

By Senator Gutman

34-792-99

See HB

1 A bill to be entitled
2 An act relating to nursing homes; creating the
3 "Nursing Home Quality Improvement Act of 1999";
4 creating s. 400.0115, F.S.; providing
5 legislative findings and intent; requiring
6 studies and recommendations by the Agency for
7 Health Care Administration; amending s.
8 400.022, F.S.; revising rights of residents of
9 nursing home facilities and providing
10 additional rights; amending s. 400.0231, F.S.;
11 requiring facilities to keep complete and
12 accurate medical records; providing a
13 rebuttable presumption in the absence of such
14 records; amending s. 400.0255, F.S.; providing
15 definitions and requirements relating to
16 discharge or transfer of residents; amending s.
17 400.063, F.S.; conforming a cross-reference;
18 amending s. 400.121, F.S.; authorizing payment
19 of facility fines or recovery costs by setoffs
20 from amounts otherwise payable to the facility;
21 providing requirements for review of
22 administrative proceedings challenging agency
23 enforcement actions; amending s. 400.151, F.S.;
24 requiring agency approval of the form of
25 facility contracts with residents; amending s.
26 400.162, F.S.; providing minimum requirements
27 for policies regarding the safekeeping of
28 residents' property; amending s. 400.23, F.S.;
29 providing minimum staffing requirements;
30 requiring recordkeeping with respect to
31 staffing and report of staffing shortfalls;

1 increasing membership on the Nursing Home
2 Advisory Committee; authorizing the agency to
3 downgrade facility ratings under certain
4 circumstances; requiring issuance of amended
5 licenses reflecting facility ratings changes;
6 revising certain ratings requirements;
7 providing additional acts classified as
8 deficiencies; providing penalties and
9 increasing maximum fines; amending s. 400.29,
10 F.S.; requiring the agency to make certain
11 updated information available to the public;
12 amending s. 415.107, F.S.; providing that the
13 identity of a person reporting adult abuse,
14 neglect, or exploitation may be released to the
15 Attorney General's Medicaid Fraud Control Unit;
16 amending ss. 435.03 and 435.04, F.S.; providing
17 for employment screening of persons convicted
18 under s. 825.1035, F.S.; creating s. 825.1035,
19 F.S.; providing a penalty for failure to report
20 known abuse, neglect, or exploitation of a
21 nursing home resident to law enforcement;
22 amending s. 394.4625, F.S.; conforming a
23 cross-reference; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. This act may be cited as the "Nursing Home
28 Quality Improvement Act of 1999."

29 Section 2. Section 400.0115, Florida Statutes, is
30 created to read:

31

1 400.0115 Legislative findings and intent; studies;
2 report and recommendations.--

3 (1) The Legislature finds that, in some cases, the
4 present regulatory system regarding nursing home facilities is
5 not adequate to detect and correct problems at the facilities
6 before they reach the crisis stage. Some facilities have
7 failed to meet their payroll and other normal operating
8 expenses, resulting in sudden closure of the facility and the
9 need for emergency measures and the expenditure of public
10 funds to transfer residents to another facility in order to
11 continue their care. Other facilities have lapsed into such
12 inadequate care that the health and welfare of many residents
13 has been harmed, resulting in the need for emergency measures
14 to alleviate the problems, again often at great public
15 expense. Many facilities with separate licenses for each
16 location are owned by holding companies or chains; other
17 groups of facilities, which may or may not have different
18 owners, are managed by the same management company. In either
19 case, the regulatory system must recognize such realities and
20 the potential impact they may have on the quality of care
21 received by nursing home residents. In carrying out its duties
22 under this section, the agency shall consider the terms
23 "facility" and "licensee" to include holding companies,
24 chains, or management companies, where appropriate. The
25 Legislature finds and determines that, in order to protect the
26 health, safety, and welfare of nursing home residents,
27 additional procedures are required to:

28 (a) Continuously gather and analyze information
29 regarding the operation of facilities and the condition of
30 residents therein.

31

1 (b) Determine which events or conditions or other data
2 are "early warning signs" indicating a substantial possibility
3 that the financial stability of the facility or the quality of
4 care of residents of the facility is or may soon be in
5 jeopardy.

6 (c) Enable the agency to inspect, survey, and examine
7 any facility deemed to be potentially in danger of having
8 deficiencies or violations threatening the financial stability
9 of the facility or the quality of care given to residents of
10 the facility.

11 (d) Enable the agency to intervene immediately in the
12 case of a facility found to have such deficiencies or
13 violations, in order to prevent further deterioration of
14 conditions and possible crisis situations.

15 (e) Protect the rights of facility owners and staff,
16 as well as the rights of residents of the facilities.

17 (2) It is, further, the intent of the Legislature to
18 require that information provided to the agency by facilities
19 and by other government agencies be in a consistent,
20 user-friendly, and logical format to enable maximum use of
21 electronic data transmission and processing techniques by the
22 agency to more efficiently gather, collate, analyze, use, and
23 disseminate information used in the regulation of facilities.

24 (3) The agency is directed to perform the following
25 studies and to present a report and recommendations to the
26 Speaker of the House of Representatives and the President of
27 the Senate by February 1, 2000, for consideration at the 2000
28 Regular Session of the Legislature. The agency shall:

29 (a) Identify all sources of data and other information
30 relating to regulation of facilities presently received by the
31 agency from facilities, government agencies, and the public.

1 (b) Determine those types of events, occurrences, and
2 conditions at facilities which, in the judgment of the agency,
3 based upon its experience and knowledge of conditions in the
4 nursing home industry, serve as "early warning signs" or
5 indicators that there is a substantial possibility that the
6 financial stability of a facility, or the quality of care
7 given to residents of a facility, may be in jeopardy to the
8 extent that the health, safety, or welfare of residents could
9 be adversely affected. The events, occurrences, and
10 conditions so determined need not constitute violations or
11 deficiencies themselves, as long as they are sufficient
12 indicators of the possible presence of violations or
13 deficiencies which could adversely affect the health, safety,
14 or welfare of residents. For example, and without limiting
15 the generality of the foregoing:

16 1. A continuing failure or inability of a facility to
17 pay its accounts payable, payroll, taxes, etc., in a timely
18 manner may indicate that a facility's financial stability is
19 jeopardized to the extent that it may become insolvent or
20 abruptly cease operations, thus causing disruption and adverse
21 effects on the care given to residents, with the concomitant
22 need for the agency to seek moratoria, injunctions,
23 receiverships, and expenditures from the Resident Protection
24 Trust Fund. If the use of "early warning signs" enables the
25 agency to detect and alleviate such financial problems before
26 matters reach such a crisis stage, public resources will be
27 conserved and the quality of care of residents will be
28 enhanced.

