

710-126AX-08 Bill No. CS for CS for CS for SB 1202, 2nd Eng.
Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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3		.	
4		.	

ORIGINAL STAMP BELOW

11 Representative(s) Frankel, Sobel, Heyman, and Gelber offered
12 the following:

14 **Substitute Amendment for Amendment (341895) (with title**
15 **amendment)**

16 Remove from the bill: Everything after the enacting clause
17
18 and insert in lieu thereof:

19 Section 1. Present subsection (6) of section 400.0073,
20 Florida Statutes, is amended, present subsections (5) and (6)
21 are renumbered as subsections (7) and (8), respectively, and
22 new subsections (5) and (6) are added to said section, to
23 read:

24 400.0073 State and local ombudsman council
25 investigations.--

26 (5) Each time a member of an ombudsman council is in a
27 nursing home facility to investigate a resident's complaint or
28 to conduct an inspection, the ombudsman shall verify, record,
29 and report to the Office of the State Long-Term Care Ombudsman
30 the number of certified nursing assistants, the number of
31 licensed practical nurses, and the number of registered nurses

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1 on duty, the date and time of the visit, and the facility
2 census at that time. The Office of the State Long-Term Care
3 Ombudsman shall maintain a record of each such ombudsman
4 report in a database, which record shall be reported to the
5 Legislature quarterly beginning on October 1, 2001.

6 (6) Each time a member of an ombudsman council is in a
7 nursing home facility, the ombudsman shall determine whether
8 the facility is in compliance with s. 400.23(3)(a) relating to
9 daily posting of staff on duty. The ombudsman shall
10 immediately report to the agency failure by the nursing home
11 to comply with this requirement.

12 ~~(8)(6)~~ An inspection may not be accomplished by
13 forcible entry. Refusal of a long-term care facility to allow
14 entry of any ombudsman council member constitutes a violation
15 of part II, part III, or part VII of this chapter. Refusal to
16 allow entry to any ombudsman council member constitutes a
17 class I deficiency under part II or part III of this chapter.

18 Section 2. Section 400.021, Florida Statutes, is
19 amended to read:

20 400.021 Definitions.--When used in this part, unless
21 the context otherwise requires, the term:

22 (1) "Administrator" means the person licensed under
23 part II of chapter 468 individual who has the general
24 administrative charge of a facility.

25 (2) "Agency" means the Agency for Health Care
26 Administration, which is the licensing agency under this part.

27 (3) "Bed reservation policy" means the number of
28 consecutive days and the number of days per year that a
29 resident may leave the nursing home facility for overnight
30 therapeutic visits with family or friends or for
31 hospitalization for an acute condition before the licensee may

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1 discharge the resident due to his or her absence from the
2 facility.

3 (4) "Board" means the Board of Nursing Home
4 Administrators.

5 (5) "Controlling interest" means:

6 (a) The applicant for licensure or a licensee;

7 (b) A person or entity that serves as an officer of,
8 is on the board of directors of, or has a 5-percent or greater
9 ownership interest in the management company or other entity,
10 related or unrelated, which the applicant or licensee may
11 contract with to operate the facility; or

12 (c) A person or entity that serves as an officer of,
13 is on the board of directors of, or has a 5-percent or greater
14 ownership interest in the applicant or licensee.

15

16 The term does not include a voluntary board member.

17 ~~(6)~~(5) "Custodial service" means care for a person
18 which entails observation of diet and sleeping habits and
19 maintenance of a watchfulness over the general health, safety,
20 and well-being of the aged or infirm.

21 ~~(7)~~(6) "Department" means the Department of Children
22 and Family Services.

23 ~~(8)~~(7) "Facility" means any institution, building,
24 residence, private home, or other place, whether operated for
25 profit or not, including a place operated by a county or
26 municipality, which undertakes through its ownership or
27 management to provide for a period exceeding 24-hour nursing
28 care, personal care, or custodial care for three or more
29 persons not related to the owner or manager by blood or
30 marriage, who by reason of illness, physical infirmity, or
31 advanced age require such services, but does not include any

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1 place providing care and treatment primarily for the acutely
2 ill. A facility offering services for fewer than three persons
3 is within the meaning of this definition if it holds itself
4 out to the public to be an establishment which regularly
5 provides such services.

6 (9)~~(8)~~ "Geriatric outpatient clinic" means a site for
7 providing outpatient health care to persons 60 years of age or
8 older, which is staffed by a registered nurse or a physician
9 assistant.

10 (10)~~(9)~~ "Geriatric patient" means any patient who is
11 60 years of age or older.

12 (11)~~(10)~~ "Local ombudsman council" means a local
13 long-term care ombudsman council established pursuant to s.
14 400.0069, ~~located within the Older Americans Act planning and~~
15 ~~service areas.~~

16 (12) "Nursing home ~~facility~~" means any facility which
17 provides nursing services ~~as defined in part I of chapter 464~~
18 and which is licensed according to this part.

19 (13)~~(11)~~ "Nursing home bed" or "bed" means an
20 accommodation which is ready for immediate occupancy, or is
21 capable of being made ready for occupancy within 48 hours,
22 excluding provision of staffing; and which conforms to minimum
23 space requirements, including the availability of appropriate
24 equipment and furnishings within the 48 hours, as specified by
25 rule of the agency, for the provision of services specified in
26 this part to a single resident.

27 (14)~~(13)~~ "Nursing service" means such services or acts
28 as may be rendered, directly or indirectly, to and in behalf
29 of a person by individuals licensed under part I of chapter
30 464 ~~as defined in s. 464.003.~~

31 (15)~~(14)~~ "Planning and service area" means the

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1 geographic area in which the Older Americans Act programs are
2 administered and services are delivered by the Department of
3 Elderly Affairs.

4 (16)~~(15)~~ "Respite care" means admission to a nursing
5 home for the purpose of providing a short period of rest or
6 relief or emergency alternative care for the primary caregiver
7 of an individual receiving care at home who, without
8 home-based care, would otherwise require institutional care.

9 (17)~~(16)~~ "Resident care plan" means a written plan
10 developed, maintained, and reviewed not less than quarterly by
11 a registered nurse, with participation from other facility
12 staff and the resident or his or her designee or legal
13 representative, which includes a comprehensive assessment of
14 the needs of an individual resident, a listing of services
15 provided within or outside the facility to meet those needs,
16 and an explanation of service goals.

17 (18)~~(17)~~ "Resident designee" means a person, other
18 than the owner, administrator, or employee of the facility,
19 designated in writing by a resident or a resident's guardian,
20 if the resident is adjudicated incompetent, to be the
21 resident's representative for a specific, limited purpose.

22 (19)~~(18)~~ "State ombudsman council" means the State
23 Long-Term Care Ombudsman Council established pursuant to s.
24 400.0067.

25 (20) "Voluntary board member" means a director of a
26 not-for-profit corporation or organization who serves solely
27 in a voluntary capacity for the corporation or organization,
28 receives no remuneration for his or her services on the board
29 of directors, and has no financial interest in the corporation
30 or organization. A person shall be recognized by the agency as
31 a voluntary board member upon submission of a statement, on a

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1 form provided by the agency, affirming that the requirements
2 of this subsection are satisfied by the director and the
3 not-for-profit corporation or organization.

4 Section 3. The Agency for Health Care Administration
5 and the Office of the Attorney General shall jointly study the
6 potential use of electronic monitoring devices in nursing home
7 facilities licensed under part II of chapter 400, Florida
8 Statutes. The study shall include, but not be limited to, a
9 review of the current use of electronic monitoring devices by
10 nursing home facilities and their residents and other health
11 care facilities, an analysis of other state laws and proposed
12 legislation related to the mandated use of electronic
13 monitoring devices in nursing home facilities, an analysis of
14 the potential ramifications of requiring facilities to install
15 such devices when requested by or on behalf of a resident, the
16 impact of the devices on the privacy and dignity of both the
17 resident on whose behalf the device is installed and other
18 residents who may be affected by the device, the potential
19 impact on improving the care of residents, the potential
20 impact on the care environment and on staff recruitment and
21 retention, appropriate uses of any tapes if mandated by law,
22 including methods and time frames for reporting any
23 questionable incidents to the facility and appropriate
24 regulatory agencies, appropriate security needed to protect
25 the integrity of tapes for both the protection of the resident
26 and direct care staff, and the potential ramifications on the
27 care environment of allowing the use of recorded tapes in
28 legal proceedings, including any exceptions that should apply
29 if prohibited. The Agency for Health Care Administration shall
30 have the lead on the study and shall submit the findings and
31 recommendations of the study to the Governor, the Speaker of

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1 the House of Representatives and the President of the Senate
2 by January 1, 2002.

3 Section 4. Effective October 1, 2001, section 400.023,
4 Florida Statutes, is amended to read:

5 (Substantial rewording of section. See
6 s. 400.023, F.S., for present text.)

7 400.023 Civil actions to enforce nursing home
8 residents' rights.--

9 (1)(a) Sections 400.023-400.0242 provide the exclusive
10 remedy for any civil action against a nursing home licensee,
11 facility owner, facility administrator, or facility staff for
12 recovery of damages from personal injury to or death of a
13 nursing home resident arising out of negligence or deprivation
14 of rights specified in s. 400.022. This exclusivity applies to
15 and includes any claim against an employee, agent, or other
16 person for whose actions the licensee is alleged to be
17 vicariously liable and to any management company, parent
18 corporation, subsidiary, lessor, or other person alleged to be
19 directly liable to the resident or vicariously liable for the
20 actions of the licensee or its agent.

21 (b) However, ss. 400.023-400.0242 do not prohibit a
22 resident or a resident's legal guardian from pursuing any
23 administrative remedy or injunctive relief available to a
24 resident as a result of a deprivation of the rights specified
25 in s. 400.022, whether or not the deprivation of rights
26 resulted in personal injury to, or the death of, the resident.
27 In any case where there is a deprivation of rights that does
28 not involve personal injury or death, including any claim for
29 injunctive relief or an administrative remedy, the prevailing
30 party shall be entitled to recover reasonable attorney's fees,
31 not to exceed \$25,000, and costs from the nonprevailing party;

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1 however, the joinder of a claim under this paragraph with a
2 claim under paragraph (a) shall not be the basis for an award
3 of fees or costs in such claim under paragraph (a). Except as
4 otherwise set forth in this paragraph, it is the intent of the
5 Legislature that this provision for attorney's fees be
6 interpreted in a manner consistent with federal case law
7 involving an action under Title VII of the Civil Rights Act.

8 (c) In addition to the remedies provided in ss.
9 400.023-400.0242, a resident, a resident's legal guardian, or
10 the personal representative of the estate of a deceased
11 resident may pursue an action under s. 415.1111. In addition,
12 a resident or a resident's legal guardian shall be entitled to
13 pursue a claim for damages or injunctive relief for those
14 violations of s. 400.022 that do not result in personal injury
15 or death.

16 (2) A claim pursuant to ss. 400.023-400.0242 may be
17 brought by the resident or his or her legal guardian, by a
18 person or organization acting on behalf of a resident with the
19 consent of the resident or his or her guardian, or, if the
20 resident has died, the personal representative of the estate
21 of the deceased resident.

22 (3) In any claim brought pursuant to ss.
23 400.023-400.0242, the claimant has the burden of proving by a
24 preponderance of the evidence that:

25 (a) Each defendant had an established duty to the
26 resident;

27 (b) Each defendant breached that duty;

28 (c) The breach of that duty is the proximate cause of
29 the personal injury to, or the death of, the resident, or the
30 proximate cause of the deprivation of the resident's rights
31 specified in s. 400.022; and

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1 (d) The proximate cause of the personal injury, death,
2 or deprivation of the resident's rights resulted in damages.

3 (4) For purposes of ss. 400.023-400.0242, a licensee
4 breaches its established duty to the resident when it fails to
5 provide a standard of care that a reasonably prudent nursing
6 home would provide under the same or similar circumstances. A
7 deprivation of the rights specified in s. 400.022 or in any
8 other standard or guidelines specified in this part or in any
9 applicable administrative standard or guidelines of this state
10 or a federal regulatory agency shall be evidence of a breach
11 of duty by the licensee.

12 (5) A licensee shall not be liable for the medical
13 negligence of any physician rendering care or treatment to the
14 resident except for the services of a medical director as
15 required in this part. Nothing in this subsection shall be
16 construed to protect a licensee from liability for failure to
17 provide a resident with appropriate observation, assessment,
18 nursing diagnosis, planning, intervention, and evaluation of
19 care by nursing staff.

20 (6) An action for damages brought under ss.
21 400.023-400.0242 must be commenced within 2 years after the
22 date on which the incident giving rise to the action occurred
23 or within 2 years after the date on which the incident is
24 discovered, or should have been discovered with the exercise
25 of due diligence. However, the action may not be commenced
26 later than 4 years after the date of the incident or
27 occurrence out of which the cause of action accrued. In any
28 action covered by this subsection in which it is shown that
29 fraud, concealment, or intentional misrepresentation of fact
30 prevented the discovery of the injury, the period of
31 limitation is extended forward 2 years from the time that the

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1 injury is discovered, or should have been discovered with the
2 exercise of due diligence, but such period may not in any
3 event exceed 7 years after the date that the incident giving
4 rise to the injury occurred.

5 (7) As used in ss. 400.023-400.0242, the term:

6 (a) "Claimant" means any person who is entitled to
7 recover damages under this part.

8 (b) "Licensee" means the legal entity identified in
9 the application for licensure under this part which entity is
10 the licensed operator of the facility.

11 (c) "Medical expert" means a person duly and regularly
12 engaged in the practice of his or her profession who holds a
13 health care professional degree from a university or college
14 and has had special professional training and experience, or a
15 person who possesses special health care knowledge or skill,
16 concerning the subject upon which he or she is called to
17 testify or provide an opinion.

18 (d) "Resident" means a person who occupies a licensed
19 bed in a facility licensed under this part.

20 (8) Sections 768.16-768.26 apply to a claim in which
21 the resident has died as a result of the facility's breach of
22 an established duty to the resident. In addition to any other
23 damages, the personal representative may recover on behalf of
24 the estate pursuant to ss. 768.16-768.26. The personal
25 representative may also recover on behalf of the estate
26 noneconomic damages for the resident's pain and suffering from
27 the time of injury until the time of death. The limitations
28 set forth in s. 768.21(8) do not apply to a claim maintained
29 under this section where a resident has died as a result of
30 the nursing home's breach of a duty to the resident.

31 (9) For the purpose of this section, punitive damages

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1 may be awarded for conduct which is willful, wanton, gross or
2 flagrant, reckless, or consciously indifferent to the rights
3 of the resident.

4 (10) Discovery of financial information for the
5 purpose of determining the value of punitive damages may not
6 be had unless the plaintiff shows the court by proffer or
7 evidence in the record that a reasonable basis exists to
8 support a claim for punitive damages.

9 (11) In addition to any other standards for punitive
10 damages, any award of punitive damages must be reasonable in
11 light of the actual harm suffered by the resident and the
12 egregiousness of the conduct that caused the actual harm to
13 the resident.

14 (12) Any portion of an order, judgment, arbitration
15 decision, mediation agreement, or other type of agreement,
16 contract, or settlement that has the purpose or effect of
17 concealing information relating to the settlement or
18 resolution of any claim or action brought pursuant to this
19 part is void, contrary to public policy, and may not be
20 enforced. No court shall enter an order or judgment that has
21 the purpose or effect of concealing any information pertaining
22 to the resolution or settlement of any claim or action brought
23 pursuant to ss. 400.023-400.0242. Any person or governmental
24 entity has standing to contest an order, judgment, arbitration
25 decision, mediation agreement, or other type of agreement,
26 contract, or settlement that violates this subsection. A
27 contest pursuant to this subsection may be brought by a motion
28 or an action for a declaratory judgment filed in the circuit
29 court of the circuit where the violation of this subsection
30 occurred.

