the public.
9 The department shall be entitled to the summary procedure
10 provided in s. 51.011. A licensee affected under this
11 paragraph shall have the opportunity, at reasonable intervals,
12 to demonstrate that he or she can resume the competent
13 practice of nursing home administration with reasonable skill
14 and safety to patients.

15 (n)~~(m)~~ ~~Has~~ Willfully or repeatedly violating ~~violated~~
16 any of the provisions of the law, code or rules of the
17 licensing or supervising authority or agency of the state or
18 political subdivision thereof having jurisdiction of the
19 operation and licensing of nursing homes.

20 (o)~~(n)~~ Paying, giving, causing ~~Has paid, given, caused~~
21 to be paid or given, or offering ~~offered~~ to pay or to give to
22 any person a commission or other valuable consideration for
23 the solicitation or procurement, either directly or
24 indirectly, of nursing home usage.

25 (p)~~(o)~~ ~~Has~~ Willfully permitting ~~permitted~~ unauthorized
26 disclosure of information relating to a patient or his or her
27 records.

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

31

1 Section 20. Paragraph (b) of subsection (1) of section
2 394.4625, Florida Statutes, is amended to read:

3 394.4625 Voluntary admissions.--

4 (1) AUTHORITY TO RECEIVE PATIENTS.--

5 (b) A mental health overlay program or a mobile crisis
6 response service or a licensed professional who is authorized
7 to initiate an involuntary examination pursuant to s. 394.463
8 and is employed by a community mental health center or clinic
9 must, pursuant to district procedure approved by the
10 respective district administrator, conduct an initial
11 assessment of the ability of the following persons to give
12 express and informed consent to treatment before such persons
13 may be admitted voluntarily:

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

18 2. A person 60 years of age or older for whom transfer
19 is being sought from a nursing home pursuant to s.
20 400.0255(11)~~s. 400.0255(6)~~.

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

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

26 400.063 Resident Protection Trust Fund.--

27 (1) A Resident Protection Trust Fund shall be
28 established for the purpose of collecting and disbursing funds
29 generated from the license fees and administrative fines as
30 provided for in ss. 393.0673(2), 400.062(3)(b), 400.111(1),
31 400.121(2), and 400.23(8)~~(9)~~. Such funds shall be for the

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

21 Section 22. For purposes of incorporating the
22 amendment to section 468.1755, Florida Statutes, in references
23 thereto, subsection (3) of section 468.1695, Florida Statutes,
24 is reenacted to read:

25 468.1695 Licensure by examination.--

26 (3) The department shall issue a license to practice
27 nursing home administration to any applicant who successfully
28 completes the examination in accordance with this section and
29 otherwise meets the requirements of this part. The department
30 shall not issue a license to any applicant who is under
31 investigation in this state or another jurisdiction for an

1 offense which would constitute a violation of s. 468.1745 or
2 s. 468.1755. Upon completion of the investigation, the
3 provisions of s. 468.1755 shall apply.

4 Section 23. For the purpose of incorporating the
5 amendment to section 468.1755, Florida Statutes, in references
6 thereto, section 468.1735, Florida Statutes, is reenacted to
7 read:

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

29 Section 24. Section 468.1756, Florida Statutes, 1998
30 Supplement, is amended to read:

31

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

7 Section 25. Patient care targets.--The Legislature may
8 appropriate funds in any fiscal year to the Agency for Health
9 Care Administration in order to allow nursing facilities the
10 ability to recruit and retain qualified staff and to provide
11 appropriate care. The Agency for Health Care Administration
12 shall adjust target limitations in the patient-care component
13 of the per diem rate to allow these additional funds to be
14 reimbursed through the per diem rate.

15 Section 26. Panel on Medicaid reimbursement.--

16 (1) There is created a panel on Medicaid reimbursement
17 to study the state's Medicaid reimbursement plan for nursing
18 home facilities and to recommend changes to accomplish the
19 following goals:

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

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

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

29 (2) The panel shall be administratively attached to
30 and supported by the Agency for Health Care Administration and
31 shall be composed of the following members: the Director for

1 Medicaid of the Agency for Health Care Administration and two
2 agency staff persons competent in the technical and policy
3 aspects of Medicaid reimbursement; one representative from the
4 Governor's Office of Planning and Budgeting; one
5 representative from the Florida Association of Homes for the
6 Aging; one representative from the Florida Health Care
7 Association; one representative from the Department of Elderly
8 Affairs, and one consumer representative appointed by the
9 secretary of that department; and a consumer's advocate for
10 senior citizens and two persons with expertise in the field of
11 quality management, financing, or public sector
12 accountability, appointed by the Governor.

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

23 Section 27. Study of certified nursing assistant
24 training, employment, and retention.--The Department of
25 Elderly Affairs, in consultation with the nursing home
26 industry, consumer advocates, persons employed by nursing
27 homes as licensed nurses and certified nursing assistants, the
28 Department of Health, the Agency for Health Care
29 Administration, the Department of Labor and Employment
30 Security, and the Department of Education, shall conduct, or
31 contract for, a study of the major factors affecting the

1 recruitment, training, employment, and retention of qualified
2 certified nursing assistants within the nursing home industry.
3 The Department of Elderly Affairs shall, by January 15, 2000,
4 provide to the Speaker of the House of Representatives and the
5 President of the Senate the results of the study, along with
6 recommendations to improve the quality and availability of
7 certified nursing assistants employed by nursing facilities.
8 The study shall include a one-time review of the performance
9 of certified nursing assistant training programs and shall
10 compare the types of training programs as to admission
11 criteria, program requirements, graduation rates, job
12 placement, and job retention in nursing homes relative to job
13 retention in other health care environments and other job
14 classifications for which certified nursing assistants may
15 qualify. The study shall identify factors likely to improve
16 the rates of employment and retention of certified nursing
17 assistants in nursing homes. The study shall also include an
18 assessment of the extent and impact of certified nursing
19 assistant shortages within the major regional job markets of
20 the state. The study shall include an assessment of the
21 following factors:
22 (1) The extent and characteristics of the shortage
23 within the various regions of the state.
24 (2) The causes of the shortage, including, but not
25 restricted to, salary and benefits, working conditions, career
26 development, and the availability of certified nursing
27 assistant training programs.
28 (3) The impact of labor shortages on the ability of
29 nursing homes to hire sufficient staff to meet both the
30 minimum staffing standards required by agency rule and the
31

1 facility-specific staffing standards based on the needs of
2 residents.