29 2. A pattern of falls, significant weight loss,
30 dehydration, pressure sores, or pulmonary infections among
31 residents of a facility could indicate a decline in the

1 standard of care being given by the facility, which could lead
2 to serious adverse impacts on the health of residents if
3 unchecked.

4 3. A pattern of unexplained disappearances of
5 resident's personal property, or the presence of unauthorized
6 persons in the facility, or a pattern of attacks on residents,
7 could indicate inadequate security measures at the facility,
8 endangering the safety and welfare of residents if not
9 corrected.

10 (c) Determine whether the data and other information
11 identified under paragraph (a) is sufficient in terms of
12 timeliness and quality to serve as the "early warning signs"
13 identified under paragraph (b), and if not, what changes would
14 be required in agency rules or in statutes to provide
15 sufficient information.

16 (d) Determine whether additional changes are needed in
17 agency rules or in statutes to make the information identified
18 in paragraphs (a) and (b) more systematic, coherent,
19 meaningful, consistent, useful, and user-friendly, in order to
20 promote efficiency, recognize and regulate practices of
21 holding companies, chains, and management companies affecting
22 more than one facility, improve regulation of facilities, and
23 enhance protection of the health, safety, and welfare of
24 residents of facilities, without unnecessary burdens on the
25 regulated facilities, and without conflicting with nonwaivable
26 federal requirements.

27 (e) Devise a plan to implement an "early warning
28 system" whereby:

29 1. Sufficient and timely information would be provided
30 to the agency to enable "early warning signs" to be
31 identified.

1 2. Agency staff could analyze and evaluate such
2 information and detect "early warning signs."

3 3. Threshold levels of "early warning signs" would be
4 set to indicate the strong possibility of the existence of
5 conditions at a facility that could, directly or indirectly,
6 jeopardize the health, safety, or welfare of residents of the
7 facility, or which could require the inordinate expenditure of
8 public resources to stave off such jeopardy.

9 4. When such threshold levels are found, graduated
10 levels of agency intervention would be triggered, such as:

11 a. Inspections or surveys.

12 b. Documenting of deficiencies or violations
13 discovered.

14 c. Consultation and advice for the facility from one
15 or more private or nonagency public consultants on a list of
16 consultants with sufficient expertise approved by the agency,
17 it being the intent of the Legislature that the agency itself
18 should not serve as a consultant with facilities because of
19 the inherent conflict with the agency's regulatory and
20 enforcement roles.

21 d. Negotiation and implementation of consent orders
22 with corrective action plans with facilities.

23 e. Incentives for facilities to enter into and comply
24 with such consent orders, such as agreement by the agency not
25 to pursue penalties or other disciplinary action for
26 identified and admitted existing deficiencies and violations,
27 so long as the terms of the consent order are complied with.

28 f. Agency monitors stationed at the facility, at the
29 expense of the facility, to monitor and report progress on the
30 corrective actions.

31

1 g. Enhanced penalties or other discipline if the
2 facility fails to comply with the consent order.

3 h. Expedited use by the agency of remedies such as
4 moratoria, injunctions, license suspensions or revocations,
5 federal sanctions, penalties, or receiverships, if the
6 facility declines to enter into a consent order or if
7 conditions at the facility are such that a consent order with
8 corrective action plan would most likely not produce the
9 necessary improvements.

10 i. Other measures recommended by the agency.

11 (f) Propose language amending the Florida Statutes to
12 enable the agency to carry out and implement the plan for an
13 "early warning system."

14 Section 3. Subsection (1) of section 400.022, Florida
15 Statutes, is amended to read:

16 400.022 Residents' rights.--

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

23 (a) The right to civil and religious liberties,
24 including knowledge of available choices and the right to
25 independent personal decision, which will not be infringed
26 upon, and the right to encouragement and assistance from the
27 staff of the facility in the fullest possible exercise of
28 these rights.

29 (b) The right to private and uncensored communication,
30 including, but not limited to, receiving and sending unopened
31 correspondence, access to a telephone at all times, visiting

1 with any person of the resident's choice during visiting
2 hours, and overnight visitation outside the facility with
3 family and friends in accordance with facility policies,
4 physician orders, and Title XVIII (Medicare) and Title XIX
5 (Medicaid) of the Social Security Act regulations, without the
6 resident's losing his or her bed. Facility visiting hours
7 shall be flexible, taking into consideration special
8 circumstances such as, but not limited to, out-of-town
9 visitors and working relatives or friends. Unless otherwise
10 indicated in the resident care plan, the licensee shall, with
11 the consent of the resident and in accordance with policies
12 approved by the agency, permit recognized volunteer groups,
13 representatives of community-based legal, social, mental
14 health, and leisure programs, and members of the clergy access
15 to the facility during visiting hours for the purpose of
16 visiting with and providing services to any resident. Facility
17 policies shall ensure the resident's right to communicate with
18 his or her legal representative and with public officials.

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

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

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

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

6 The facility must allow representatives of the state ~~Home~~ Nursing
7 ~~and long-term care Facility~~ ombudsman program Council to
8 examine a resident's clinical records with the permission of
9 the resident or the resident's legal representative and
10 consistent with state law.

11 (d) The right to present grievances on behalf of
12 himself or herself or others to the staff or administrator of
13 the facility, to governmental officials, or to any other
14 person; to recommend changes in policies and services to
15 facility personnel; and to join with other residents or
16 individuals within or outside the facility to work for
17 improvements in resident care, free from restraint,
18 interference, coercion, discrimination, or reprisal. This
19 right includes access to ombudsmen and advocates and the right
20 to be a member of, to be active in, and to associate with
21 advocacy or special interest groups. The right also includes
22 the right to prompt efforts by the facility to resolve
23 resident grievances, including grievances with respect to the
24 behavior of other residents.

25 (e) The right to organize and participate in resident
26 groups in the facility and the right to have the resident's
27 family meet in the facility with the families of other
28 residents.

29 (f) The right to participate in social, religious, and
30 community activities that do not interfere with the rights of
31 other residents.

1 (g) The right to examine, upon reasonable request, the
2 results of the most recent inspection of the facility
3 conducted by a federal or state agency and any plan of
4 correction in effect with respect to the facility.