31 (13) The defendant must provide to the agency a copy

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1 of any resolution of a claim or civil action brought pursuant
2 to ss. 400.023-400.0242 within 90 days after such resolution,
3 including, but not limited to, any final judgment, arbitration
4 decision, order, mediation agreement, or settlement. Failure
5 to provide the copy to the agency shall result in a fine of
6 \$500 for each day it is overdue. The agency shall develop
7 forms and adopt rules necessary to administer this subsection.

8 Section 5. Subsections (1) through (11) of section
9 400.023, Florida Statutes, as amended by this act, shall apply
10 to causes of action accruing on or after October 1, 2001.
11 Subsections (12) and (13) of section 400.023, Florida
12 Statutes, as amended by this act, shall apply to causes of
13 action in existence on October 1, 2001.

14 Section 6. Effective October 1, 2001, and applicable
15 to causes of action accruing on or after that date, section
16 400.0235, Florida Statutes, is created to read:

17 400.0235 Requirements of the presuit process.--Before
18 filing an action in circuit court under this part, the
19 claimant must engage in the presuit screening process
20 prescribed in s. 400.0236. If the claim meets the requirements
21 of s. 400.0236, the claimant must notify each potential
22 defendant of the claimant's intent to initiate litigation
23 under this part, at which time the claimant and each potential
24 defendant must engage in the presuit investigation process
25 prescribed in s. 400.0237. Upon completion of the presuit
26 investigation process, either party may offer to engage in
27 binding arbitration as described in s. 400.0238. If the
28 parties do not engage in binding arbitration, the claimant may
29 file an action in circuit court and the provisions of s.
30 400.0238 shall apply at trial.

31 Section 7. Effective October 1, 2001, and applicable

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1 to causes of action accruing on or after that date, section
2 400.0236, Florida Statutes, is created to read:
3 400.0236 Presuit screening.--Before issuing a
4 notification of intent to initiate litigation under s.
5 400.0237, the claimant must engage in presuit screening to
6 ascertain that there are reasonable grounds for believing that
7 a defendant violated the provisions of s. 400.022. If the
8 claim involves personal injury to, or death of, the resident,
9 the claimant must obtain a verified written medical opinion
10 from a medical expert which provides corroboration of
11 reasonable grounds to initiate litigation under ss.
12 400.023-400.0242.

13 Section 8. Effective October 1, 2001, and applicable
14 to causes of action accruing on or after that date, section
15 400.0237, Florida Statutes, is created to read:

16 400.0237 Presuit investigation.--
17 (1) Upon completing the presuit requirements in s.
18 400.0236, the claimant shall notify each prospective defendant
19 by certified mail, return receipt requested, of the claimant's
20 intent to initiate litigation. If the claim involves personal
21 injury to, or death of, the resident, the notice of intent to
22 initiate litigation must contain the verified written medical
23 opinion described in s. 400.0236. Upon receipt of the
24 claimant's notice of intent to initiate litigation, the
25 defendant, the defendant's insurer, or the defendant's
26 self-insurer must conduct a review to determine the liability
27 of the defendant. The review must be completed within 90 days
28 after receipt of the notice to initiate litigation and the
29 suit may not be filed until at least 90 days after the date
30 the defendant receives notice.

31 (2) The notice of intent to initiate litigation must

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1 be served during the time limits set forth in s. 400.023(6);
2 however, during the 90-day period the statute of limitations
3 is tolled as to all potential defendants and, upon written
4 stipulation by the parties, the 90-day period may be extended,
5 and the statute of limitations is tolled during any such
6 extension. Upon completion of the 90-day period, or upon
7 receiving notice of termination of negotiations during an
8 extended period, the claimant has 60 days or the remainder of
9 the period of the statute of limitations, whichever is
10 greater, within which to file suit.

11 (3) Each defendant, and each insurer or self-insurer
12 of each defendant, must have a procedure for promptly
13 investigating, reviewing, and evaluating a claim during the
14 90-day period. If the defendant rejects the claim and the
15 claim involves personal injury to, or death of, the resident,
16 corroboration of lack of reasonable grounds for litigation
17 under ss. 400.023-400.0242 must be provided by submitting a
18 verified written medical opinion from a medical expert at the
19 time the response rejecting the claim is mailed.

20 (4) During the 90-day investigation period, each party
21 shall provide to the other party reasonable access to
22 information within its possession or control in order to
23 facilitate evaluation of the claim. Such access shall be
24 provided without formal discovery, pursuant to s.
25 766.106(5)-(9), and failure to provide such information is
26 grounds for dismissal of any applicable claim or defense
27 ultimately asserted.

28 Section 9. Effective October 1, 2001, and applicable
29 to causes of action accruing on or after that date, section
30 400.0238, Florida Statutes, is created to read:

31 400.0238 Voluntary binding arbitration.--

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1 (1)(a) Upon the completion of presuit investigation
2 with preliminary reasonable grounds for a claim intact, the
3 parties may elect to have damages determined by an arbitration
4 panel. Such election may be initiated by either party by
5 -serving a request for voluntary binding arbitration of damages
6 within 90 days after service of the complaint upon the
7 defendant. The evidentiary standards for voluntary binding
8 arbitration as authorized herein shall be as provided in ss.
9 120.569(2)(g) and 120.57(1)(c).

10 (b) Upon receipt of a party's request for such
11 arbitration, the opposing party may accept the offer of
12 voluntary binding arbitration within 30 days. However, in no
13 event shall the defendant be required to respond to the
14 request for arbitration sooner than 90 days after service of
15 the complaint. Such acceptance within the time period
16 provided by this paragraph shall be a binding commitment to
17 comply with the decision of the arbitration panel.

18 (c) The arbitration panel shall be composed of three
19 arbitrators, one selected by the claimant, one selected by the
20 defendant, and one an administrative law judge furnished by
21 the Division of Administrative Hearings who shall serve as the
22 chief arbitrator. In the event of multiple plaintiffs or
23 multiple defendants, the arbitrator selected by the side with
24 multiple parties shall be the choice of those parties. If the
25 multiple parties cannot reach agreement as to their
26 arbitrator, each of the multiple parties shall submit a
27 nominee, and the director of the Division of Administrative
28 Hearings shall appoint the arbitrator from among such
29 nominees.

30 (d) The arbitrators shall be independent of all
31 parties, witnesses, and legal counsel, and no officer,

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1 director, affiliate, subsidiary, or employee of a party,
2 witness, or legal counsel may serve as an arbitrator in the
3 proceeding.

4 (e) The rate of compensation for arbitrators other
5 than the administrative law judge shall be set by the chief
6 judge of the appropriate circuit court by schedule or as
7 agreed by the parties. In setting the schedule, the chief
8 judge shall consider the prevailing rates charged for the
9 delivery of professional services in the community.

10 (f) Arbitration pursuant to this section shall
11 preclude recourse to any other remedy by the claimant against
12 any participating defendant, and shall be undertaken with the
13 understanding that:

14 1. Net economic damages shall be awardable, including,
15 but not limited to, past and future medical expenses and 80
16 percent of wage loss and loss of earning capacity, offset by
17 any collateral source payments.

18 2. Noneconomic damages shall be limited to a maximum
19 of \$500,000 per incident.

20 3. Damages for future economic losses shall be awarded
21 to be paid by periodic payments pursuant to s. 766.202(8) and
22 shall be offset by future collateral source payments.

23 4. Punitive damages may be awarded by the arbitration
24 panel for conduct which is willful, wanton, gross or flagrant,
25 reckless, or consciously indifferent to the rights of the
26 resident. Upon such finding, the judgment for the total amount
27 of punitive damages awarded to a claimant may not exceed three
28 times the amount of compensatory damages awarded to each
29 person entitled thereto by the arbitrators. Any award of
30 punitive damages shall be equally divided between the claimant
31 and the Quality Care Improvement Fund and awarded pursuant to

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1 paragraphs (3)(b)-(e).

2 5. The defendant shall be responsible for the payment
3 of interest on all accrued damages with respect to which
4 interest would be awarded at trial.

5 6. The defendant shall pay the claimant's reasonable
6 attorney's fees and costs, as determined by the arbitration
7 panel, but in no event more than 15 percent of the award,
8 reduced to present value.

9 7. The defendant shall pay all the costs of the
10 arbitration proceeding and the fees of all the arbitrators
11 other than the administrative law judge.

12 8. Each defendant who submits to arbitration under
13 this section shall be jointly and severally liable for all
14 damages assessed pursuant to this section.

15 9. The defendant's obligation to pay the claimant's
16 damages shall be for the purpose of arbitration under this
17 section only. A defendant's or claimant's offer to arbitrate
18 shall not be used in evidence or in argument during any
19 subsequent litigation of the claim following the rejection
20 thereof. Once arbitration has been selected by the parties, it
21 shall be with the understanding and agreement that the
22 defendants do not contest liability, and the issue to be
23 determined in this regard shall be the amount of compensatory
24 damages to be awarded to the claimant. The defendant may fully
25 contest liability regarding punitive damages and shall not be
26 deemed to have admitted liability for, or the amount of, any
27 punitive damages.

28 10. The fact of making or accepting an offer to
29 arbitrate shall not be admissible as evidence of liability in
30 any collateral or subsequent proceeding on the claim.

31 11. Any offer by a claimant to arbitrate must be made

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1 to each defendant against whom the claimant has made a claim.
2 Any offer by a defendant to arbitrate must be made to each
3 claimant who has joined in the litigation. A defendant who
4 rejects a claimant's offer to arbitrate shall be subject to
5 the provisions of paragraph (2)(c). A claimant who rejects a
6 defendant's offer to arbitrate shall be subject to the
7 provisions of paragraph (2)(d).

8 12. The hearing shall be conducted by all of the
9 arbitrators, but a majority may determine any question of fact
10 and render a final decision. The chief arbitrator shall
11 decide all evidentiary matters.

12
13 The provisions of this paragraph shall not preclude settlement
14 at any time by mutual agreement of the parties.

15 (g) Any issue between the defendant and the
16 defendant's insurer or self-insurer as to who shall control
17 the defense of the claim and any responsibility for payment of
18 an arbitration award shall be determined under existing
19 principles of law; provided that the insurer or self-insurer
20 shall not offer to arbitrate or accept a claimant's offer to
21 arbitrate without the written consent of the defendant.

22 (h) The Division of Administrative Hearings is
23 authorized to promulgate rules to effect the orderly and
24 efficient processing of the arbitration procedures of this
25 section.

26 (i) Rules promulgated by the Division of
27 Administrative Hearings pursuant to this section, s. 120.54,
28 or s. 120.65 may authorize any reasonable sanctions except
29 contempt for violation of the rules of the division or failure
30 to comply with a reasonable order issued by an administrative
31 law judge, which is not under judicial review.

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1 (2) The following provisions shall govern when
2 voluntary binding arbitration is not offered or accepted:

3 (a) A proceeding for voluntary binding arbitration is
4 an alternative to judicial proceedings once agreed to by the
5 parties. If not offered or accepted, however, the provisions
6 of paragraph (b) shall apply.

7 (b) If neither party requests voluntary binding
8 arbitration, the claim shall proceed in the judicial process.
9 In such judicial process, the provisions of s. 768.79 shall
10 apply.

11 (c) If the defendant refuses a claimant's offer of
12 voluntary binding arbitration under this section:

13 1. The claim shall proceed in the judicial process
14 without limitation upon damages.

15 2. The claimant's award shall be reduced by any
16 damages recovered by the claimant from arbitrating
17 codefendants following arbitration.

18 (d) If the claimant rejects a defendant's offer to
19 enter voluntary binding arbitration under this section:

20 1. The claim shall proceed in the judicial process
21 without limitation upon damages.

22 2. The claimant's award shall be reduced by any
23 damages recovered by the claimant from arbitrating
24 codefendants following arbitration.

25 3. Notwithstanding any other law to the contrary,
26 punitive damages may not exceed three times the amount of
27 compensatory damages awarded to each person entitled thereto
28 by the trier of fact and the amount shall be divided equally
29 between the claimant and the Quality of Long-Term Care
30 Facility Improvement Trust Fund, in accordance with the
31 following provisions:

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1 a. The clerk of the court shall transmit a copy of the
2 jury verdict to the State Treasurer by certified mail. In the
3 final judgment the court shall order the percentages of the
4 award, payable as provided herein.

5 b. A settlement agreement entered into between the
6 original parties to the action after a verdict has been
7 returned must provide a proportionate share payable to the
8 Quality of Long-Term Care Facility Improvement Trust Fund
9 specified herein. For purposes of this subsection, a
10 proportionate share is a 50-percent share of that percentage
11 of the settlement amount which the punitive damages portion of
12 the verdict bore to the total of the compensatory and punitive
13 damages in the verdict.

14 c. The Department of Banking and Finance shall collect
15 or cause to be collected all payments due the state under this
16 section. Such payments are made to the Comptroller and
17 deposited in the appropriate fund specified in this
18 subsection.

19 d. If the full amount of punitive damages awarded
20 cannot be collected, the claimant and the other recipient
21 designated pursuant to this subsection are each entitled to a
22 proportionate share of the punitive damages collected.

23 (3)(a)1. In the event that neither the claimant nor
24 the defendant request arbitration under this section, then
25 notwithstanding any other provision of law to the contrary, in
26 any actions arising under this part and involving the award of
27 punitive damages, the judgment for the total amount of
28 punitive damages awarded to a claimant may not exceed three
29 times the amount of compensatory damages awarded to each
30 person entitled thereto by the trier of fact, except as
31 provided in subparagraph 2. This paragraph does not apply to

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1 any class action.

2 2. If any award for punitive damages exceeds the
3 limitation specified in subparagraph 1., the award is presumed
4 to be excessive and the defendant is entitled to remittitur of
5 the amount in excess of the limitation unless the claimant
6 demonstrates to the court by clear and convincing evidence
7 that the award is not excessive in light of the facts and
8 circumstances that were presented to the trier of fact. The
9 court shall give great weight as a mitigating factor to the
10 infrequency or lack of severity of prior claims against the
11 defendant.

12 3. The jury may not be instructed or informed as to
13 the provisions of this subsection.

14 (b) The amount of punitive damages awarded to each
15 claimant shall be equally divided between the claimant and the
16 Quality of Long-Term Care Facility Improvement Trust Fund, in
17 accordance with the following:

18 1. The clerk of the court shall transmit a copy of the
19 jury verdict to the State Treasurer by certified mail. In the
20 final judgment the court shall order the percentages of the
21 award, payable as provided herein.

22 2. A settlement agreement entered into between the
23 original parties to the action after a verdict has been
24 returned must provide a proportionate share payable to the
25 fund specified herein. Such proportionate share shall be
26 determined by prorating the amount of the settlement between
27 compensatory and punitive damages in the same ratio as the
28 respective portions of the damages awarded in the verdict.
29 That portion of the prorated punitive damages that exceeds
30 three times the prorated compensatory damages shall be the
31 amount of the proportionate share to be divided as provided

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1 herein.

2 3. The Department of Banking and Finance shall collect
3 or cause to be collected all payments due the state under this
4 section. Such payments shall be made to the Comptroller and
5 deposited in the appropriate fund specified in this
6 subsection.