3 (4) The impact of the labor shortage on the increased
4 use of temporary nursing pool agencies by nursing homes; the
5 influences of this trend on the quality and cost of services
6 provided; and the benefits of additional regulation of such
7 nursing pool agencies in light of the shortage.

8 (5) Comparisons of the extent and effect of the
9 shortage of certified nursing assistants in Florida to the
10 experiences of other states and with respect to national
11 trends.

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

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

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

24 (9) The desirability of demonstration projects to test
25 innovative models and methods for the purpose of addressing
26 the need for more and better-qualified certified nursing
27 assistants in nursing homes.

28 Section 28. Section 400.29, Florida Statutes, is
29 repealed.

30 Section 29. Section 408.909, Florida Statutes, is
31 created to read:

1 408.909 Implementation of a teaching-nursing-home
2 pilot project.--

3 (1) As used in this section, the term "teaching
4 nursing home" means a nursing home facility licensed under
5 chapter 400 which contains a minimum of 400 licensed nursing
6 home beds; has access to a resident senior population of
7 sufficient size to support education, training, and research
8 relating to geriatric care; and has a contractual relationship
9 with a federally funded, accredited geriatric research center
10 in this state.

11 (2)(a) The Agency for Health Care Administration shall
12 implement a comprehensive multidisciplinary program of
13 geriatric education and research as a pilot project in a
14 nursing home facility designated by the agency as a teaching
15 nursing home. The program must be established as a pilot
16 project and must be administered at the nursing home facility
17 and other appropriate settings.

18 (b) The agency shall develop criteria for designating
19 teaching nursing homes in consultation with advocates of the
20 elderly, advocates of persons with disabilities,
21 representatives of the nursing home industry, and
22 representatives of the State University System.

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

25 (a) Provide a comprehensive program of integrated
26 senior services that include institutional services and
27 community-based services;

28 (b) Participate in a nationally recognized
29 accreditation program and hold a valid accreditation, such as
30 the accreditation awarded by the Joint Commission on
31 Accreditation of the Healthcare Organizations;

1 (c) Have been in business in this state for at least
2 10 consecutive years;

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

5 (e) Have a formalized contractual relationship with at
6 least one accredited health-profession education program
7 located in this state;

8 (f) Have a formalized contractual relationship with an
9 accredited hospital that is designated by law as a teaching
10 hospital; and

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

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

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

28 (6) In order for a nursing home to qualify as a
29 teaching nursing home under this section and to be entitled to
30 the benefits provided under this section, the nursing home
31 must:

1 (a) Be primarily operated and established to offer,
2 afford, and render a comprehensive multidisciplinary program
3 of geriatric education and research to residents of the state;
4 and

5 (b) Certify to the Agency for Health Care
6 Administration, each school year, the name, address, and
7 educational history of each trainee approved and accepted for
8 enrollment in the institution.

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

17 Section 30. Paragraphs (i) and (j) of subsection (1)
18 of section 430.502, Florida Statutes, 1998 Supplement, are
19 amended and paragraph (k) is added to said subsection, to
20 read:

21 430.502 Alzheimer's disease; memory disorder clinics
22 and day care and respite care programs.--

23 (1) There is established:

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

26 (j) A memory disorder clinic at Lee Memorial Hospital
27 created by chapter 63-1552, Laws of Florida, as amended; ~~and~~7

28 (k) A memory disorder clinic at Sarasota Memorial
29 Hospital in Sarasota County,
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1 for the purpose of conducting research and training in a
2 diagnostic and therapeutic setting for persons suffering from
3 Alzheimer's disease and related memory disorders. However,
4 memory disorder clinics funded as of June 30, 1995, shall not
5 receive decreased funding due solely to subsequent additions
6 of memory disorder clinics in this subsection.

7 Section 31. The sum of \$100,000 is appropriated from
8 the Health Care Trust Fund to the Department of Elderly
9 Affairs for Fiscal Year 1999-2000 to fund the responsibilities
10 of the Office of State Long-Term-Care Ombudsman and establish
11 a statewide toll-free telephone number pursuant to section
12 400.0078, Florida Statutes, as created by this act. Eighteen
13 positions and the sum of \$425,123 from recurring General
14 Revenue Funds, \$72,691 from nonrecurring General Revenue Funds
15 and \$882,484 from the Administrative Trust Fund is
16 appropriated to the Agency for Health Care Administration for
17 Fiscal Year 1999-2000 to implement the provisions of this act.
18 The sum of \$26,000 from the General Revenue Fund is
19 appropriated to the Executive Office of the Governor for
20 Fiscal Year 1999-2000 for the Governor's Panel on Excellence
21 in Long-Term Care.

22 Section 32. This act shall comply with sections
23 112.3189 and 448.102, Florida Statutes.

24 Section 33. This act shall take effect July 1, 1999,
25 except that this section and section 13 shall take effect upon
26 becoming a law.

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