5 (h) The right to manage his or her own financial
6 affairs or to delegate such responsibility to the licensee,
7 but only to the extent of the funds held in trust by the
8 licensee for the resident. A quarterly accounting of any
9 transactions made on behalf of the resident shall be furnished
10 to the resident or the person responsible for the resident.
11 The facility may not require a resident to deposit personal
12 funds with the facility. However, upon written authorization
13 of a resident, the facility must hold, safeguard, manage, and
14 account for the personal funds of the resident deposited with
15 the facility as follows:

16 1. The facility must establish and maintain a system
17 that ensures a full, complete, and separate accounting,
18 according to generally accepted accounting principles, of each
19 resident's personal funds entrusted to the facility on the
20 resident's behalf.

21 2. The accounting system established and maintained by
22 the facility must preclude any commingling of resident funds
23 with facility funds or with the funds of any person other than
24 another resident.

25 3. A quarterly accounting of any transaction made on
26 behalf of the resident shall be furnished to the resident or
27 the person responsible for the resident.

28 4. Upon the death of a resident with personal funds
29 deposited with the facility, the facility must convey within
30 30 days the resident's funds, including interest, and a final
31 accounting of those funds, to the individual or probate

1 jurisdiction administering the resident's estate, or, if a
2 personal representative has not been appointed within 30 days,
3 to the resident's spouse or adult next of kin named in the
4 beneficiary designation form provided for in s. 400.162(6).

5 5. The facility may not impose a charge against the
6 personal funds of a resident for any item or service for which
7 payment is made under Title XVIII or Title XIX of the Social
8 Security Act.

9 (i) The right to be fully informed, in writing and
10 orally, prior to or at the time of admission and during his or
11 her stay, of services available in the facility and of related
12 charges for such services, including any charges for services
13 not covered under Title XVIII or Title XIX of the Social
14 Security Act or not covered by the basic per diem rates and of
15 bed reservation and refund policies of the facility. In
16 addition, the resident or his or her designee or legal
17 representative shall have the right, upon request, to be
18 provided with an itemized bill and a reasonable explanation
19 thereof, for any care, medication, supplies, or services
20 billed with respect to the resident not covered by the
21 facility's basic per diem rate, regardless of the source of
22 payment. This information shall include a statement of any
23 third-party payments made with respect to the bill. The
24 request for billing and reimbursement information may be
25 continuing in nature and need not be renewed on each occasion.

26 (j) The right to be adequately informed of his or her
27 medical condition and proposed treatment, unless the resident
28 is determined to be unable to provide informed consent under
29 Florida law, or the right to be fully informed in advance of
30 any nonemergency changes in care or treatment that may affect
31 the resident's well-being; and, except with respect to a

1 resident adjudged incompetent, the right to participate in the
2 planning of all medical treatment, including the right to
3 refuse medication and treatment, unless otherwise indicated by
4 the resident's physician; and to know the consequences of such
5 actions.

6 (k) The right to refuse medication or treatment and to
7 be informed of the consequences of such decisions, unless
8 determined unable to provide informed consent under state law.
9 The foregoing right includes the right to have a living will,
10 including a do-not-resuscitate order, that the facility must
11 follow when the living will or order is validly and legally
12 executed and the resident has been determined by two licensed
13 physicians to be in a terminal condition.When the resident
14 refuses medication or treatment, the nursing home facility
15 must notify the resident or the resident's legal
16 representative of the consequences of such decision and must
17 document the resident's decision in his or her medical record.
18 The nursing home facility must continue to provide other
19 services the resident agrees to in accordance with the
20 resident's care plan.

21 (l) The right to receive adequate and appropriate
22 health care and protective and support services, including
23 social services; mental health services, if available; planned
24 recreational activities; and therapeutic and rehabilitative
25 services consistent with the resident care plan, with
26 established and recognized practice standards within the
27 community, and with rules as adopted by the agency. The
28 facility shall ensure good personal hygiene for residents, to
29 minimize the risk of infections and bedsores; measures to
30 prevent or reduce incontinence in residents and minimize the
31 adverse effects of unavoidable incontinence; and the

1 availability of a nurse call system to summon assistance, with
2 buttons or other activating mechanisms at critical locations,
3 including a button or other activating mechanism within reach
4 of each resident.

5 (m) The right to proper contemporaneous documentation
6 of the provision of medication, treatment, or other care in
7 the resident's medical records as required by law.

8 (n) The right to refuse to serve as a research subject
9 and to refuse any care or examination the primary purpose of
10 which is educational or informative, rather than therapeutic.

11 (o)~~(m)~~ The right to have privacy in treatment and in
12 caring for personal needs; to close room doors and to have
13 facility personnel knock before entering the room, except in
14 the case of an emergency or unless medically contraindicated;
15 and to security in storing and using personal possessions.
16 Privacy of the resident's body shall be maintained during, but
17 not limited to, toileting, bathing, and other activities of
18 personal hygiene, except as needed for resident safety or
19 assistance. Residents' personal and medical records shall be
20 confidential and exempt from the provisions of s. 119.07(1).

21 (p)~~(n)~~ The right to be treated courteously, fairly,
22 and with the fullest measure of dignity and to receive a
23 written statement and an oral explanation of the services
24 provided by the licensee, including those required to be
25 offered on an as-needed basis.

26 (q)~~(o)~~ The right to be free from mental and physical
27 abuse, corporal punishment, extended involuntary seclusion,
28 and from physical and chemical restraints, except those
29 restraints authorized in writing by a physician for a
30 specified and limited period of time or as are necessitated by
31 an emergency. In case of an emergency, restraint may be

1 applied only by a qualified licensed nurse who shall set forth
2 in writing the circumstances requiring the use of restraint,
3 and, in the case of use of a chemical restraint, a physician
4 shall be consulted immediately thereafter. Restraints may not
5 be used in lieu of staff supervision or merely for staff
6 convenience, for punishment, or for reasons other than
7 resident protection or safety.

8 (r)~~(p)~~ The right not to be transferred or discharged
9 by the facility except for the reasons and under the
10 procedures set forth in s. 400.0255.~~only for medical reasons~~
11 ~~or for the welfare of other residents, and the right to be~~
12 ~~given reasonable advance notice of no less than 30 days of any~~
13 ~~involuntary transfer or discharge, except in the case of an~~
14 ~~emergency as determined by a licensed professional on the~~
15 ~~staff of the nursing home, or in the case of conflicting rules~~
16 ~~and regulations which govern Title XVIII or Title XIX of the~~
17 ~~Social Security Act. For nonpayment of a bill for care~~
18 ~~received, the resident shall be given 30 days' advance notice.~~

19 A licensee certified to provide services under Title XIX of
20 the Social Security Act may not transfer or discharge a
21 resident solely because the source of payment for care
22 changes, and the facility may not cite a lack of
23 Medicaid-certified beds as a reason for transfer or discharge
24 unless the facility has been denied permission by the agency
25 to add a vacant bed to the number of Medicaid-certified beds.