7 4. If the full amount of punitive damages awarded
8 cannot be collected, the claimant and the other recipient
9 designated pursuant to this subsection are each entitled to a
10 proportional share of the punitive damages collected.

11 Section 10. Effective October 1, 2001, and applicable
12 to causes of action accruing on or after that date, section
13 400.0239, Florida Statutes, is created to read:

14 400.0239 Arbitration to allocate responsibility.--

15 (1) This section applies when more than one defendant
16 has participated in voluntary binding arbitration pursuant to
17 s. 400.0238.

18 (2) Within 20 days after the determination of damages
19 by the arbitration panel in the first arbitration proceeding,
20 those defendants who have agreed to voluntary binding
21 arbitration shall submit any dispute among them regarding the
22 apportionment of financial responsibility to a separate
23 binding arbitration proceeding. Such proceeding shall be with
24 a panel of three arbitrators, which panel shall consist of the
25 chief arbitrator who presided in the first arbitration
26 proceeding, who shall serve as the chief arbitrator, and two
27 arbitrators appointed by the defendants. If the defendants
28 cannot agree on their selection of arbitrators within 20 days
29 after the determination of damages by the arbitration panel in
30 the first arbitration proceeding, selection of the arbitrators
31 shall be in accordance with chapter 682.

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1 (3) The chief arbitrator shall convene the arbitrators
2 for the purpose of determining allocation of responsibility
3 among multiple defendants within 65 days after the
4 determination of damages by the arbitration panel in the first
5 arbitration proceeding.

6 (4) The arbitration panel shall allocate financial
7 responsibility among all defendants named in the notice of
8 intent to initiate litigation, regardless of whether the
9 defendant has submitted to arbitration. The defendants in the
10 arbitration proceeding shall pay their proportionate share of
11 the economic and noneconomic damages awarded by the
12 arbitration panel. All defendants in the arbitration
13 proceeding shall be jointly and severally liable for any
14 damages assessed in arbitration. The determination of the
15 percentage of fault of any defendant not in the arbitration
16 proceeding is not binding against the plaintiff or that
17 defendant, and is not admissible in any subsequent legal
18 proceeding.

19 (5) Payment by the defendants of the damages awarded
20 by the arbitration panel in the first arbitration proceeding
21 shall extinguish those defendants' liability to the claimant
22 and shall also extinguish those defendants' liability for
23 contribution to any defendants who did not participate in
24 arbitration.

25 (6) Any defendant paying damages assessed under this
26 section or s. 400.0238 shall have an action for contribution
27 against any nonarbitrating person whose negligence contributed
28 to the injury.

29 Section 11. Effective October 1, 2001, and applicable
30 to causes of action accruing on or after that date, section
31 400.024, Florida Statutes, is created to read:

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1 400.024 Misarbitration.--
2 (1) At any time during the course of voluntary binding
3 arbitration of a claim under s. 400.0238, the chief arbitrator
4 on the arbitration panel, if he or she determines that
5 agreement cannot be reached, may dissolve the arbitration
6 panel and appoint two new arbitrators from lists of three to
7 five names provided by each party to the arbitration. Not more
8 than one arbitrator shall be appointed from the list provided
9 by any party.

10 (2) Upon appointment of the new arbitrators,
11 arbitration shall proceed at the direction of the chief
12 arbitrator in accordance with ss. 400.0238-400.0242.

13 (3) At any time after the allocation arbitration
14 hearing under s. 400.0239 has concluded, the chief arbitrator
15 on the arbitration panel may dissolve the arbitration panel
16 and declare the proceedings concluded if he or she determines
17 that agreement cannot be reached.

18 Section 12. Effective October 1, 2001, and applicable
19 to causes of action accruing on or after that date, section
20 400.0241, Florida Statutes, is created to read:

21 400.0241 Payment of arbitration award.--

22 (1) Within 20 days after the determination of damages
23 by the arbitration panel pursuant to s. 400.0238, the
24 defendant shall:

25 (a) Pay the arbitration award, including interest at
26 the legal rate, to the claimant; or

27 (b) Submit any dispute among multiple defendants to
28 arbitration as provided in s. 400.0239.

29 (2) Commencing 90 days after the award rendered in the
30 arbitration procedure under s. 400.0238, such award shall
31 accrue interest at the rate of 18 percent per year.

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1 Section 13. Effective October 1, 2001, and applicable
2 to causes of action accruing on or after that date, section
3 400.0242, Florida Statutes, is created to read:

4 400.0242 Appeal of arbitration award.--

5 (1) An arbitration award and an allocation of
6 financial responsibility are final agency action for purposes
7 of s. 120.68. Any appeal must be filed in the district court
8 of appeal for the district in which the arbitration took
9 place, is limited to review of the record, and must otherwise
10 proceed in accordance with s. 120.68. The amount of an
11 arbitration award or an order allocating financial
12 responsibility, the evidence in support of either, and the
13 procedure by which either is determined are subject to
14 judicial scrutiny only in a proceeding instituted under this
15 subsection.

16 (2) An appeal does not operate to stay an arbitration
17 award, and an arbitration panel, member of an arbitration
18 panel, or circuit court shall not stay an arbitration award.
19 The district court of appeal may order a stay to prevent
20 manifest injustice, but the court shall not abrogate the
21 provisions of s. 400.0241(2).

22 (3) Any party to an arbitration proceeding may enforce
23 an arbitration award or an allocation of financial
24 responsibility by filing a petition in the circuit court for
25 the circuit in which the arbitration took place. A petition
26 may not be granted unless the time for appeal has expired. If
27 an appeal has been taken, a petition may not be granted with
28 respect to an arbitration award or an allocation of financial
29 responsibility which has been stayed.

30 (4) If the petitioner establishes the authenticity of
31 the arbitration award or the allocation of financial

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1 responsibility, shows that the time for appeal has expired,
2 and demonstrates that no stay is in place, the court shall
3 enter such orders and judgments as are required to carry out
4 the terms of the arbitration award or allocation of financial
5 responsibility. Such orders are enforceable by the contempt
6 powers of the court, and execution will issue, upon the
7 request of a party, for such judgments.

8 Section 14. Section 400.0245, Florida Statutes, is
9 created to read:

10 400.0245 Adverse action against employee for
11 disclosing information of specified nature prohibited;
12 employee remedy and relief.--

13 (1) SHORT TITLE.--This section may be cited as the
14 "Nursing Home Facility Whistleblower's Act."

15 (2) LEGISLATIVE INTENT.--It is the intent of the
16 Legislature to prevent nursing home facilities or independent
17 contractors from taking retaliatory action against an employee
18 who reports to an appropriate person or agency violations of
19 law on the part of a facility or independent contractor that
20 create a substantial and specific danger to a nursing home
21 facility resident's health, safety, or welfare. It is further
22 the intent of the Legislature to prevent nursing home
23 facilities or independent contractors from taking retaliatory
24 action against any person who discloses information to an
25 appropriate agency alleging improper use of or gross waste of
26 governmental funds, or any other abuse or gross neglect of
27 duty on the part of a nursing home facility.

28 (3) DEFINITIONS.--As used in this section, unless
29 otherwise specified, the following words or terms shall have
30 the meanings indicated:

31 (a) "Adverse personnel action" means the discharge,

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1 suspension, transfer, or demotion of any employee or the
2 withholding of bonuses, the reduction in salary or benefits,
3 or any other adverse action taken against an employee within
4 the terms and conditions of employment by a nursing home
5 facility or independent contractor.

6 (b) "Agency" means any state, regional, county, local,
7 or municipal government entity, whether executive, judicial,
8 or legislative; or any official, officer, department,
9 division, bureau, commission, authority, or political
10 subdivision thereof.

11 (c) "Employee" means a person who performs services
12 for, and under the control and direction of, or contracts
13 with, a nursing home facility or independent contractor for
14 wages or other remuneration.

15 (d) "Gross mismanagement" means a continuous pattern
16 of managerial abuses, wrongful or arbitrary and capricious
17 actions, or fraudulent or criminal conduct which may have a
18 substantial adverse economic impact.

19 (e) "Independent contractor" means a person who is
20 engaged in any business and enters into a contract with a
21 nursing home facility.

22 (4) ACTIONS PROHIBITED.--

23 (a) A nursing home facility or an independent
24 contractor shall not dismiss, discipline, or take any other
25 adverse personnel action against an employee for disclosing
26 information pursuant to the provisions of this section.

27 (b) A nursing home facility or an independent
28 contractor shall not take any adverse action that affects the
29 rights or interests of a person in retaliation for the
30 person's disclosure of information under this section.

31 (c) The provisions of this subsection shall not be

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1 applicable when an employee or person discloses information
2 known by the employee or person to be false.
3 (5) NATURE OF INFORMATION DISCLOSED.--The information
4 disclosed under this section must include:
5 (a) Any violation or suspected violation of any
6 federal, state, or local law, rule, or regulation committed by
7 an employee or agent of a nursing home facility or independent
8 contractor which creates and presents a substantial and
9 specific danger to the nursing home facility resident's
10 health, safety, or welfare.
11 (b) Any act or suspected act of gross mismanagement,
12 malfeasance, misfeasance, gross waste of public funds, or
13 gross neglect of duty committed by an employee or agent of a
14 nursing home facility or independent contractor.
15 (6) TO WHOM INFORMATION DISCLOSED.--The information
16 disclosed under this section must be disclosed to any agency
17 or Federal Government entity or person designated in s.
18 400.022(1)(c) having the authority to investigate, police,
19 manage, or otherwise remedy the violation or act.
20 (7) EMPLOYEES AND PERSONS PROTECTED.--This section
21 protects employees and persons who disclose information on
22 their own initiative in a written and signed complaint; who
23 are requested to participate in an investigation, hearing, or
24 other inquiry conducted by any agency or Federal Government
25 entity; who refuse to participate in any adverse action
26 prohibited by this section; or who initiate a complaint
27 through any appropriate complaint hotline. No remedy or other
28 protection under this section applies to any person who has
29 committed or intentionally participated in committing the
30 violation or suspected violation for which protection under
31 this section is being sought.

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1 (8) REMEDIES.--Any person protected by this section
2 may bring a civil action in any court of competent
3 jurisdiction against a nursing home facility for any action
4 prohibited by this section.

5 (9) RELIEF.--In any action brought under this section,
6 the relief may include the following:

7 (a) Reinstatement of the employee to the same position
8 held before the adverse action was commenced or to an
9 equivalent position, or reasonable front pay as alternative
10 relief.

11 (b) Reinstatement of the employee's full fringe
12 benefits and seniority rights, as appropriate.

13 (c) Compensation, if appropriate, for lost wages, lost
14 benefits, or other lost remuneration caused by the adverse
15 action.

16 (d) Payment of reasonable costs, including attorney's
17 fees, to a substantially prevailing employee, or to the
18 prevailing employer if the employee filed a frivolous action
19 in bad faith.

20 (e) Issuance of an injunction, if appropriate, by a
21 court of competent jurisdiction.

22 (f) Temporary reinstatement to the employee's former
23 position or to an equivalent position, pending the final
24 outcome on the complaint, if an employee complains of being
25 discharged in retaliation for a protected disclosure and if a
26 court of competent jurisdiction determines that the disclosure
27 was not made in bad faith or for a wrongful purpose or
28 occurred after a nursing home facility's or independent
29 contractor's initiation of a personnel action against the
30 employee which includes documentation of the employee's
31 violation of a disciplinary standard or performance

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1 deficiency.

2 (10) PENALTIES.--

3 (a) A nursing home facility determined by the agency
4 to have committed an action prohibited under subsection (4) is
5 subject to the penalties set forth in s. 400.23(8)(a).

6 (b) In addition, a violation of subsection (4)
7 constitutes a felony of the third degree, punishable as
8 provided in ss. 775.082 and 775.083.

9 (11) REWARD.--Any person protected by this section who
10 discloses information as provided in paragraph (5)(b) related
11 to gross waste of public funds shall be awarded \$10,000, which
12 sum shall be paid from the Resident Protection Trust Fund.

13 (12) POSTING OF NOTICE.--Each facility licensed under
14 this part shall prominently post notice of the protections,
15 rewards, and remedies provided under this section, along with
16 the telephone numbers for making reports, and shall provide
17 such notice to all employees of the facility within 30 days
18 after the effective date of this section and to all new
19 employees hired subsequent to that date.

20 (13) DEFENSES.--It shall be an affirmative defense to
21 any action brought pursuant to this section that the adverse
22 action was predicated upon grounds other than, and would have
23 been taken absent, the employee's or person's exercise of
24 rights protected by this section.

25 (14) EXISTING RIGHTS.--This section does not diminish
26 the rights, privileges, or remedies of an employee under any
27 other law or rule or under any collective bargaining agreement
28 or employment contract.

29 Section 15. Subsections (2) and (5) of section
30 400.071, Florida Statutes, are amended, subsections (9) and
31 (10) are renumbered as subsections (10) and (11),

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1 respectively, and a new subsection (9) is added to said
2 section, to read:

3 400.071 Application for license.--

4 (2) The application shall be under oath and shall
5 contain the following:

6 (a) The name, address, and social security number of
7 the applicant if an individual; if the applicant is a firm,
8 partnership, or association, its name, address, and employer
9 identification number (EIN), and the name and address of any
10 controlling interest ~~every member; if the applicant is a~~
11 ~~corporation, its name, address, and employer identification~~
12 ~~number (EIN), and the name and address of its director and~~
13 ~~officers and of each person having at least a 5 percent~~
14 ~~interest in the corporation; and the name by which the~~
15 facility is to be known.

16 (b) The name of any person whose name is required on
17 the application under the provisions of paragraph (a) and who
18 owns at least a 10 percent interest in any professional
19 service, firm, association, partnership, or corporation
20 providing goods, leases, or services to the facility for which
21 the application is made, and the name and address of the
22 professional service, firm, association, partnership, or
23 corporation in which such interest is held.

24 (c) The location of the facility for which a license
25 is sought and an indication, ~~as in the original application,~~
26 that such location conforms to the local zoning ordinances.

27 (d) The name of the person or persons under whose
28 management or supervision the facility will be conducted and
29 the name of its licensed administrator.

30 (e) A signed affidavit disclosing any financial or
31 ownership interest that a person or entity described in

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1 paragraph (a) or paragraph (d) has held in the last 5 years in
2 any entity licensed by this state or any other state to
3 provide health or residential care, which entity has closed
4 voluntarily or involuntarily, and the reason for the closure;
5 has filed bankruptcy; has had a receiver appointed or a
6 license denied, suspended, or revoked; or has had an
7 injunction issued against it which was initiated by a
8 regulatory agency.

9 ~~(f)(e)~~ The total number of beds and the total number
10 of Medicare and Medicaid certified beds.

11 ~~(g)(f)~~ Information relating to the number, experience,
12 and training of the employees of the facility ~~and of the moral~~
13 ~~character of the applicant and employees which the agency~~
14 ~~requires by rule, including the name and address of any~~
15 nursing home with which the applicant or employees have been
16 affiliated through ownership or employment within 5 years of
17 the date of the application for a license ~~and the record of~~
18 ~~any criminal convictions involving the applicant and any~~
19 ~~criminal convictions involving an employee if known by the~~
20 ~~applicant after inquiring of the employee.~~ The applicant must
21 demonstrate that sufficient numbers of qualified staff, by
22 training or experience, will be employed to properly care for
23 the type and number of residents who will reside in the
24 facility.

25 ~~(h)(g)~~ Copies of any settlement entered into by the
26 applicant or any civil verdict or judgment involving the
27 applicant, rendered within the 10 years preceding the
28 application, relating to medical negligence, violation of
29 residents' rights, or wrongful death. As a condition of
30 licensure, the licensee agrees to provide to the agency copies
31 of any new settlement, verdict, or judgment involving the

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1 applicant, relating to such matters, within 30 days after
2 filing with the clerk of the court. The information required
3 in this paragraph shall be maintained in the facility's
4 licensure file and in an agency database which is available as
5 a public record.

6 (5) The applicant shall furnish satisfactory proof of
7 financial ability to operate ~~and conduct~~ the nursing home in
8 accordance with the requirements of this part and all rules
9 adopted under this part, and the agency shall establish
10 standards for this purpose, including standards for the
11 information required to be reported pursuant to paragraph
12 (2)(e). The agency also shall establish documentation

13 requirements, to be completed by each applicant, that show
14 anticipated facility revenues and expenditures, the basis for
15 financing the anticipated cash-flow requirements of the
16 facility, and an applicant's access to contingency financing.

17 (9) Effective on the effective date of this section,
18 as a condition of licensure, each facility must establish and
19 submit with its application a plan for quality assurance and
20 for conducting risk management.

21 Section 16. Section 400.102, Florida Statutes, is
22 amended to read:

23 400.102 Action by agency against licensee; grounds.--

24 (1) Any of the following conditions shall be grounds
25 for action by the agency against a licensee:

26 (a) An intentional or negligent act materially
27 affecting the health or safety of residents of the facility;

28 (b) Misappropriation or conversion of the property of
29 a resident of the facility;

30 (c) Failure to follow the criteria and procedures
31 provided under part I of chapter 394 relating to the

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1 transportation, voluntary admission, and involuntary
2 examination of a nursing home resident;

3 (d) Violation of provisions of this part or rules
4 adopted under this part; ~~or~~

5 (e) Fraudulent altering, defacing, or falsifying any
6 medical or other nursing home record, or causing or procuring
7 any of these offenses to be committed;

8 (f) A demonstrated pattern of deficient practice.
9 Deficiencies found during the first 6 months after a change of
10 ownership to an unrelated party shall not be counted toward a
11 pattern of deficient practice under this paragraph. The agency
12 may adopt rules to implement this paragraph;

13 (g) Failure to pay any outstanding fines assessed by
14 final agency order or fines assessed by the Health Care
15 Financing Administration pursuant to requirements for federal
16 Medicare certification;

17 (h) Exclusion from the Medicare or Medicaid programs;
18 or

19 (i)~~(e)~~ Any act constituting a ground upon which
20 application for a license may be denied.

21 (2) If the agency has reasonable belief that any of
22 such conditions exist, it shall take the following action:

23 (a) In the case of an applicant for original
24 licensure, denial action as provided in s. 400.121.

25 (b) In the case of an applicant for relicensure or a
26 current licensee, administrative action as provided in s.
27 400.121 or injunctive action as authorized by s. 400.125.

28 (c) In the case of a facility operating without a
29 license, injunctive action as authorized in s. 400.125.

30

31 Agency action for violations of this section shall not

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1 preclude agency action under s. 400.23(8).

2 Section 17. Subsections (4) through (10) are added to
3 section 400.118, Florida Statutes, to read:

4 400.118 Quality assurance; early warning system;
5 monitoring; rapid response teams; verification of nursing
6 staff; provision of care and services.--

7 (4) Each time a staff person of the agency conducting
8 an inspection, an investigation of a complaint, an unannounced
9 facility review, or a monitoring visit under this part is in a
10 nursing home facility, the staff person shall verify, record,
11 and report to the agency the number of certified nursing
12 assistants, the number of licensed practical nurses, and the
13 number of registered nurses on duty. The staff person shall
14 report the date and time of the visit, and the facility census
15 at that time, to the agency.

16 (5) Each resident must receive and the facility must
17 provide the necessary care and services to attain or maintain
18 the highest practicable physical, mental, and psychosocial
19 well-being, in accordance with the comprehensive assessment
20 and plan of care.

21 (a) Activities of daily living.--Based on the
22 comprehensive assessment of a resident, the facility must
23 ensure that:

24 1. The resident's abilities in activities of daily
25 living do not diminish unless circumstances of the
26 individual's clinical condition demonstrate that diminution
27 was unavoidable. These abilities include the resident's
28 ability to bathe, dress, and groom; transfer and ambulate;
29 toilet; eat; and use speech, language, or other functional
30 communication systems.

31 2. The resident is given the appropriate treatment and

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1 services to maintain or improve his or her abilities specified
2 in subparagraph 1.

3 3. A resident who is unable to carry out activities of
4 daily living receives the necessary services to maintain good
5 nutrition, grooming, and personal and oral hygiene.

6 (b) Vision and hearing.--To ensure that residents
7 receive proper treatment and assistive devices to maintain
8 vision and hearing abilities, the facility must, if necessary,
9 assist the resident in making appointments with, and by
10 arranging for transportation to and from, the office of a
11 practitioner specializing in the treatment of vision or
12 hearing impairment or the office of a professional
13 specializing in the provision of vision or hearing assistive
14 devices.

15 (c) Pressure sores.--Based on the comprehensive
16 assessment of a resident, the facility must ensure that a
17 resident who enters the facility without pressure sores does
18 not develop pressure sores unless the individual's clinical
19 condition demonstrates that they were unavoidable; and a
20 resident having pressure sores receives necessary treatment
21 and services to promote healing, prevent infection, and
22 prevent new sores from developing.

23 (d) Urinary incontinence.--Based on the comprehensive
24 assessment of a resident, the facility must ensure that a
25 resident who enters the facility without an indwelling
26 catheter is not catheterized unless the resident's clinical
27 condition demonstrates that catheterization was necessary; and
28 a resident who is incontinent of bladder receives appropriate
29 treatment and services to prevent urinary tract infections and
30 to restore as much normal bladder function as possible.

31 (e) Range of motion.--Based on the comprehensive

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1 assessment of a resident, the facility must ensure that a
2 resident who enters the facility without a limited range of
3 motion does not experience reduction in range of motion unless
4 the resident's clinical condition demonstrates that a
5 reduction in range of motion is unavoidable; and a resident
6 with a limited range of motion receives appropriate treatment
7 and services to increase range of motion or to prevent further
8 decrease in range of motion.

9 (f) Mental and psychosocial functioning.--Based on the
10 comprehensive assessment of a resident, the facility must
11 ensure that a resident who displays mental or psychosocial
12 adjustment difficulty receives appropriate treatment and
13 services to correct the assessed problem; and a resident whose
14 assessment did not reveal a mental or psychosocial adjustment
15 difficulty does not display a pattern of decreased social
16 interaction or increased withdrawn, angry, or depressive
17 behaviors, unless the resident's clinical condition
18 demonstrates that such a pattern was unavoidable.

19 (g) Nasogastric tubes.--Based on the comprehensive
20 assessment of a resident, the facility must ensure that a
21 resident who has been able to eat enough alone or with
22 assistance is not fed by a nasogastric tube unless the
23 resident's clinical condition demonstrates that use of a
24 nasogastric or gastrostomy tube was unavoidable; and the
25 resident receives the appropriate treatment and services to
26 prevent aspiration pneumonia, diarrhea, vomiting, dehydration,
27 metabolic abnormalities, and nasal-pharyngeal ulcers and to
28 restore, if possible, normal eating skills.

29 (h) Accidents.--The facility must ensure that the
30 residents' environment remains as free of accident hazards as
31 is possible and that each resident receives adequate

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1 supervision and assistance devices to prevent accidents.

2 (i) Nutrition.--Based on the comprehensive assessment
3 of a resident, the facility must ensure that a resident
4 maintains acceptable parameters of nutritional status, such as
5 body weight and protein levels, unless the resident's clinical
6 condition demonstrates that this is not possible, and receives
7 a therapeutic diet when there is a nutritional problem.

8 (j) Hydration.--The facility must provide each
9 resident with sufficient fluid intake to maintain proper
10 hydration and health.

11 (k) Special needs.--The facility must ensure that
12 residents receive proper treatment and care for the following
13 special services: injections; parenteral and enteral fluids;
14 colostomy, ureterostomy, or ileostomy care; tracheostomy care;
15 tracheal suctioning; respiratory care; foot care; and
16 prostheses.

17 (l) Drug regimen.--

18 1. The facility must ensure that a resident's drug
19 regimen is free from unnecessary drugs. An unnecessary drug is
20 any drug when used in excessive doses, including duplicate
21 drug therapy; or for excessive duration; or without adequate
22 monitoring; or without adequate indications for its use; or in
23 the presence of adverse consequences which indicate the dose
24 should be reduced or discontinued; or any combination of such
25 uses.

26 2. Based on a comprehensive assessment of a resident,
27 the facility must ensure that residents who have not used
28 antipsychotic drugs are not given these drugs unless
29 antipsychotic drug therapy is necessary to treat a specific
30 condition as diagnosed and documented in the clinical record;
31 and residents who use antipsychotic drugs receive gradual dose

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1 reductions, and behavioral interventions, unless clinically
2 contraindicated, in an effort to discontinue these drugs.

3 3. The facility must ensure that a resident's drug
4 regimen is free of any significant medication errors. The
5 facility must ensure that the facility medication error rate
6 is less than 5 percent.

7 (6) A resident who has not been adjudged incapacitated
8 shall be assisted to participate in the planning of all
9 medical treatment and in the development of the plan of care.

10 (7) A resident who refuses medication, treatment, or
11 other components of the plan of care shall be advised of the
12 potential consequences of such actions. The resident's refusal
13 shall be documented in the medical record.

14 (8) The legal representative of a resident who has
15 been adjudged incapacitated and unable to make decisions about
16 medication, treatment, or other components of the plan of care
17 must be informed in writing of the resident's proposed plan of
18 care and the consequences of refusal of medication, treatment,
19 or other components of the plan of care.

20 (9) If a resident refuses medication, treatment, or
21 other components of the plan of care, the nursing home
22 facility must continue to provide other services that the
23 resident agrees to, in accordance with the resident's plan of
24 care.

25 (10) All refusals of medication, treatment, or other
26 components of the plan of care by the resident or his or her
27 legal representative shall be acknowledged in writing and
28 signed by the resident's physician.

29 Section 18. Section 400.1183, Florida Statutes, is
30 created to read:

31 400.1183 Resident grievance and complaint procedures.--

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1 (1) Every nursing home must have a grievance procedure
2 available to its residents and their families. The grievance
3 procedure must include:

4 (a) An explanation of how to pursue redress of a
5 grievance or complaint.

6 (b) The names, job titles, and telephone numbers of
7 the employees responsible for implementing the organization's
8 grievance procedure. The list must include the address and the
9 toll-free telephone numbers of the ombudsman and the agency.

10 (c) A simple description of the process through which
11 a resident may, at any time, contact the toll-free telephone
12 hotline of the ombudsman or the agency to report the
13 unresolved grievance.

14 (d) A procedure for providing assistance to residents
15 who cannot prepare a written grievance or complaint without
16 help.

17 (2) Each facility shall maintain records of all
18 grievances and shall report annually to the agency the total
19 number of grievances handled, a categorization of the cases
20 underlying the grievances, and the final disposition of the
21 grievances.

22 (3) Each facility must respond to the complaint or
23 grievance within a reasonable time after its submission.

24 (4) The agency shall investigate any complaint or
25 grievance at any time.

26 (5) The agency shall impose an administrative fine, in
27 accordance with s. 400.121, against a nursing home facility
28 for noncompliance with this section.

29 Section 19. Subsections (2) and (5) of section
30 400.121, Florida Statutes, are amended, and subsections (7)
31 and (8) are added to said section, to read:

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1 400.121 Denial, suspension, revocation of license;
2 moratorium on admissions; administrative fines; procedure;
3 order to increase staffing.--

4 (1) The agency may deny, revoke, or suspend a license
5 or impose an administrative fine, not to exceed \$500 per
6 violation per day, for a violation of any provision of s.
7 400.102(1). All hearings shall be held within the county in
8 which the licensee or applicant operates or applies for a
9 license to operate a facility as defined herein.

10 (2) Except as provided in s. 400.23(8), a \$500 fine
11 shall be imposed for each violation of this part ~~The agency,~~
12 ~~as a part of any final order issued by it under this part, may~~
13 ~~impose such fine as it deems proper, except that such fine may~~
14 ~~not exceed \$500 for each violation.~~ Each day a violation of
15 this part occurs constitutes a separate violation and is
16 subject to a separate fine, but in no event may any fine
17 aggregate more than \$5,000. A fine may be levied pursuant to
18 this section in lieu of and notwithstanding the provisions of
19 s. 400.23. ~~Fines paid by any nursing home facility licensee~~
20 ~~under this subsection~~ shall be deposited in the Resident
21 Protection Trust Fund and expended as provided in s. 400.063.

22 (5) An action taken by the agency to deny, suspend, or
23 revoke a facility's license ~~under this part~~, in which the
24 agency claims that the facility owner or an employee of the
25 facility has threatened the health, safety, or welfare of a
26 resident of the facility, shall be heard by the Division of
27 Administrative Hearings of the Department of Management
28 Services within 120 days after receipt of the facility's
29 request for a hearing, unless the time limitation is waived by
30 both parties. The administrative law judge must render a
31 decision within 30 days after receipt of a proposed

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1 recommended order. This subsection does not modify the
2 requirement that an administrative hearing be held within 90
3 days after a license is suspended under paragraph (4)(b).
4 (7) The agency may deny an application based on the
5 disclosure of information required in s. 400.07(2)(e) if such
6 information demonstrates that any controlling interest has
7 been the subject of an adverse action by a regulatory
8 authority of any jurisdiction, including its agencies or
9 subdivisions, for a violation that would constitute a
10 violation under Florida law. The licensing authority's
11 acceptance of a relinquishment of licensure, stipulation,
12 consent order, or other settlement, offered in response to or
13 in anticipation of the filing of charges against the licensee,
14 shall be construed as an adverse action against the licensee.
15 If the adverse action solely involves the management company,
16 the applicant or licensee shall be given 30 days to replace
17 the management company with a company that has not been the
18 subject of an adverse action as described in this subsection.
19 The agency may adopt rules as necessary to implement this
20 subsection.

21 (8) Administrative proceedings challenging agency
22 licensure enforcement actions shall be reviewed on the basis
23 of the facts and conditions that resulted in the initial
24 agency action.

25 Section 20. Section 400.141, Florida Statutes, is
26 amended to read:

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

30 (1) Be under the administrative direction and charge
31 of a licensed administrator.