26 Admission to a nursing home facility operated by a licensee
27 certified to provide services under Title XIX of the Social
28 Security Act may not be conditioned upon a waiver of such
29 right, and any document or provision in a document which
30 purports to waive or preclude such right is void and
31 unenforceable. Any licensee certified to provide services

1 under Title XIX of the Social Security Act that obtains or
2 attempts to obtain such a waiver from a resident or potential
3 resident shall be construed to have violated the resident's
4 rights as established herein and is subject to disciplinary
5 action as provided in subsection (3). The resident and the
6 family or representative of the resident shall be consulted in
7 choosing another facility.

8 (s)~~(q)~~ The right to freedom of choice in selecting a
9 personal physician; to obtain pharmaceutical supplies and
10 services from a pharmacy of the resident's choice, at the
11 resident's own expense or through Title XIX of the Social
12 Security Act; and to obtain information about, and to
13 participate in, community-based activities programs, unless
14 medically contraindicated as documented by a physician in the
15 resident's medical record. If a resident chooses to use a
16 community pharmacy and the facility in which the resident
17 resides uses a unit-dose system, the pharmacy selected by the
18 resident shall be one that provides a compatible unit-dose
19 system, provides service delivery, and stocks the drugs
20 normally used by long-term care residents. If a resident
21 chooses to use a community pharmacy and the facility in which
22 the resident resides does not use a unit-dose system, the
23 pharmacy selected by the resident shall be one that provides
24 service delivery and stocks the drugs normally used by
25 long-term care residents. Any other law or rule
26 notwithstanding, a registered pharmacist acting on behalf of a
27 facility or resident shall be permitted to repackage
28 prescription medicine packaged by another pharmacist, for
29 administration to a resident, in order to implement the
30 resident's rights under this paragraph.

31

1 ~~(t)(r)~~ The right to retain and use personal clothing
2 and possessions as space permits, unless to do so would
3 infringe upon the rights of other residents or unless
4 medically contraindicated as documented in the resident's
5 medical record by a physician. If clothing is provided to the
6 resident by the licensee, it shall be of reasonable fit. The
7 facility shall establish policies and procedures to eliminate
8 or greatly reduce theft and loss of residents' personal
9 property, in accordance with s. 400.162 and rules of the
10 agency.

11 ~~(u)(s)~~ The right to have copies of the rules and
12 regulations of the facility and an explanation of the
13 responsibility of the resident to obey all reasonable rules
14 and regulations of the facility and to respect the personal
15 rights and private property of the other residents.

16 ~~(v)(t)~~ The right to receive 24 hours' written notice
17 before the room of the resident in the facility is changed.

18 ~~(w)(u)~~ The right to be informed of the bed reservation
19 policy for a hospitalization. The nursing home shall inform a
20 private-pay resident and his or her responsible party that his
21 or her bed will be reserved for any single hospitalization for
22 a period up to 30 days, provided the nursing home receives
23 reimbursement. Any resident who is a recipient of assistance
24 under Title XIX of the Social Security Act, or the resident's
25 designee or legal representative, shall be informed by the
26 licensee that his or her bed will be reserved for any single
27 hospitalization for the length of time for which Title XIX
28 reimbursement is available, up to 8 ~~15~~ days; but that the bed
29 will not be reserved if it is medically determined by the
30 agency that the resident will not need it or will not be able
31 to return to the nursing home, or if the agency determines

1 that the nursing home's occupancy rate ensures the
2 availability of a bed for the resident. A written notice of
3 the foregoing rights, as applicable, in a form to be
4 promulgated or approved by the agency,~~Notice~~ shall be
5 provided within 24 hours of the hospitalization. A facility
6 that has been reimbursed for reserving a bed and wrongfully
7 refuses to readmit a resident within the prescribed time
8 period shall refund the bed reservation compensation and shall
9 be deemed to have violated the resident's rights under this
10 paragraph.

11 ~~(x)(v)~~ For residents of Medicaid or Medicare certified
12 facilities, the right to challenge a decision by the facility
13 to discharge or transfer the resident, as required under s.
14 400.0255 and Title 42 C.F.R. part 483.12 ~~483.13~~.

15 Section 4. Section 400.0231, Florida Statutes, is
16 amended to read:

17 400.0231 Patient records; penalties for alteration.--

18 (1) Every licensed facility shall keep complete and
19 accurate medical records for each resident, as provided by law
20 and by rules of the agency and the Department of Health.
21 Assessments of each resident's condition and the provision of
22 medication, treatment, therapy or other medical or skilled
23 nursing care shall be contemporaneously documented in the
24 resident's medical records. The absence of such documentation
25 of the provision of medication, treatment, or other care in
26 the resident's medical records creates a rebuttable
27 presumption that the medication, treatment, or other care was
28 not provided. This presumption shall apply in disciplinary
29 proceedings by the agency or other regulatory entity against
30 the licensee or a licensed health care provider and may, at
31 the court's discretion, apply in other actions to which the

1 resident is a party. This presumption may be rebutted by clear
2 and convincing evidence.

3 (2)~~(1)~~ Any person who fraudulently alters, defaces, or
4 falsifies any medical or other nursing home record, or causes
5 or procures any of these offenses to be committed, commits a
6 misdemeanor of the second degree, punishable as provided in s.
7 775.082 or s. 775.083.

8 (3)~~(2)~~ A conviction under subsection (2)~~(1)~~ is also
9 grounds for restriction, suspension, or termination of license
10 privileges.

11 Section 5. Present subsections (1), (3), (4), and (6)
12 of section 400.0255, Florida Statutes, are amended, present
13 subsections (2) through (12) are renumbered as subsections (4)
14 through (14), respectively, and new subsections (2) and (3)
15 are added to that section, to read:

16 400.0255 Resident hearings of facility decisions to
17 transfer or discharge.--

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

19 (a) "Discharge" or "transfer" means the movement of a
20 resident to a bed outside the certified facility. "Discharge"
21 or "transfer" does not refer to the movement of a resident to
22 a bed within the same certified facility.