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- 1 (2) Appoint a medical director licensed pursuant to
2 chapter 458 or chapter 459 who meets the criteria established
3 by the Florida Medical Directors Association adopted by agency
4 rule. The agency may establish by rule more specific criteria
5 for the appointment of a medical director.
- 6 (3) Have available the regular, consultative, and
7 emergency services of physicians licensed by the state.
- 8 (4) Have sufficient nursing staff, on a 24-hour basis,
9 to provide nursing and related services to residents in order
10 to maintain the highest practicable physical, mental, and
11 psychosocial well-being of each resident, as determined by
12 resident assessments and plans of care.
- 13 (5) Conduct initially and periodically a
14 comprehensive, accurate, standardized, reproducible assessment
15 of each resident's functional capacity and care plans in
16 conformance with the federal regulations contained in Title 42
17 of the Code of Federal Regulation. Each assessment must be
18 conducted or coordinated by a registered nurse who signs and
19 certifies the accuracy of the assessment.
- 20 (6) Employ registered nurses and licensed practical
21 nurses who are responsible for the proper practice of
22 professional nursing and practical nursing, respectively, in
23 accordance with chapter 464.
- 24 (7) Designate as the director of nursing or the
25 assistant director of nursing persons who have had a least 12
26 months of experience in nursing service supervision or
27 administration, and education or work experience beyond the
28 minimum required for licensure in rehabilitative or geriatric
29 nursing, before assuming responsibility for the total nursing
30 service program in a nursing home.
- 31 (8) Designate as the charge nurse on duty a person who

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1 has the ability to recognize and respond to significant
2 changes in a resident's condition.
3 (9)(4) Provide for resident use of a community
4 pharmacy as specified in s. 400.022(1)(q). Any other law to
5 the contrary notwithstanding, a registered pharmacist licensed
6 in Florida, that is under contract with a facility licensed
7 under this chapter, shall repackage a nursing facility
8 resident's bulk prescription medication which has been
9 packaged by another pharmacist licensed in any state in the
10 United States into a unit dose system compatible with the
11 system used by the nursing facility, if the pharmacist is
12 requested to offer such service. To be eligible for
13 repackaging, a resident or the resident's spouse must receive
14 prescription medication benefits provided through a former
15 employer as part of his or her retirement benefits a qualified
16 pension plan as specified in s. 4972 of the Internal Revenue
17 Code, a federal retirement program as specified under 5 C.F.R.
18 s. 831, or a long-term care policy as defined in s.
19 627.9404(1). A pharmacist who correctly repackages and
20 relabels the medication and the nursing facility which
21 correctly administers such repackaged medication under the
22 provisions of this subsection shall not be held liable in any
23 civil or administrative action arising from the repackaging.
24 In order to be eligible for the repackaging, a nursing
25 facility resident for whom the medication is to be repackaged
26 shall sign an informed consent form provided by the facility
27 which includes an explanation of the repackaging process and
28 which notifies the resident of the immunities from liability
29 provided herein. A pharmacist who repackages and relabels
30 prescription medications, as authorized under this subsection,
31 may charge a reasonable fee for costs resulting from the

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1 implementation of this provision.

2 (10)~~(5)~~ Provide for the access of the facility
3 residents to dental and other health-related services,
4 recreational services, rehabilitative services, and social
5 work services appropriate to their needs and conditions and
6 not directly furnished by the licensee. When a geriatric
7 outpatient nurse clinic is conducted in accordance with rules
8 adopted by the agency, outpatients attending such clinic shall
9 not be counted as part of the general resident population of
10 the nursing home facility, nor shall the nursing staff of the
11 geriatric outpatient clinic be counted as part of the nursing
12 staff of the facility, until the outpatient clinic load
13 exceeds 15 a day.

14 (11)~~(6)~~ Be allowed and encouraged by the agency to
15 provide other needed services under certain conditions. If the
16 facility has a standard licensure status, and has had no class
17 I or class II deficiencies during the past 2 years or has been
18 awarded a Gold Seal under the program established in s.
19 400.235, it may be encouraged by the agency to provide
20 services, including, but not limited to, respite and adult day
21 services, which enable individuals to move in and out of the
22 facility. A facility is not subject to any additional
23 licensure requirements for providing these services. Respite
24 care may be offered to persons in need of short-term or
25 temporary nursing home services. Respite care must be provided
26 in accordance with this part and rules adopted by the agency.
27 However, the agency shall, by rule, adopt modified
28 requirements for resident assessment, resident care plans,
29 resident contracts, physician orders, and other provisions, as
30 appropriate, for short-term or temporary nursing home
31 services. The agency shall allow for shared programming and

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

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

23 (13)~~(8)~~ Maintain the facility premises and equipment
24 and conduct its operations in a safe and sanitary manner.

25 (14)~~(9)~~ If the licensee furnishes food service,
26 provide a wholesome and nourishing diet sufficient to meet
27 generally accepted standards of proper nutrition for its
28 residents and provide such therapeutic diets as may be
29 prescribed by attending physicians. In making rules to
30 implement this subsection, the agency shall be guided by
31 standards recommended by nationally recognized professional

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1 groups and associations with knowledge of dietetics.
2 (15)~~(10)~~ Keep full records of resident admissions and
3 discharges; medical and general health status, including
4 medical records, personal and social history, and identity and
5 address of next of kin or other persons who may have
6 responsibility for the affairs of the residents; and
7 individual resident care plans including, but not limited to,
8 prescribed services, service frequency and duration, and
9 service goals. The records shall be open to inspection by the
10 agency.

11 (16) Maintain in the medical record for each resident
12 a daily chart of certified nursing assistant services provided
13 to the resident. This record must be completed
14 contemporaneously with the delivery of care, by the certified
15 nursing assistant caring for the resident. This record must
16 indicate assistance with activities of daily living,
17 assistance with eating, and assistance with drinking, and must
18 record each offering of nutrition and hydration for those
19 residents whose plan of care or assessment indicates a risk
20 for malnutrition or dehydration.

21 (17)~~(11)~~ Keep such fiscal records of its operations
22 and conditions as may be necessary to provide information
23 pursuant to this part.

24 (18)~~(12)~~ Furnish copies of personnel records for
25 employees affiliated with such facility, to any other facility
26 licensed by this state requesting this information pursuant to
27 this part. Such information contained in the records may
28 include, but is not limited to, disciplinary matters and any
29 reason for termination. Any facility releasing such records
30 pursuant to this part shall be considered to be acting in good
31 faith and may not be held liable for information contained in

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1 such records, absent a showing that the facility maliciously
2 falsified such records.

3 (19)(13) Publicly display a poster provided by the
4 agency containing the names, addresses, and telephone numbers
5 for the state's abuse hotline, the State Long-Term Care
6 Ombudsman, the Agency for Health Care Administration consumer
7 hotline, the Advocacy Center for Persons with Disabilities,
8 the Florida Statewide Advocacy Council, and the Medicaid Fraud
9 Control Unit, with a clear description of the assistance to be
10 expected from each.

11 (20) Submit to the agency information specified in s.
12 400.071(2) relating to management companies within 30 days
13 after the effective date of a management agreement.

14 (21) Submit to the agency by February 1 and August 1
15 of each year and as otherwise requested by the agency
16 information regarding staff-to-resident ratios, staff
17 turnover, and staff stability of the facility, with respect to
18 certified nursing assistants, registered nurses, licensed
19 nurses, the director of nursing, and the facility
20 administrator. For purposes of this reporting:

21 (a) Staff-to-resident ratio is based on the
22 requirements established pursuant to s. 400.23(3)(a) and
23 applicable rules.

24 (b) Staff turnover shall be calculated from the most
25 recent 12-month period ending on the 1st workday of the most
26 recent calendar quarter prior to submission of the
27 information. The turnover rate must be computed quarterly,
28 with the annual rate being the cumulative sum of the quarterly
29 rates. The formula to determine the turnover rate shall be the
30 total number of terminations or separations of nonprobationary
31 employees from employment divided by the total number of staff

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1 employed at the end of the period for which the rate is
2 computed, expressed as a percent.

3 (c) Staff turnover shall be reported as one total
4 figure including staff of all classes and shall be reported by
5 the following categories: certified nursing assistants,
6 dietitians, licensed practical nurses, registered nurses,
7 noncertified nursing assistants working for the allowed 4
8 months before certification, therapists, social services
9 staff, recreation staff, activity staff, administrative
10 support personnel, managers, dietary aides, cooks, maintenance
11 personnel, custodial personnel, and any other category of
12 staff necessary for the facility.

13 (d) The formula for determining staff stability is the
14 total number of employees that have been employed for over 12
15 months divided by the total number of employees employed at
16 the end of the most recent calendar quarter, expressed as a
17 percentage.

18 (22) Report monthly the number of vacant beds in the
19 facility that are available for resident occupancy on the day
20 the information is reported.

21 (23) Submit to the agency copies of any settlement,
22 civil verdict, or judgment relating to medical negligence,
23 violation of residents' rights, or wrongful death. Copies must
24 be submitted to the agency within 30 days after the filing
25 with the clerk of the court. The information required in this
26 subsection shall be maintained in the facility's licensure
27 file and in an agency database which is available as a public
28 record.

29
30 Facilities that have been awarded a Gold Seal under the
31 program established in s. 400.235 may develop a plan to

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1 provide certified nursing assistant training as prescribed by
2 federal regulations and state rules and may apply to the
3 agency for approval of its program.

4 Section 21. Section 400.1413, Florida Statutes, is
5 created to read:

6 400.1413 Internal risk management and quality
7 assurance program.--

8 (1) Every licensed facility shall, as part of its
9 administrative functions, establish an internal risk
10 management and quality assurance program, the purpose of which
11 is to assess patient care practices, review and act on
12 facility quality indicators, maintain and review facility
13 incident reports, correct deficiencies cited by the agency,
14 resolve resident grievances, and develop plans of action to
15 correct and respond quickly to identified quality
16 deficiencies.

17 (2) The internal risk management and quality assurance
18 program is the responsibility of the facility administrator.

19 (3) The owner of the nursing home shall establish
20 policies and procedures to implement the internal risk
21 management and quality assurance program, which includes:

22 (a) The investigation and analysis of the frequency
23 and causes of general categories and specific types of adverse
24 incidents involving or affecting residents.

25 (b) The development of appropriate measures to
26 minimize the risk of adverse incidents to residents,
27 including, but not limited to:

28 1. Risk management and risk prevention education and
29 training of all nonphysician personnel as follows:

30 a. Such education and training of all nonphysician
31 personnel as part of their initial orientation; and

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1 b. At least 3 hours of such education and training
2 annually for all nonphysician personnel in both clinical areas
3 and provision of resident care.

4 2. The analysis of resident grievances that relate to
5 resident care and the quality of clinical services.

6 3. The development and implementation of an incident
7 reporting system based upon the affirmative duty of all health
8 care providers and all agents and employees of the facility to
9 report adverse incidents to the risk manager.

10 (4) In addition to the program mandated by this
11 section, other innovative approaches intended to reduce the
12 frequency and severity of adverse incidents to residents and
13 violations of residents' rights shall be encouraged and their
14 implementation and operation facilitated.

15 (5) Each internal risk management and quality
16 assurance program shall include the use of incident reports to
17 be filed with the risk manager and the facility administrator.
18 The risk manager shall have free access to all medical records
19 of the licensed facility. As a part of each internal risk
20 management and quality assurance program, the incident reports
21 shall be used to develop categories of incidents which
22 identify problem areas. Once identified, procedures shall be
23 adjusted to correct the problem areas.

24 (6) The nursing home shall report adverse incidents to
25 the agency in a timely manner.

26 (7) For purposes of report to the agency pursuant to
27 this section, the term "adverse incident" means:

28 (a) An event over which facility personnel could
29 exercise control and which is associated in whole or in part
30 with clinical intervention, rather than the condition for
31 which such intervention occurred, and which results in one of

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- 1 the following injuries:
- 2 1. Death.
 - 3 2. Brain or spinal damage.
 - 4 3. Permanent disfigurement.
 - 5 4. Fracture or dislocation of bones or joints.
 - 6 5. A resulting limitation of neurological, physical,
 - 7 or sensory function.
 - 8 6. Any condition that required medical attention to
 - 9 which the patient has not given his or her informed consent,
 - 10 including failure to honor advanced directives.
 - 11 7. Any condition that required the transfer of the
 - 12 patient, within or outside the facility, to a unit providing a
 - 13 more acute level of care due to the adverse incident, rather
 - 14 than the resident's condition prior to the adverse incident.
- 15 (b) Abuse, neglect, or exploitation as defined in s.
- 16 415.102.
- 17 (c) Abuse, neglect, or harm as defined in s. 39.01.
- 18 (d) Resident elopement.
- 19 (e) Events reported to law enforcement.
- 20 (8)(a) Each licensed facility subject to this section
- 21 shall submit an annual report to the agency on a form
- 22 developed by the agency summarizing the incident reports that
- 23 have been filed in the facility for that year. The report
- 24 shall include:
- 25 1. The total number of adverse incidents.
 - 26 2. A listing, by category, of the types of adverse
 - 27 incidents and the number of incidents occurring within each
 - 28 category.
 - 29 3. Types of liability claims filed based on an adverse
 - 30 incident or reportable injury.
 - 31 4. Disciplinary action taken against staff,

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1 categorized by type of staff involved.

2 5. The facility's failure to comply with state minimum
3 staffing requirements.

4 (b) The information reported to the agency pursuant to
5 paragraph (a) which relates to persons licensed under chapter
6 458, chapter 459, chapter 461, chapter 464, or chapter 466
7 shall be reviewed by the agency. The agency shall determine
8 whether any of the incidents potentially involved conduct by a
9 health care professional who is subject to disciplinary
10 action, in which case the provisions of s. 456.073 shall
11 apply.

12 (c) The report submitted to the agency shall also
13 contain the name of the person responsible for risk management
14 in the facility.

15 (9)(a) The licensed facility shall notify the agency
16 within 1 business day after the occurrence of any of the
17 following:

18 1. The death of a patient.

19 2. Alleged mistreatment of a patient by a certified
20 nursing assistant or licensed nurse.

21 3. Resident elopement.

22 4. Events reported to law enforcement.

23 5. The facility's failure to comply with state minimum
24 staffing requirements.

25 (b) The notification must be made in writing and be
26 provided by facsimile device or overnight mail delivery. The
27 notification must include information regarding the identity
28 of the affected resident, the type of adverse incident, the
29 initiation of an investigation by the facility, and whether
30 the events causing or resulting in the adverse incident
31 represent a potential risk to other residents.

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1 (c) The agency may investigate, as it deems
2 appropriate, any such incident and prescribe measures that
3 must or may be taken in response to the incident. The agency
4 shall review each incident and determine whether it
5 potentially involved conduct by the health care professional
6 who is subject to disciplinary action, in which case the
7 provisions of s. 456.073 shall apply.

8 (10) The agency shall have access to all licensed
9 facility records necessary to carry out the provisions of this
10 section.

11 (11) The agency shall review, as part of its licensure
12 inspection process, the internal risk management and quality
13 assurance program at each licensed facility regulated by this
14 section to determine whether the program meets standards
15 established in statutes and rules, whether the program is
16 being conducted in a manner designed to reduce the incidence
17 and severity of adverse incidents, and whether the facility is
18 reporting adverse incidents as required.

19 (12) There shall be no monetary liability on the part
20 of, and no cause of action for damages shall arise against,
21 any risk manager licensed under s. 395.10974, for the
22 implementation and oversight of the internal risk management
23 and quality assurance program in a facility licensed under
24 this chapter as required by this section, or for any act or
25 proceeding undertaken or performed within the scope of the
26 functions of such internal risk management and quality
27 assurance program, if the risk manager acts without
28 intentional fraud.

29 (13) If the agency, through its receipt of the annual
30 reports prescribed in this chapter or through any
31 investigation, has a reasonable belief that conduct by a staff

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1 member or employee of a licensed facility is grounds for
2 disciplinary action by the appropriate regulatory board, the
3 agency shall report this fact to such regulatory board.