23 (b) "Necessary for the resident's welfare" means that,
24 by objective criteria as provided in rules of the agency, the
25 resident's physical or emotional well-being would more likely
26 than not be harmed by remaining in the facility and receiving
27 adequate levels of care, which harm would be less likely to
28 occur if the resident were discharged or transferred.

29 (c) "The resident's needs cannot be met in the
30 facility" means that the resident's medical condition has
31 changed to the extent that the resident now needs additional

1 or different treatments or advanced levels of care which the
2 facility does not provide to any resident of the facility.

3 (2) A facility must permit each resident to remain in
4 the facility, and may not discharge or transfer a resident
5 from the facility, unless one or more of the following
6 applies:

7 (a) The transfer or discharge is medically appropriate
8 because the resident's health has improved sufficiently that
9 the resident no longer needs the services provided by the
10 facility;

11 (b) The transfer or discharge is necessary for the
12 resident's welfare and the resident's needs cannot be met in
13 the facility;

14 (c) The safety of other individuals in the facility is
15 endangered;

16 (d) The health of other individuals in the facility
17 would otherwise be endangered;

18 (e) The resident has failed, after reasonable and
19 appropriate notice, to pay for, or to have paid for under
20 Medicare or Medicaid, a stay at the facility. For a resident
21 who becomes eligible for Medicaid after admission to a
22 Medicaid-certified facility, the facility may charge a
23 resident only allowable charges under Medicaid; or

24 (f) The facility ceases to operate.

25 (3) When the facility transfers or discharges a
26 resident under any of the circumstances specified in
27 paragraphs (2)(a)-(e), the resident's medical or other record
28 must be so documented. The documentation must be made by the
29 resident's physician under the circumstances specified in
30 paragraphs (2)(a) or paragraph (2)(b), or by any physician
31 under the circumstances specified in paragraph (2)(d).

1 ~~(5)(3)~~ At least 30 days prior to any proposed transfer
2 or discharge, a facility must provide advance notice of the
3 proposed transfer or discharge to the resident and, if known,
4 to a family member or the resident's legal guardian or
5 representative, except that, if in the following circumstances
6 listed in paragraph (2)(b), paragraph (2)(c), or paragraph
7 (2)(d) constitute an emergency as documented in the resident's
8 medical records by the resident's physician, or by the medical
9 director if the resident's physician is not available, the
10 facility shall give notice as soon as practicable before the
11 transfer or discharge.†

12 ~~(a) The transfer or discharge is necessary for the~~
13 ~~resident's welfare and the resident's needs cannot be met in~~
14 ~~the facility, and the circumstances are documented in the~~
15 ~~resident's medical records by the resident's physician, or~~

16 ~~(b) The health or safety of other residents or~~
17 ~~facility employees would be endangered, and the circumstances~~
18 ~~are documented in the resident's medical records by the~~
19 ~~resident's physician or the medical director if the resident's~~
20 ~~physician is not available.~~

21 ~~(6)(4)~~ The notice required by subsection~~(5)(3)~~ must
22 be in writing and must contain all information required by
23 state and federal law, rules, or regulations applicable to
24 Medicaid or Medicare cases. A copy of the notice must be
25 placed in the resident's clinical record, and a copy must be
26 transmitted to the resident's legal guardian or representative
27 and to the local district ombudsman council. The agency shall
28 by rule promulgate a standard form or forms of notice of
29 transfer or discharge, which shall be used by all facilities
30 unless a facility's own form has been submitted to and
31 approved by the agency.

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

15 Section 6. Subsection (1) of section 400.063, Florida
16 Statutes, is amended to read:

17 400.063 Resident Protection Trust Fund.--

18 (1) A Resident Protection Trust Fund shall be
19 established for the purpose of collecting and disbursing funds
20 generated from the license fees and administrative fines as
21 provided for in ss. 393.0673(2), 400.062(3)(b), 400.111(1),
22 400.121(2), and 400.23(10)~~(9)~~. Such funds shall be for the
23 sole purpose of paying for the appropriate alternate
24 placement, care, and treatment of residents who are removed
25 from a facility licensed under this part or a facility
26 specified in s. 393.0678(1) in which the agency determines
27 that existing conditions or practices constitute an immediate
28 danger to the health, safety, or security of the residents.
29 If the agency determines that it is in the best interest of
30 the health, safety, or security of the residents to provide
31 for an orderly removal of the residents from the facility, the

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

12 Section 7. Subsections (6) and (7) are added to
13 section 400.121, Florida Statutes, 1998 Supplement, to read:

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

16 (6) Any fine or civil penalty or recovery of costs
17 imposed by or awarded to the agency under this part may be
18 collected by the agency as a setoff from amounts otherwise
19 payable by the state to the facility under the Florida
20 Medicaid program or any other program by which the agency
21 makes payments to the facility. The collection method set
22 forth in this subsection shall be supplemental to any other
23 method which the agency may lawfully utilize.

24 (7) Administrative proceedings challenging agency
25 action under this section shall be reviewed on the basis of
26 the facts and conditions that resulted in the agency action.

27 Section 8. Present subsection (2) of section 400.151,
28 Florida Statutes, is renumbered as subsection (3) and a new
29 subsection (2) is added to that section to read:

30 400.151 Contracts.--

31

1 (2) Every licensed facility shall submit the form of
2 its contract or contracts with residents to the agency for
3 approval. The agency shall reject any contract which contains
4 language which is vague, misleading, illegal, or against
5 public policy as set forth in the Florida Statutes, and the
6 facility shall submit revised contracts which cure the
7 deficiencies found by the agency. If a facility is part of a
8 continuing care facility certified under chapter 651, the
9 review and approval of the contract or contracts shall be
10 completed by the Department of Insurance, which shall consult
11 with the agency regarding portions of contracts related to
12 nursing home care. Beginning 1 year after the effective date
13 of this subsection, a facility may not enter into a contract,
14 renew a contract, or enforce a contract with a resident unless
15 the form of the contract has been approved by the agency.

16 Section 9. Subsection (3) of section 400.162, Florida
17 Statutes, is amended to read:

18 400.162 Property and personal affairs of residents.--

19 (3) A licensee shall provide for the safekeeping of
20 personal effects, funds, and other property of the resident in
21 the facility. Whenever necessary for the protection of
22 valuables, or in order to avoid unreasonable responsibility
23 therefor, the licensee may require that such valuables be
24 excluded or removed from the facility and kept at some place
25 not subject to the control of the licensee. The facility's
26 policies regarding the safekeeping of a resident's property
27 pursuant to s. 400.022(1)(t) shall comply with rules of the
28 agency and shall, at a minimum, provide for:

29 1. An inventory of a resident's personal property upon
30 admission to the facility, to be updated when the resident
31 disposes of old property or acquires new property. The types

1 of items to be included in the inventory shall be determined
2 by agency rule.