4 Section 22. Section 400.1415, Florida Statutes, is
5 amended to read:

6 400.1415 Patient records; penalties for alteration.--

7 (1) Any person who fraudulently alters, defaces, or
8 falsifies any medical or other nursing home record, or causes
9 or procures any of these offenses to be committed, commits a
10 misdemeanor of the second degree, punishable as provided in s.
11 775.082 or 775.083. Any such offense at a facility shall be
12 subject to a class I citation and fine pursuant to s.

13 400.23(8). Any person authorized under s. 400.19 to enter a
14 nursing home facility who detects or reasonably suspects such
15 offense has occurred must immediately report such information
16 to the local law enforcement agency and state attorney.

17 (2) A conviction under subsection (1) is also grounds
18 for restriction, suspension, or termination of license
19 privileges.

20 (3) The director of nursing and the licensed nursing
21 home administrator at the facility shall be referred to their
22 respective licensure boards for disciplinary review when a
23 staff person is convicted under subsection (1).

24 (4) A conviction or finding by the agency under
25 subsection (1) is also grounds for an immediate moratorium on
26 admissions.

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

29 400.19 Right of entry and inspection.--

30 (4) The agency shall conduct unannounced onsite
31 facility reviews following written verification of licensee

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

16 Section 24. Paragraph (a) of subsection (5) of section
17 400.191, Florida Statutes, is amended to read:

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

20 (5) Every nursing home facility licensee shall:

21 (a) Post, in a sufficient number of prominent
22 positions in the nursing home so as to be accessible to all
23 residents and to the general public:7

24 1. A concise summary of the last inspection report
25 pertaining to the nursing home and issued by the agency, with
26 references to the page numbers of the full reports, noting any
27 deficiencies found by the agency and the actions taken by the
28 licensee to rectify such deficiencies and indicating in such
29 summaries where the full reports may be inspected in the
30 nursing home.

31 2. A copy of the most recent version of the Florida

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1 Nursing Home Guide Watch List.

2 Section 25. Subsection (2) of section 400.211, Florida
3 Statutes, is amended, and subsection (4) is added to said
4 section, to read:

5 400.211 Persons employed as nursing assistants;
6 certification requirement.--

7 (2) The following categories of persons who are not
8 certified as nursing assistants under part II of chapter 464
9 may be employed as a nursing assistant by a nursing facility
10 for a period of 4 months:

11 (a) Persons who are enrolled in, or have completed, a
12 state-approved nursing assistant program; ~~or~~

13 (b) Persons who have been positively verified as
14 actively certified and on the registry in another state and
15 who have not been found to have been convicted of or entered a
16 plea of nolo contendere or guilty to abuse, neglect, or
17 exploitation in another state, regardless of adjudication with
18 ~~no findings of abuse~~; or

19 (c) Persons who have preliminarily passed the state's
20 certification exam.

21
22 The certification requirement must be met within 4 months
23 after initial employment as a nursing assistant in a licensed
24 nursing facility.

25 (4) When employed in a nursing home facility for a
26 12-month period or longer, a certified nursing assistant, to
27 maintain certification, shall submit to a performance review
28 every 12 months and shall be given regular inservice education
29 based on the outcome of such review. The inservice training
30 shall be provided by the facility and must:

31 (a) Be sufficient to ensure the continuing competence

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1 of the certified nursing assistant, but must be no less than
2 18 hours per year.

3 (b) Include, at a minimum:

4 1. Assisting residents with eating and proper feeding
5 techniques.

6 2. Principles of adequate hydration.

7 3. Assisting and responding to the cognitively
8 impaired residents or residents with difficult behaviors.

9 4. Caring for resident at the end of life.

10 5. Recognizing changes that place a resident at risk
11 for pressure ulcers and falls.

12 (c) Address areas of weakness as determined in the
13 certified nursing assistant's performance reviews and may
14 address the special needs of residents as determined by the
15 nursing home facility staff.

16 Section 26. Subsections (2), (3), (7), and (8) of
17 section 400.23, Florida Statutes, are amended, and subsection
18 (10) is added to said section, to read:

19 400.23 Rules; evaluation and deficiencies; licensure
20 status.--

21 (2) Pursuant to the intention of the Legislature, the
22 agency, in consultation with the Department of Health and the
23 Department of Elderly Affairs, shall adopt and enforce rules
24 to implement this part, which shall include reasonable and
25 fair standards and procedures relating ~~criteria in relation~~
26 to:

27 (a) The location and construction of the facility;
28 including fire and life safety, plumbing, heating, cooling,
29 lighting, ventilation, and other housing conditions which will
30 ensure the health, safety, and comfort of residents, including
31 an adequate call system. The agency shall establish standards

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

25 (b) The number and qualifications of all personnel,
26 including management, medical, nursing, and other professional
27 personnel, and nursing assistants, orderlies, and support
28 personnel, having responsibility for any part of the care
29 given residents.

30 (c) All sanitary conditions within the facility and
31 its surroundings, including water supply, sewage disposal,

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1 food handling, and general hygiene which will ensure the
2 health and comfort of residents.

3 (d) The equipment essential to the health and welfare
4 of the residents.

5 (e) A uniform accounting system.

6 (f) The care, treatment, and maintenance of residents
7 and measurement of the quality and adequacy thereof,
8 consistent with based on rules developed under this chapter
9 ~~and the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.~~
10 ~~100-203) (December 22, 1987), Title IV (Medicare, Medicaid,~~
11 ~~and Other Health-Related Programs), Subtitle C (Nursing Home~~
12 ~~Reform), as amended.~~

13 (g) The preparation and annual update of a
14 comprehensive emergency management plan. The agency shall
15 adopt rules establishing minimum criteria for the plan after
16 consultation with the Department of Community Affairs. At a
17 minimum, the rules must provide for plan components that
18 address emergency evacuation transportation; adequate
19 sheltering arrangements; postdisaster activities, including
20 emergency power, food, and water; postdisaster transportation;
21 supplies; staffing; emergency equipment; individual
22 identification of residents and transfer of records; and
23 responding to family inquiries. The comprehensive emergency
24 management plan is subject to review and approval by the local
25 emergency management agency. ~~During its review, the local~~
26 ~~emergency management agency shall ensure that the following~~
27 ~~agencies, at a minimum, are given the opportunity to review~~
28 ~~the plan: the Department of Elderly Affairs, the Department~~
29 ~~of Health, the Agency for Health Care Administration, and the~~
30 ~~Department of Community Affairs. Also, appropriate volunteer~~
31 ~~organizations must be given the opportunity to review the~~

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1 ~~plan.~~ The local emergency management agency shall complete
2 its review within 60 days and either approve the plan or
3 advise the facility of necessary revisions.

4 (h) The implementation of the consumer satisfaction
5 surveys required under s. 400.0225; the availability,
6 distribution, and posting of reports and records required
7 under s. 400.191; and the Gold Seal program established under
8 s. 400.235.

9 (i) An adequate quality assurance process and risk
10 management procedure.

11 (3)(a)1. ~~The agency shall adopt rules providing for~~
12 ~~the~~ minimum staffing requirements for direct care staff
13 ~~nursing homes. These requirements~~ shall include, for each
14 nursing home ~~facility,~~ a minimum certified nursing assistant
15 staffing of 2.9 hours per resident per day, with no single
16 shift having less than one certified nursing assistant per 15
17 residents;and a minimum licensed nursing staffing of 1.0 hour
18 per resident per day, with no single shift having less than
19 one licensed nurse per 40 residents and 0.5 hours of
20 registered nurse staffing per resident per day. Each nursing
21 home shall document, including evening and night shifts and
22 weekends. Agency rules shall specify requirements for
23 documentation of compliance with staffing standards and post
24 daily, sanctions for violation of such standards, and
25 requirements for daily posting of the names of staff on duty
26 for the benefit of facility residents and the public. Failure
27 to provide such posting daily constitutes a class III
28 deficiency.

29 2. The agency shall recognize the use of licensed
30 nurses for compliance with minimum staffing requirements for
31 certified nursing assistants, provided that the facility

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1 otherwise meets the minimum staffing requirements for licensed
2 nurses and that the licensed nurses so recognized are
3 performing the duties of a certified nursing assistant. Unless
4 otherwise approved by the agency, licensed nurses counted
5 towards the minimum staffing requirements for certified
6 nursing assistants must exclusively perform the duties of a
7 certified nursing assistant for the entire shift and shall not
8 also be counted towards the minimum staffing requirements for
9 licensed nurses.

10 3. If the agency approved a facility's request to use
11 a licensed nurse to perform both licensed nursing and
12 certified nursing assistant duties, the facility must allocate
13 the amount of staff time specifically spent on certified
14 nursing assistant duties for the purpose of documenting
15 compliance with minimum staffing requirements for certified
16 and licensed nursing staff. In no event may the hours of a
17 licensed nurse with dual job responsibilities be counted
18 twice.

19 4. A nursing facility that has failed to comply with
20 state minimum staffing requirements 2 days out of any 7-day
21 period shall be prohibited from accepting new admissions until
22 such time as the facility has achieved the minimum staffing
23 requirements for a period of 7 consecutive days. For purposes
24 of this subparagraph, any person who was a resident of the
25 facility and was absent from the facility for the purpose of
26 receiving medical care at a separate location or was on a
27 leave of absence shall not be considered a new admission.
28 Failure to impose such an admissions moratorium constitutes a
29 class I deficiency.

30 (b) The agency shall adopt rules to allow properly
31 trained staff of a nursing facility, in addition to certified

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1 nursing assistants and licensed nurses, to assist residents
2 with eating. The rules shall specify the minimum training
3 requirements and shall specify the physiological conditions or
4 disorders of residents which would necessitate that the eating
5 assistance be provided by nursing personnel of the facility.
6 Nonnursing staff providing eating assistance to residents
7 under the provisions of this subsection shall not count
8 towards compliance with minimum staffing standards.

9 (c) Licensed practical nurses licensed under chapter
10 464 who are providing nursing services in nursing home
11 facilities under this part may supervise the activities of
12 other licensed practical nurses, certified nursing assistants,
13 and other unlicensed personnel providing services in such
14 facilities in accordance with rules adopted by the Board of
15 Nursing.

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

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

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

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

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

28 (d) The current licensure status of each facility must
29 be indicated in bold print on the face of the license. A list
30 of the deficiencies of the facility shall be posted in a
31 prominent place that is in clear and unobstructed public view

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

12 (e) Each licensee shall post its license in a
13 prominent place that is in clear and unobstructed public view
14 at or near the place where residents are being admitted to the
15 facility.

16 (f) ~~Not later than January 1, 1994,~~The agency shall
17 adopt rules that:

18 1. Establish uniform procedures for the evaluation of
19 facilities.

20 2. Provide criteria in the areas referenced in
21 paragraph (c).

22 3. Address other areas necessary for carrying out the
23 intent of this section.

24 (8) The agency shall adopt rules to provide that, when
25 the criteria established under subsection (2) are not met,
26 such deficiencies shall be classified according to the nature
27 and scope of the deficiency. The scope of the deficiency shall
28 be cited as isolated, patterned, or widespread. An isolated
29 deficiency is a deficiency affecting one or a very limited
30 number of residents or involving one or a very limited number
31 of staff, or a situation that occurred only occasionally or in

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1 a very limited number of locations. A patterned deficiency is
2 a deficiency where more than a very limited number of
3 residents are affected or more than a very limited number of
4 staff are involved, or the same resident or residents have
5 been affected by repeated occurrences of the same deficient
6 practice, or a situation that has occurred in several
7 locations; provided that the effect of the deficient practice
8 is not found to be pervasive throughout the facility. A
9 widespread deficiency is a deficiency in which the problems
10 causing the deficiency are pervasive throughout the facility
11 or represent systemic failure that affected or has the
12 potential to affect a large portion of all of the facility's
13 residents.The agency shall indicate the classification on the
14 face of the notice of deficiencies as follows:

15 (a) Class I deficiencies are those which the agency
16 determines present a situation in which immediate corrective
17 action is necessary because the facility's noncompliance has
18 caused, or is likely to cause, serious injury, harm,
19 impairment, or death to a resident receiving care in a
20 facility ~~an imminent danger to the residents or guests of the~~
21 ~~nursing home facility or a substantial probability that death~~
22 ~~or serious physical harm would result therefrom.~~ The condition
23 or practice constituting a class I violation shall be abated
24 or eliminated immediately, unless a fixed period of time, as
25 determined by the agency, is required for correction.
26 ~~Notwithstanding s. 400.121(2),~~A class I deficiency is subject
27 to a civil penalty of \$5,000 for an isolated deficiency,
28 \$10,000 for a patterned deficiency, and \$15,000 for a
29 widespread deficiency ~~in an amount not less than \$5,000 and~~
30 ~~not exceeding \$25,000 for each and every deficiency.~~ A fine
31 shall ~~may~~ be levied notwithstanding the correction of the

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1 deficiency.

2 (b) Class II deficiencies are those which the agency
3 determines have compromised the resident's ability to maintain
4 or reach his or her highest practicable physical, mental, and
5 psychosocial well-being as defined by an accurate and
6 comprehensive resident assessment, plan of care, and provision
7 of services ~~have a direct or immediate relationship to the~~
8 ~~health, safety, or security of the nursing home facility~~
9 ~~residents, other than class I deficiencies.~~ A class II
10 deficiency is subject to a civil penalty of \$2,500 for an
11 isolated deficiency, \$5,000 for a patterned deficiency, and
12 \$7,500 for a widespread deficiency ~~in an amount not less than~~
13 ~~\$1,000 and not exceeding \$10,000 for each and every~~
14 ~~deficiency.~~ A citation for a class II deficiency shall
15 ~~specify the time within which the deficiency is required to be~~
16 ~~corrected.~~ ~~If a class II deficiency is corrected within the~~
17 ~~time specified, no civil penalty shall be imposed, unless it~~
18 ~~is a repeated offense.~~ A fine shall be levied notwithstanding
19 the correction of the deficiency.

20 (c) Class III deficiencies are those which the agency
21 determines result in no more than minimal physical, mental, or
22 psychosocial discomfort to the resident or have minimal
23 potential to compromise the resident's ability to maintain or
24 reach his or her highest practicable physical, mental, or
25 psychosocial well-being as defined by an accurate and
26 comprehensive resident assessment, plan of care, and provision
27 of services ~~to have an indirect or potential relationship to~~
28 ~~the health, safety, or security of the nursing home facility~~
29 ~~residents, other than class I or class II deficiencies.~~ A
30 class III deficiency shall be subject to a civil penalty of
31 \$1,000 for an isolated deficiency, \$2,000 for a patterned

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1 deficiency, and \$3,000 for a widespread deficiency not less
2 than \$500 and not exceeding \$2,500 for each and every
3 deficiency. A citation for a class III deficiency shall
4 specify the time within which the deficiency is required to be
5 corrected. If a class III deficiency is corrected within the
6 time specified, no civil penalty shall be imposed, unless it
7 is a repeated offense.

8 (d) Class IV deficiencies are those which the agency
9 determines involve no actual harm but do not constitute a
10 class III deficiency. A class IV deficiency shall be
11 documented in the agency's survey results and may be required
12 to be corrected within a time specified by the agency. No
13 civil penalty shall be imposed. If the class IV deficiency is
14 an isolated deficiency, no plan of correction is required.

15
16 The fine amount shall be doubled for each class I or class II
17 deficiency if the facility was previously cited for one or
18 more class I or class II deficiencies during or since its last
19 annual inspection.

20 (10) The agency must submit a report annually to the
21 Legislature that summarizes the information regarding
22 staff-to-resident ratios, staff turnover, and staff stability
23 reported by nursing home facilities pursuant to s.
24 400.141(21).