3 2. Marking each resident's personal property with
4 identification numbers where feasible without defacing the
5 item or reducing its value.

6 3. Securing residents' personal property.

7 4. Documenting any theft or loss of personal property.

8 5. Reporting to law enforcement any theft or loss of
9 property worth \$100 or more.

10 6. Instructing facility staff regarding policies and
11 procedures to reduce theft and loss of residents' personal
12 property.

13 7. Periodic review of these policies and procedures
14 for effectiveness, and revision if necessary.

15 8. Posting notice of these policies and procedures,
16 and any revision thereof, in places accessible to residents.

17 Section 10. Present subsections (4), (6), (8), (9),
18 and (10) of section 400.23, Florida Statutes, 1998 Supplement,
19 are amended, present subsections (3) through (13) are
20 renumbered as subsections (4) through (14), respectively, and
21 a new subsection (3) is added to that section, to read:

22 400.23 Rules; criteria; Nursing Home Advisory
23 Committee; evaluation and rating system; fee for review of
24 plans.--

25 (3) The agency shall adopt rules providing the minimum
26 staffing requirements for nursing homes. These requirements
27 shall include, for each nursing home facility:

28 (a) One full-time licensed or registered nurse as
29 director of nursing.

30
31

1 (b) For facilities serving more than 100 residents,
2 one licensed or registered nurse as assistant director of
3 nursing.

4 (c) One full-time licensed or registered nurse as
5 director of inservice education.

6 (d) The following number of licensed or certified
7 nursing personnel, including registered nurses, licensed
8 practical nurses, and certified nursing assistants, for every
9 day, by shift:

10 1. Day shift: one nurse or nursing assistant for
11 every five residents.

12 2. Evening shift: one nurse or nursing assistant for
13 every 10 residents.

14 3. Night shift: one nurse or nursing assistant for
15 every 15 residents.

16 (e) The following number of registered nurses or
17 licensed practical nurses, in addition to the licensed or
18 certified nursing personnel required under paragraph (d), for
19 every day, by shift:

20 1. Day shift: one nurse for every 15 residents.

21 2. Evening shift: one nurse for every 25 residents.

22 3. Night shift: one nurse for every 35 residents.

23 (f) One registered nurse supervisor on duty 24 hours
24 every day.

25
26 The agency's rules shall provide that facilities that do not
27 utilize three 8-hour shifts per day shall maintain staffing
28 levels equivalent to or better than the levels set forth in
29 paragraphs (d) and (e). The agency's rules shall further
30 provide that the staffing requirements provided in this
31 subsection apply to all nursing home residents, including

1 respite care residents, and must be adjusted upward to meet
2 any special care needs of residents; and that staffing
3 assignments must be made based on accurate acuity levels and
4 the resources and time needed to provide safe, preventive, and
5 restorative care. The requirements provided in this
6 subsection must be enforced for all residents, regardless of
7 payment source. No ongoing waivers shall be allowed. The
8 agency's rules shall further provide that each facility shall
9 keep records showing the names, registration or certification
10 status (e.g., RN, ARNP, LPN, CNA, MD), and assignment of
11 facility staff or contract personnel actually on duty at the
12 facility during each shift, together with documentation of any
13 instances in which such actual staffing falls short of the
14 minimum staffing levels required by agency rules pursuant to
15 this subsection. Each facility shall report to the agency, no
16 less often than monthly, in a form prescribed by agency rules,
17 a summary of instances in which actual staffing levels at the
18 facility fell short of the prescribed minimum staffing levels.

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

1 (a) One researcher from a university center on aging.

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

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

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

8 (e) Six ~~Five~~ consumer members ~~representatives~~, at
9 least two of whom serve on or are staff members of the state
10 or a district ~~nursing home and long-term care Facility~~
11 ombudsman council, and at least one of whom is a
12 representative of the Florida Life Care Resident's
13 Association.

14 (f) One representative from the Florida American
15 Medical Directors Association.

16 (g) One representative from the Florida Association of
17 Directors of Nursing Administrators.

18 (h) One representative from the Agency for Health Care
19 Administration.

20 (i) One representative from the nursing home industry
21 at large who owns or operates a licensed nursing home facility
22 in the state and is not a member of any state nursing home
23 association.

24

25 At least one member shall be over 60 years of age.

26 (9)~~(8)~~ The agency shall, at least every 15 months,
27 evaluate all nursing home facilities and make a determination
28 as to the degree of compliance by each licensee with the
29 established rules adopted under this part as a basis for
30 assigning a rating to that facility. The agency shall base
31 its evaluation on the most recent inspection report, taking

1 into consideration findings from other official reports,
2 surveys, interviews, investigations, and inspections. The
3 agency shall assign one of the following ratings to each
4 nursing home: standard, conditional, or superior. The agency
5 shall have the authority to downgrade the rating of a facility
6 upon finding that the facility no longer qualifies for its
7 present rating, and shall issue an amended license showing the
8 new rating. Likewise, when a facility's rating is upgraded,
9 the agency shall issue an amended license showing the new
10 rating. The new rating on an amended license shall not be
11 retroactive to the beginning of the licensing period.

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

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

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

6 (c) To qualify for a superior rating,~~means that~~ a
7 facility must have had ~~has~~ no class I or class II deficiencies
8 within the preceding 2 years, must not have been rated
9 conditional within the preceding 2 years, must have had no
10 more than four class III deficiencies within the preceding 2
11 years, and must have ~~has~~ corrected all class III deficiencies
12 within the time established by the agency and be ~~is~~ in
13 substantial compliance with the criteria established under
14 this part and the rules adopted by the agency and, if
15 applicable, with rules adopted pursuant to the Omnibus Budget
16 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
17 1987), Title IV (Medicare, Medicaid, and Other Health-Related
18 Programs), Subtitle C (Nursing Home Reform), as amended; and
19 the facility must exceed ~~exceeds~~ the criteria for a standard
20 rating through enhanced programs and services in all of the
21 following areas:

- 22 1. Nursing service.
- 23 2. Dietary or nutritional services.
- 24 3. Physical environment.
- 25 4. Housekeeping and maintenance.
- 26 5. Restorative therapies and self-help activities.
- 27 6. Social services.
- 28 7. Activities and recreational therapy.

29 (d) In order to facilitate the development of special
30 programs or facilitywide initiatives and promote creativity
31 based on the needs and preferences of residents, the areas

1 listed in paragraph (c) may be grouped or addressed
2 individually by the licensee. However, a facility may not
3 qualify for a superior rating if fewer than three programs or
4 initiatives are developed to encompass the required areas or
5 if standard measurements of patient outcomes and resident
6 satisfaction for the facility are below the statewide average
7 for facilities of its type.

8 (e) In determining the rating and evaluating the
9 overall quality of care and services, the agency shall
10 consider the needs and limitations of residents in the
11 facility and the results of interviews and surveys of a
12 representative sampling of residents, families of residents,
13 ombudsman council members in the district in which the
14 facility is located, guardians of residents, and staff of the
15 nursing home facility.

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

30 (g) Each licensee shall post its license in a
31 prominent place that is in clear and unobstructed public view

1 at or near the place where residents are being admitted to the
2 facility. A licensee with a superior rating may advertise its
3 rating in any nonpermanent medium and in accordance with rules
4 adopted by the agency. A list of the facilities receiving a
5 superior rating shall be distributed to the state and district
6 ombudsman councils.

7 (h) Not later than January 1, 1994, the agency shall
8 adopt rules that:

9 1. Establish uniform procedures for the evaluation of
10 facilities.

11 2. Provide criteria in the areas referenced in
12 paragraph (c).

13 3. Address other areas necessary for carrying out the
14 intent of this section.

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

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

1 ~~(10)(9)~~ The agency shall adopt rules to provide that,
2 when the criteria established under subsections ~~subsection~~ (2)
3 and (3) are not met, such deficiencies shall be classified
4 according to the nature of the deficiency. The agency shall
5 indicate the classification on the face of the notice of
6 deficiencies as follows:

7 (a) Class I deficiencies are those which the agency
8 determines present an imminent danger to the residents or
9 guests of the nursing home facility or a substantial
10 probability that death or serious physical harm would result
11 therefrom. The condition or practice constituting a class I
12 violation shall be abated or eliminated immediately, unless a
13 fixed period of time, as determined by the agency, is required
14 for correction. Notwithstanding s. 400.121(2), a class I
15 deficiency is subject to a civil penalty in an amount not less
16 than \$5,000 and not exceeding ~~\$25,000~~ \$10,000 for each and
17 every deficiency. A fine may be levied notwithstanding the
18 correction of the deficiency. For purposes of the rating
19 system under subsection (9), a confirmed report of abuse,
20 neglect, or exploitation under chapter 415 of a resident by
21 the facility or an employee or contractor of the facility, or
22 a conviction or plea of guilty or nolo contendere under s.
23 825.102, s. 825.1025, or s. 825.103 of the facility or an
24 employee or contractor of the facility wherein the victim was
25 a resident of the facility, shall be treated as a class I
26 deficiency if not also the subject of an agency disciplinary
27 proceeding.

28 (b) Class II deficiencies are those which the agency
29 determines have a direct or immediate relationship to the
30 health, safety, or security of the nursing home facility
31 residents, other than class I deficiencies. A class II

1 deficiency is subject to a civil penalty in an amount not less
2 than \$1,000 and not exceeding ~~\$10,000~~\$5,000 for each and
3 every deficiency. A citation for a class II deficiency shall
4 specify the time within which the deficiency is required to be
5 corrected. If a class II deficiency is corrected within the
6 time specified, no civil penalty shall be imposed, unless it
7 is a repeated offense. For purposes of the rating system under
8 subsection (9), a conviction or plea of guilty or nolo
9 contendere of a facility or a facility administrator for one
10 or more violations of s. 409.920(2) shall be treated as a
11 class II deficiency if not also the subject of an agency
12 disciplinary proceeding. For purposes of the rating system
13 under subsection (9), wrongful transfer or discharge of a
14 resident in violation of s. 400.0255, or wrongful refusal to
15 permit a resident to return to a reserved bed in violation of
16 s. 400.022(1)(w), shall be treated as a class II deficiency.

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

28 (d) Each day during any portion of which a violation
29 occurs constitutes a separate offense. More than two
30 violations of the same class shall be treated as repeated
31 offenses if committed within 2 years of one another. If a

1 facility has three or more repeat offenses within 1 year, the
2 civil penalties for the third and subsequent offenses shall be
3 double the amounts listed in paragraphs (a), (b), and (c).

4 (11)(10) Civil penalties paid by any licensee under
5 subsection (10)(9) shall be deposited in the Resident
6 Protection Health Care Trust Fund and expended as provided in
7 s. 400.063.

8 Section 11. Section 400.29, Florida Statutes, is
9 amended to read:

10 400.29 Annual report of nursing home facilities.--The
11 agency shall publish a nursing home ~~an annual~~ report on or
12 before January 1 of each year, and shall update the
13 information therein no less than monthly, making such updated
14 information available to the public on the Internet or other
15 speedy and inexpensive electronic means of public access. The
16 report and the monthly updates which shall be available to the
17 public in printed form for free or at a cost no greater than
18 the cost of copying and postage. The report ~~and which~~ shall
19 include, but not be limited to:

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 for
23 profit or not for profit ~~proprietary or nonproprietary~~.

24 (3) The rating of each nursing home facility.

25 (4) The name of the owner or owners, including the
26 commonly used name of a chain or holding company that
27 ultimately owns the facility, if applicable.

28 (5) The name of the management company managing or
29 administering the facility, if applicable.

30 (6)(5) The total number of beds.

31 (7)(6) The number of private and semiprivate rooms.

1 ~~(8)~~~~(7)~~ The religious affiliation, if any, of such
2 nursing home facility.

3 ~~(9)~~~~(8)~~ The languages spoken by the administrator and
4 staff of such nursing home facility.

5 ~~(10)~~~~(9)~~ Whether or not such nursing home facility
6 accepts recipients of Title XVIII (Medicare) or Title XIX
7 (Medicaid) of the Social Security Act.

8 ~~(11)~~~~(10)~~ Recreational and other programs available.

9 (12) The facility's scores on standard measurements of
10 patient outcomes and resident satisfaction within the
11 preceding 12 month or since the current license was issued,
12 whichever period is longer.

13 (13) A list of all services offered by the facility
14 and the fees or prices charged by the facility.