25 Section 27. Subsection (3) of section 400.241, Florida
26 Statutes, is amended to read:

27 400.241 Prohibited acts; penalties for violations.--

28 (3) It is unlawful for any person, long-term care
29 facility, or other entity to willfully interfere with the
30 unannounced inspections mandated by s. 400.0073 or s.
31 400.19(3). Alerting or advising a facility of the actual or

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1 approximate date of such inspection shall be a per se
2 violation of this subsection.

3 (4) A violation of any provision of this part or of
4 any minimum standard, rule, or regulation adopted pursuant
5 thereto constitutes a misdemeanor of the second degree,
6 punishable as provided in s. 775.082 or s. 775.083. Each day
7 of a continuing violation shall be considered a separate
8 offense.

9 Section 28. Paragraph (b) of subsection (3) of section
10 400.407, Florida Statutes, is amended to read:

11 400.407 License required; fee, display.--

12 (3) Any license granted by the agency must state the
13 maximum resident capacity of the facility, the type of care
14 for which the license is granted, the date the license is
15 issued, the expiration date of the license, and any other
16 information deemed necessary by the agency. Licenses shall be
17 issued for one or more of the following categories of care:
18 standard, extended congregate care, limited nursing services,
19 or limited mental health.

20 (b) An extended congregate care license shall be
21 issued to facilities providing, directly or through contract,
22 services beyond those authorized in paragraph (a), including
23 acts performed pursuant to part I of chapter 464 by persons
24 licensed thereunder, and supportive services defined by rule
25 to persons who otherwise would be disqualified from continued
26 residence in a facility licensed under this part.

27 1. In order for extended congregate care services to
28 be provided in a facility licensed under this part, the agency
29 must first determine that all requirements established in law
30 and rule are met and must specifically designate, on the
31 facility's license, that such services may be provided and

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1 whether the designation applies to all or part of a facility.
2 Such designation may be made at the time of initial licensure
3 or biennial relicensure, or upon request in writing by a
4 licensee under this part. Notification of approval or denial
5 of such request shall be made within 90 days after receipt of
6 such request and all necessary documentation. Existing
7 facilities qualifying to provide extended congregate care
8 services must have maintained a standard license and may not
9 have been subject to administrative sanctions during the
10 previous 2 years, or since initial licensure if the facility
11 has been licensed for less than 2 years, for any of the
12 following reasons:

- 13 a. A class I or class II violation;
- 14 b. Three or more repeat or recurring class III
15 violations of identical or similar resident care standards as
16 specified in rule from which a pattern of noncompliance is
17 found by the agency;
- 18 c. Three or more class III violations that were not
19 corrected in accordance with the corrective action plan
20 approved by the agency;
- 21 d. Violation of resident care standards resulting in a
22 requirement to employ the services of a consultant pharmacist
23 or consultant dietitian;
- 24 e. Denial, suspension, or revocation of a license for
25 another facility under this part in which the applicant for an
26 extended congregate care license has at least 25 percent
27 ownership interest; or
- 28 f. Imposition of a moratorium on admissions or
29 initiation of injunctive proceedings.

30 2. Facilities that are licensed to provide extended
31 congregate care services shall maintain a written progress

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1 report on each person who receives such services, which report
2 describes the type, amount, duration, scope, and outcome of
3 services that are rendered and the general status of the
4 resident's health. A registered nurse, or appropriate
5 designee, representing the agency shall visit such facilities
6 at least two times a year to monitor residents who are
7 receiving extended congregate care services and to determine
8 if the facility is in compliance with this part and with rules
9 that relate to extended congregate care. One of these visits
10 may be in conjunction with the regular biennial survey. The
11 monitoring visits may be provided through contractual
12 arrangements with appropriate community agencies. A
13 registered nurse shall serve as part of the team that
14 biennially inspects such facility. The agency may waive one of
15 the required yearly monitoring visits for a facility that has
16 been licensed for at least 24 months to provide extended
17 congregate care services, if, during the biennial inspection,
18 the registered nurse determines that extended congregate care
19 services are being provided appropriately, and if the facility
20 has no class I or class II violations and no uncorrected class
21 III violations. Before such decision is made, the agency shall
22 consult with the long-term care ombudsman council for the area
23 in which the facility is located to determine if any
24 complaints have been made and substantiated about the quality
25 of services or care. The agency may not waive one of the
26 required yearly monitoring visits if complaints have been made
27 and substantiated.

28 3. Facilities that are licensed to provide extended
29 congregate care services shall:

30 a. Demonstrate the capability to meet unanticipated
31 resident service needs.

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- 1 b. Offer a physical environment that promotes a
2 homelike setting, provides for resident privacy, promotes
3 resident independence, and allows sufficient congregate space
4 as defined by rule.
- 5 c. Have sufficient staff available, taking into
6 account the physical plant and firesafety features of the
7 building, to assist with the evacuation of residents in an
8 emergency, as necessary.
- 9 d. Adopt and follow policies and procedures that
10 maximize resident independence, dignity, choice, and
11 decisionmaking to permit residents to age in place to the
12 extent possible, so that moves due to changes in functional
13 status are minimized or avoided.
- 14 e. Allow residents or, if applicable, a resident's
15 representative, designee, surrogate, guardian, or attorney in
16 fact to make a variety of personal choices, participate in
17 developing service plans, and share responsibility in
18 decisionmaking.
- 19 f. Implement the concept of managed risk.
- 20 g. Provide, either directly or through contract, the
21 services of a person licensed pursuant to part I of chapter
22 464.
- 23 h. In addition to the training mandated in s. 400.452,
24 provide specialized training as defined by rule for facility
25 staff.
- 26 4. Facilities licensed to provide extended congregate
27 care services are exempt from the criteria for continued
28 residency as set forth in rules adopted under s. 400.441.
29 Facilities so licensed shall adopt their own requirements
30 within guidelines for continued residency set forth by the
31 department in rule. However, such facilities may not serve

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1 residents who require 24-hour nursing supervision. Facilities
2 licensed to provide extended congregate care services shall
3 provide each resident with a written copy of facility policies
4 governing admission and retention.

5 5. The primary purpose of extended congregate care
6 services is to allow residents, as they become more impaired,
7 the option of remaining in a familiar setting from which they
8 would otherwise be disqualified for continued residency. A
9 facility licensed to provide extended congregate care services
10 may also admit an individual who exceeds the admission
11 criteria for a facility with a standard license, if the
12 individual is determined appropriate for admission to the
13 extended congregate care facility.

14 6. Before admission of an individual to a facility
15 licensed to provide extended congregate care services, the
16 individual must undergo a medical examination as provided in
17 s. 400.426~~(4)~~ and the facility must develop a preliminary
18 service plan for the individual.

19 7. When a facility can no longer provide or arrange
20 for services in accordance with the resident's service plan
21 and needs and the facility's policy, the facility shall make
22 arrangements for relocating the person in accordance with s.
23 400.428(1)(k).

24 8. Failure to provide extended congregate care
25 services may result in denial of extended congregate care
26 license renewal.

27 9. No later than January 1 of each year, the
28 department, in consultation with the agency, shall prepare and
29 submit to the Governor, the President of the Senate, the
30 Speaker of the House of Representatives, and the chairs of
31 appropriate legislative committees, a report on the status of,

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- 1 and recommendations related to, extended congregate care
2 services. The status report must include, but need not be
3 limited to, the following information:
- 4 a. A description of the facilities licensed to provide
5 such services, including total number of beds licensed under
6 this part.
 - 7 b. The number and characteristics of residents
8 receiving such services.
 - 9 c. The types of services rendered that could not be
10 provided through a standard license.
 - 11 d. An analysis of deficiencies cited during biennial
12 inspections.
 - 13 e. The number of residents who required extended
14 congregate care services at admission and the source of
15 admission.
 - 16 f. Recommendations for statutory or regulatory
17 changes.
 - 18 g. The availability of extended congregate care to
19 state clients residing in facilities licensed under this part
20 and in need of additional services, and recommendations for
21 appropriations to subsidize extended congregate care services
22 for such persons.
 - 23 h. Such other information as the department considers
24 appropriate.
- 25 Section 29. Subsections (4) through (11) of section
26 400.426, Florida Statutes, are renumbered as subsections (5)
27 through (12), respectively, and a new subsection (4) is added
28 to said section to read:
- 29 400.426 Appropriateness of placements; daily record of
30 care;examinations of residents.--
- 31 (4) Each facility shall maintain in the care records

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1 for each resident a daily chart of activities of daily living
2 care provided to a resident. This record must be completed
3 contemporaneously with the delivery of care by the caregiver
4 and include the date of care and the initials or signature of
5 the caregiver. These records shall be made available to the
6 resident or his or her guardian upon request within 7 days of
7 the request. These records shall be maintained by the facility
8 for a period of not less than 5 years.

9 Section 30. Paragraph (k) of subsection (1) of section
10 400.428, Florida Statutes, is amended to read:

11 400.428 Resident bill of rights.--

12 (1) No resident of a facility shall be deprived of any
13 civil or legal rights, benefits, or privileges guaranteed by
14 law, the Constitution of the State of Florida, or the
15 Constitution of the United States as a resident of a facility.
16 Every resident of a facility shall have the right to:

17 (k) At least 45 ~~30~~ days' notice of relocation or
18 termination of residency from the facility unless, for medical
19 reasons, the resident is certified by a physician to require
20 an emergency relocation to a facility providing a more skilled
21 level of care or the resident engages in a pattern of conduct
22 that is harmful or offensive to other residents. In the case
23 of a resident who has been adjudicated mentally incapacitated,
24 the guardian shall be given at least 45 ~~30~~ days' notice of a
25 nonemergency relocation or residency termination. Reasons for
26 relocation shall be set forth in writing. In order for a
27 facility to terminate the residency of an individual without
28 notice as provided herein, the facility shall show good cause
29 in a court of competent jurisdiction.

30 Section 31. Effective October 1, 2001, section
31 400.429, Florida Statutes, is amended to read:

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1 (Substantial rewording of section. See
2 s. 400.429, F.S., for present text.)
3 400.429 Civil actions to enforce assisted living
4 facility residents' rights.--
5 (1)(a) Sections 400.429-400.430 provide the exclusive
6 remedy for any civil action against an assisted living
7 facility licensee, facility owner, facility administrator, or
8 facility staff for recovery of damages from personal injury to
9 or death of an assisted living facility resident arising out
10 of negligence or deprivation of the rights specified in s.
11 400.428. This exclusivity applies to and includes any claim
12 against an employee, agent, or other person for whose actions
13 the licensee is alleged to be vicariously liable and to any
14 management company, parent corporation, subsidiary, lessor, or
15 other person alleged to be directly liable to the resident or
16 vicariously liable for the actions of the licensee or its
17 agent.
18 (b) However, ss. 400.429-400.430 do not prohibit a
19 resident or a resident's legal guardian from pursuing any
20 administrative remedy or injunctive relief available to a
21 resident as a result of a deprivation of the rights specified
22 in s. 400.428, whether or not the deprivation of rights
23 resulted in personal injury to, or the death of, the resident.
24 In any case where there is a deprivation of rights that does
25 not involve personal injury or death, including any claim for
26 injunctive relief or an administrative remedy, the prevailing
27 party shall be entitled to recover reasonable attorney's fees,
28 not to exceed \$25,000, and costs from the nonprevailing party;
29 however, the joinder of a claim under this paragraph with a
30 claim under paragraph (a) shall not be the basis for an award
31 of fees or costs in such claim under paragraph (a). Except as

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1 otherwise set forth in this paragraph, it is the intent of the
2 Legislature that this provision for attorney's fees be
3 interpreted in a manner consistent with federal case law
4 involving an action under Title VII of the Civil Rights Act.

5 (c) In addition to the remedies provided in ss.
6 400.429-400.430, a resident, a resident's legal guardian, or
7 the personal representative of the estate of a deceased
8 resident may pursue an action under s. 415.1111. In addition,
9 a resident or a resident's legal guardian shall be entitled to
10 pursue a claim for damages or injunctive relief for those
11 violations of s. 400.428 that do not result in personal injury
12 or death.

13 (2) A claim pursuant to ss. 400.429-400.430 may be
14 brought by the resident or his or her legal guardian, by a
15 person or organization acting on behalf of a resident with the
16 consent of the resident or his or her guardian or, if the
17 resident has died, the personal representative of the estate
18 of the deceased resident.

19 (3) In any claim brought pursuant to ss.
20 400.429-400.430, the claimant has the burden of proving by a
21 preponderance of the evidence that:

22 (a) Each defendant had an established duty to the
23 resident;

24 (b) Each defendant breached that duty;

25 (c) The breach of that duty is the proximate cause of
26 the personal injury to, or the death of, the resident, or the
27 proximate cause of the deprivation of the resident's rights
28 specified in s. 400.428; and

29 (d) The proximate cause of the personal injury, death,
30 or deprivation of the resident's rights resulted in damages.

31 (4) For purposes of ss. 400.429-400.430, a licensee

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1 breaches its established duty to the resident when it fails to
2 provide a standard of care that a reasonably prudent assisted
3 living facility would provide under the same or similar
4 circumstances. A deprivation of the rights specified in s.
5 400.428 or in any other standard or guidelines specified in
6 this part or in any applicable administrative standard or
7 guidelines of this state or a federal regulatory agency shall
8 be evidence of a breach of duty by the licensee.

9 (5) A licensee shall not be liable for the medical
10 negligence of any physician rendering care or treatment to the
11 resident except for the services of a medical director as
12 required in this part. Nothing in this subsection shall be
13 construed to protect a licensee from liability for failure to
14 provide a resident with appropriate observation, assessment,
15 nursing diagnosis, planning, intervention, and evaluation of
16 care by nursing staff.

17 (6) An action for damages brought under ss.
18 400.429-400.430 must be commenced within 2 years after the
19 date on which the incident giving rise to the action occurred
20 or within 2 years after the date on which the incident is
21 discovered, or should have been discovered with the exercise
22 of due diligence. However, the action may not be commenced
23 later than 4 years after the date of the incident or
24 occurrence out of which the cause of action accrued. In any
25 action covered by this subsection in which it is shown that
26 fraud, concealment, or intentional misrepresentation of fact
27 prevented the discovery of the injury, the period of
28 limitation is extended forward 2 years from the time that the
29 injury is discovered, or should have been discovered with the
30 exercise of due diligence, but such period may not in any
31 event exceed 7 years after the date that the incident giving

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1 rise to the injury occurred.

2 (7) As used in ss. 400.429-400.430, the term:

3 (a) "Claimant" means any person who is entitled to
4 recover damages under this part.

5 (b) "Licensee" means the legal entity identified in
6 the application for licensure under this part which entity is
7 the licensed operator of the facility.

8 (c) "Medical expert" means a person duly and regularly
9 engaged in the practice of his or her profession who holds a
10 health care professional degree from a university or college
11 and has had special professional training and experience, or a
12 person who possesses special health care knowledge or skill,
13 concerning the subject upon which he or she is called to
14 testify or provide an opinion.

15 (d) "Resident" means a person who occupies a licensed
16 bed in a facility licensed under this part.

17 (8) Sections 768.16-768.26 apply to a claim in which
18 the resident has died as a result of the facility's breach of
19 an established duty to the resident. In addition to any other
20 damages, the personal representative may recover on behalf of
21 the estate pursuant to ss. 768.16-768.26. The personal
22 representative may also recover on behalf of the estate
23 noneconomic damages for the resident's pain and suffering from
24 the time of injury until the time of death. The limitations
25 set forth in s. 768.21(8) do not apply to a claim maintained
26 under this section where a resident has died as a result of
27 the assisted living facility's breach of a duty to the
28 resident.