15 (14) A summary of all official adverse findings
16 relating to the facility within the past 12 months, including,
17 but not limited to:

18 (a) Class I, II, or III deficiencies found by the
19 agency.

20 (b) Confirmed reports of abuse, neglect, or
21 exploitation under chapter 415, wherein the victim was a
22 resident of the facility and the perpetrator was the facility
23 or an employee or contractor of the facility.

24 (c) Convictions or pleas of guilty or nolo contendere
25 of the facility, the facility administrator, or an officer of
26 the facility for any violation of s. 409.920(2).

27 (d) Convictions or pleas of guilty or nolo contendere
28 of the facility or an employee or contractor of the facility
29 under s. 825.102, s. 825.1025, or s. 825.103, wherein the
30 victim was a resident of the facility.

31

1 (e) Convictions or pleas of guilty or nolo contendere
2 of the facility or an employee or contractor of the facility
3 under s. 400.0083 or s. 400.0085.

4 (f) Final judgments from courts of this state wherein
5 the facility or an employee or contractor of the facility has
6 been found to have violated a resident's rights under s.
7 400.023.

8 Section 12. Subsection (6) of section 415.107, Florida
9 Statutes, 1998 Supplement, is amended to read:

10 415.107 Confidentiality of reports and records.--

11 (6) The identity of any person reporting adult abuse,
12 neglect, or exploitation may not be released, without that
13 person's written consent, to any person other than employees
14 of the department responsible for adult protective services,
15 the central abuse registry and tracking system, or the
16 appropriate state attorney or law enforcement agency,
17 including the Attorney General's Medicaid Fraud Control Unit.

18 This subsection grants protection only for the person who
19 reported the adult abuse, neglect, or exploitation and
20 protects only the fact that the person is the reporter. This
21 subsection does not prohibit the subpoena of a person
22 reporting adult abuse, neglect, or exploitation when deemed
23 necessary by the state attorney or the department to protect a
24 disabled adult or an elderly person who is the subject of a
25 report, if the fact that the person made the report is not
26 disclosed.

27 Section 13. Present paragraphs (w) through (cc) of
28 subsection (2) of section 435.03, Florida Statutes, are
29 redesignated as paragraphs (x) through (dd), respectively, and
30 a new paragraph (w) is added to that subsection to read:

31 435.03 Level 1 screening standards.--

1 (2) Any person for whom employment screening is
2 required by statute must not have been found guilty of,
3 regardless of adjudication, or entered a plea of nolo
4 contendere or guilty to, any offense prohibited under any of
5 the following provisions of the Florida Statutes or under any
6 similar statute of another jurisdiction:

7 (w) Section 825.1035, relating to abuse, neglect, or
8 exploitation of a nursing home resident.

9 Section 14. Present paragraphs (w) through (cc) of
10 subsection (2) of section 435.04, Florida Statutes, are
11 redesignated as paragraphs (x) through (dd), respectively, and
12 a new paragraph (w) is added to that subsection to read:

13 435.04 Level 2 screening standards.--

14 (2) The security background investigations under this
15 section must ensure that no persons subject to the provisions
16 of this section have been found guilty of, regardless of
17 adjudication, or entered a plea of nolo contendere or guilty
18 to, any offense prohibited under any of the following
19 provisions of the Florida Statutes or under any similar
20 statute of another jurisdiction:

21 (w) Section 825.1035, relating to abuse, neglect, or
22 exploitation of a nursing home resident.

23 Section 15. Section 825.1035, Florida Statutes, is
24 created to read:

25 825.1035 Report of abuse, neglect, or exploitation of
26 nursing home residents required; penalty.--An employee of a
27 nursing home facility as defined in part II of chapter 400,
28 including any contractor or consultant working for such a
29 facility, shall report to law enforcement any known abuse,
30 neglect, or exploitation of an elderly person or disabled
31 adult committed upon a resident of the facility in violation

1 of ss. 825.101-825.103. This report shall be in addition to
2 any report of abuse, neglect, or exploitation made to the
3 central abuse hotline of the Department of Children and Family
4 Services pursuant to the requirements of chapter 415. An
5 employee of a nursing home facility who fails to make the
6 report required by this section commits a misdemeanor of the
7 second degree, punishable as provided in s. 775.082 or s.
8 775.083.

9 Section 16. Paragraph (b) of subsection (1) of section
10 394.4625, Florida Statutes, is amended to read:

11 394.4625 Voluntary admissions.--

12 (1) AUTHORITY TO RECEIVE PATIENTS.--

13 (b) A mental health overlay program or a mobile crisis
14 response service or a licensed professional who is authorized
15 to initiate an involuntary examination pursuant to s. 394.463
16 and is employed by a community mental health center or clinic
17 must, pursuant to district procedure approved by the
18 respective district administrator, conduct an initial
19 assessment of the ability of the following persons to give
20 express and informed consent to treatment before such persons
21 may be admitted voluntarily:

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

26 2. A person 60 years of age or older for whom transfer
27 is being sought from a nursing home pursuant to s.
28 400.0255(8)~~(6)~~.

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

1 Section 17. This act shall take effect October 1,
2 1999.

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5 LEGISLATIVE SUMMARY

6
7 Creates the "Nursing Home Quality Improvement Act of
8 1999." Requires the Agency for Health Care Administration
9 to perform studies and make recommendations to the
10 Legislature. Revises rights of nursing home residents and
11 provides additional rights. Requires facilities to keep
12 complete and accurate medical records and provides a
13 rebuttable presumption, in the absence of such records,
14 that care or treatment was not provided. Provides
15 definitions and requirements relating to transfer or
16 discharge of residents. Authorizes payment of facility
17 fines or recovery costs using setoffs from amounts
18 payable to the facility by the state. Provides minimum
19 requirements for policies regarding the safekeeping of
20 residents' property. Provides for minimum staffing
21 requirements, recordkeeping therefor, and reports of
22 staffing shortfalls. Revises ratings requirements,
23 provides additional acts classified as deficiencies,
24 provides penalties and increases maximum fines, and
25 requires issuance of amended licenses reflecting facility
26 ratings changes. Requires inclusion of information on
27 facility services, fees, and deficiencies in the agency's
28 annual report. Requires the report and monthly updates to
29 be made available to the public. Requires nursing home
30 employees to report known abuse, neglect, or exploitation
31 of a resident to law enforcement, provides a penalty for
failure to report, and provides for background employment
screening of person convicted of this offense.