29 (9) For the purpose of this section, punitive damages
30 may be awarded for conduct which is willful, wanton, gross or
31 flagrant, reckless, or consciously indifferent to the rights

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1 of the resident.

2 (10) Discovery of financial information for the
3 purpose of determining the value of punitive damages may not
4 be had unless the plaintiff shows the court by proffer or
5 evidence in the record that a reasonable basis exists to
6 support a claim for punitive damages.

7 (11) In addition to any other standards for punitive
8 damages, any award of punitive damages must be reasonable in
9 light of the actual harm suffered by the resident and the
10 egregiousness of the conduct that caused the actual harm to
11 the resident.

12 (12) Any portion of an order, judgment, arbitration
13 decision, mediation agreement, or other type of agreement,
14 contract, or settlement that has the purpose or effect of
15 concealing information relating to the settlement or
16 resolution of any claim or action brought pursuant to ss.
17 400.429-400.430 is void, contrary to public policy, and may
18 not be enforced. No court shall enter an order or judgment
19 that has the purpose or effect of concealing any information
20 pertaining to the resolution or settlement of any claim or
21 action brought pursuant to ss. 400.429-400.430. Any person or
22 governmental entity has standing to contest an order,
23 judgment, arbitration decision, mediation agreement, or other
24 type of agreement, contract, or settlement that violates this
25 subsection. A contest pursuant to this subsection may be
26 brought by a motion or an action for a declaratory judgment
27 filed in the circuit court of the circuit where the violation
28 of this subsection occurred.

29 (13) The defendant must provide to the agency a copy
30 of any resolution of a claim or civil action brought pursuant
31 to ss. 400.429-400.430 within 90 days after such resolution,

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1 including, but not limited to, any final judgment, arbitration
2 decision, order, mediation agreement, or settlement. Failure
3 to provide the copy to the agency shall result in a fine of
4 \$500 for each day it is overdue. The agency shall develop
5 forms and adopt rules necessary to administer this subsection.

6 Section 32. Subsections (1) through (11) of section
7 400.429, Florida Statutes, as amended by this act, shall apply
8 to causes of action accruing on or after October 1, 2001.
9 Subsections (12) and (13) of section 400.429, Florida
10 Statutes, as amended by this act, shall apply to causes of
11 action in existence on October 1, 2001.

12 Section 33. Section 400.430, Florida Statutes, is
13 created to read:

14 400.430 Voluntary binding arbitration.--

15 (1) Causes of action pursuant to this section shall be
16 governed by the requirements for presuit process, screening,
17 and investigation provided in ss. 400.0235-400.0237.

18 (2)(a) Upon the completion of presuit investigation
19 with preliminary reasonable grounds for a claim intact, the
20 parties may elect to have damages determined by an arbitration
21 panel. Such election may be initiated by either party by
22 -serving a request for voluntary binding arbitration of damages
23 within 90 days after service of the complaint upon the
24 defendant. The evidentiary standards for voluntary binding
25 arbitration as authorized herein shall be as provided in ss.
26 120.569(2)(g) and 120.57(1)(c).

27 (b) Upon receipt of a party's request for such
28 arbitration, the opposing party may accept the offer of
29 voluntary binding arbitration within 30 days. However, in no
30 event shall the defendant be required to respond to the
31 request for arbitration sooner than 90 days after service of

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1 the complaint. Such acceptance within the time period
2 provided by this paragraph shall be a binding commitment to
3 comply with the decision of the arbitration panel.

4 (c) The arbitration panel shall be composed of three
5 arbitrators, one selected by the claimant, one selected by the
6 defendant, and one an administrative law judge furnished by
7 the Division of Administrative Hearings who shall serve as the
8 chief arbitrator. In the event of multiple plaintiffs or
9 multiple defendants, the arbitrator selected by the side with
10 multiple parties shall be the choice of those parties. If the
11 multiple parties cannot reach agreement as to their
12 arbitrator, each of the multiple parties shall submit a
13 nominee, and the director of the Division of Administrative
14 Hearings shall appoint the arbitrator from among such
15 nominees.

16 (d) The arbitrators shall be independent of all
17 parties, witnesses, and legal counsel, and no officer,
18 director, affiliate, subsidiary, or employee of a party,
19 witness, or legal counsel may serve as an arbitrator in the
20 proceeding.

21 (e) The rate of compensation for arbitrators other
22 than the administrative law judge shall be set by the chief
23 judge of the appropriate circuit court by schedule or as
24 agreed by the parties. In setting the schedule, the chief
25 judge shall consider the prevailing rates charged for the
26 delivery of professional services in the community.

27 (f) Arbitration pursuant to this section shall
28 preclude recourse to any other remedy by the claimant against
29 any participating defendant, and shall be undertaken with the
30 understanding that:

- 31 1. Net economic damages shall be awardable, including,

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1 but not limited to, past and future medical expenses and 80
2 percent of wage loss and loss of earning capacity, offset by
3 any collateral source payments.

4 2. Noneconomic damages shall be limited to a maximum
5 of \$500,000 per incident.

6 3. Damages for future economic losses shall be awarded
7 to be paid by periodic payments pursuant to s. 766.202(8) and
8 shall be offset by future collateral source payments.

9 4. Punitive damages may be awarded by the arbitration
10 panel for conduct which is willful, wanton, gross or flagrant,
11 reckless, or consciously indifferent to the rights of the
12 resident. Upon such finding, the judgment for the total amount
13 of punitive damages awarded to a claimant may not exceed three
14 times the amount of compensatory damages awarded to each
15 person entitled thereto by the arbitrators. Any award of
16 punitive damages shall be equally divided between the claimant
17 and the Quality of Long-Term Care Facility Improvement Trust
18 Fund and awarded pursuant to paragraphs (4)(b)-(e).

19 5. The defendant shall be responsible for the payment
20 of interest on all accrued damages with respect to which
21 interest would be awarded at trial.

22 6. The defendant shall pay the claimant's reasonable
23 attorney's fees and costs, as determined by the arbitration
24 panel, but in no event more than 15 percent of the award,
25 reduced to present value.

26 7. The defendant shall pay all the costs of the
27 arbitration proceeding and the fees of all the arbitrators
28 other than the administrative law judge.

29 8. Each defendant who submits to arbitration under
30 this section shall be jointly and severally liable for all
31 damages assessed pursuant to this section.

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1 9. The defendant's obligation to pay the claimant's
2 damages shall be for the purpose of arbitration under this
3 section only. A defendant's or claimant's offer to arbitrate
4 shall not be used in evidence or in argument during any
5 subsequent litigation of the claim following the rejection
6 thereof. Once arbitration has been selected by the parties, it
7 shall be with the understanding and agreement that the
8 defendants do not contest liability, and the issue to be
9 determined in this regard shall be the amount of compensatory
10 damages to be awarded to the claimant. The defendant may fully
11 contest liability regarding punitive damages and shall not be
12 deemed to have admitted liability for, or the amount of, any
13 punitive damages.

14 10. The fact of making or accepting an offer to
15 arbitrate shall not be admissible as evidence of liability in
16 any collateral or subsequent proceeding on the claim.

17 11. Any offer by a claimant to arbitrate must be made
18 to each defendant against whom the claimant has made a claim.
19 Any offer by a defendant to arbitrate must be made to each
20 claimant who has joined in the litigation. A defendant who
21 rejects a claimant's offer to arbitrate shall be subject to
22 the provisions of paragraph (3)(c). A claimant who rejects a
23 defendant's offer to arbitrate shall be subject to the
24 provisions of paragraph (3)(d).

25 12. The hearing shall be conducted by all of the
26 arbitrators, but a majority may determine any question of fact
27 and render a final decision. The chief arbitrator shall
28 decide all evidentiary matters.

29
30 The provisions of this paragraph shall not preclude settlement
31 at any time by mutual agreement of the parties.

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1 (g) Any issue between the defendant and the
2 defendant's insurer or self-insurer as to who shall control
3 the defense of the claim and any responsibility for payment of
4 an arbitration award shall be determined under existing
5 principles of law; provided that the insurer or self-insurer
6 shall not offer to arbitrate or accept a claimant's offer to
7 arbitrate without the written consent of the defendant.

8 (h) The Division of Administrative Hearings is
9 authorized to promulgate rules to effect the orderly and
10 efficient processing of the arbitration procedures of this
11 section.

12 (i) Rules promulgated by the Division of
13 Administrative Hearings pursuant to this section, s. 120.54,
14 or s. 120.65 may authorize any reasonable sanctions except
15 contempt for violation of the rules of the division or failure
16 to comply with a reasonable order issued by an administrative
17 law judge, which is not under judicial review.

18 (3) The following provisions shall govern when
19 voluntary binding arbitration is not offered or accepted:

20 (a) A proceeding for voluntary binding arbitration is
21 an alternative to judicial proceedings once agreed to by the
22 parties. If not offered or accepted, however, the provisions
23 of paragraph (b) shall apply.

24 (b) If neither party requests voluntary binding
25 arbitration, the claim shall proceed in the judicial process.
26 In such judicial process, the provisions of s. 768.79 shall
27 apply.

28 (c) If the defendant refuses a claimant's offer of
29 voluntary binding arbitration under this section:

30 1. The claim shall proceed in the judicial process
31 without limitation upon damages.

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1 2. The claimant's award shall be reduced by any
2 damages recovered by the claimant from arbitrating
3 codefendants following arbitration.

4 (d) If the claimant rejects a defendant's offer to
5 enter voluntary binding arbitration under this section:

6 1. The claim shall proceed in the judicial process
7 without limitation upon damages.

8 2. The claimant's award shall be reduced by any
9 damages recovered by the claimant from arbitrating
10 codefendants following arbitration.

11 3. Notwithstanding any other law to the contrary,
12 punitive damages may not exceed three times the amount of
13 compensatory damages awarded to each person entitled thereto
14 by the trier of fact and the amount shall be divided equally
15 between the claimant and the Quality of Long-Term Care
16 Facility Improvement Trust Fund, in accordance with the
17 following provisions:

18 a. The clerk of the court shall transmit a copy of the
19 jury verdict to the State Treasurer by certified mail. In the
20 final judgment the court shall order the percentages of the
21 award, payable as provided herein.

22 b. A settlement agreement entered into between the
23 original parties to the action after a verdict has been
24 returned must provide a proportionate share payable to the
25 Quality of Long-Term Care Facility Improvement Trust Fund
26 specified herein. For purposes of this subsection, a
27 proportionate share is a 50-percent share of that percentage
28 of the settlement amount which the punitive damages portion of
29 the verdict bore to the total of the compensatory and punitive
30 damages in the verdict.

31 c. The Department of Banking and Finance shall collect

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1 or cause to be collected all payments due the state under this
2 section. Such payments are made to the Comptroller and
3 deposited in the appropriate fund specified in this
4 subsection.

5 d. If the full amount of punitive damages awarded
6 cannot be collected, the claimant and the other recipient
7 designated pursuant to this subsection are each entitled to a
8 proportionate share of the punitive damages collected.

9 (4)(a)1. In the event that neither the claimant nor
10 the defendant requests arbitration under this section, then
11 notwithstanding any other provision of law to the contrary, in
12 any action arising under this part and involving the award of
13 punitive damages, the judgment for the total amount of
14 punitive damages awarded to a claimant may not exceed three
15 times the amount of compensatory damages awarded to each
16 person entitled thereto by the trier of fact, except as
17 provided in subparagraph 2. This paragraph does not apply to
18 any class action.

19 2. If any award for punitive damages exceeds the
20 limitation specified in subparagraph 1., the award is presumed
21 to be excessive and the defendant is entitled to remittitur of
22 the amount in excess of the limitation unless the claimant
23 demonstrates to the court by clear and convincing evidence
24 that the award is not excessive in light of the facts and
25 circumstances that were presented to the trier of fact. The
26 court shall give great weight as a mitigating factor to the
27 infrequency or lack of severity of prior claims against the
28 defendant.

29 3. The jury may not be instructed or informed as to
30 the provisions of this subsection.

31 (b) The amount of punitive damages awarded to each

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1 claimant shall be equally divided between the claimant and the
2 Quality of Long-Term Care Facility Improvement Trust Fund, in
3 accordance with the following:

4 1. The clerk of the court shall transmit a copy of the
5 jury verdict to the State Treasurer by certified mail. In the
6 final judgment, the court shall order the percentages of the
7 award, payable as provided herein.

8 2. A settlement agreement entered into between the
9 original parties to the action after a verdict has been
10 returned must provide a proportionate share payable to the
11 Quality of Long-Term Care Facility Improvement Trust Fund
12 specified herein. Such proportionate share shall be determined
13 by prorating the amount of the settlement between compensatory
14 and punitive damages in the same ratio as the respective
15 portions of the damages awarded in the verdict. That portion
16 of the prorated punitive damages that exceeds three times the
17 prorated compensatory damages shall be the amount of the
18 proportionate share to be divided as provided herein.

19 3. The Department of Banking and Finance shall collect
20 or cause to be collected all payments due the state under this
21 section. Such payments shall be made to the Comptroller and
22 deposited in the appropriate fund specified in this
23 subsection.

24 4. If the full amount of punitive damages awarded
25 cannot be collected, the claimant and the other recipient
26 designated pursuant to this subsection are each entitled to a
27 proportionate share of the punitive damages collected.

28 (5) Arbitration to allocate responsibility when more
29 than one defendant has participated in voluntary binding
30 arbitration, procedures involving misarbitration, payment of
31 an arbitration award, and appeal of an arbitration award shall

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1 be governed by the requirements provided in ss.
2 400.0239-400.0242.

3 Section 34. Subsection (5) of section 400.431, Florida
4 Statutes, is amended to read:

5 400.431 Closing of facility; notice; penalty.--

6 (5) The agency may levy a fine in an amount no greater
7 than \$5,000 upon each person or business entity that owns any
8 interest in a facility that terminates operation without
9 providing notice to the agency and the residents of the
10 facility at least 45 ~~30~~ days before operation ceases. This
11 fine shall not be levied against any facility involuntarily
12 closed at the initiation of the agency. The agency shall use
13 the proceeds of the fines to operate the facility until all
14 residents of the facility are relocated and shall deposit any
15 balance of the proceeds into the Health Care Trust Fund
16 established pursuant to s. 400.418.

17 Section 35. Section 400.455, Florida Statutes, is
18 created to read:

19 400.455 Adverse action against employee for disclosing
20 information of specified nature prohibited; employee remedy
21 and relief.--

22 (1) SHORT TITLE.--This section may be cited as the
23 "Assisted Living Facility Whistleblower's Act."

24 (2) LEGISLATIVE INTENT.--It is the intent of the
25 Legislature to prevent assisted living facilities or
26 independent contractors from taking retaliatory action against
27 an employee who reports to an appropriate person or agency
28 violations of law on the part of a facility or independent
29 contractor that create a substantial and specific danger to an
30 assisted living facility resident's health, safety, or
31 welfare. It is further the intent of the Legislature to

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1 prevent assisted living facilities or independent contractors
2 from taking retaliatory action against any person who
3 discloses information to an appropriate agency alleging
4 improper use of or gross waste of governmental funds, or any
5 other abuse or gross neglect of duty on the part of an
6 assisted living facility.

7 (3) DEFINITIONS.--As used in this section, unless
8 otherwise specified, the following words or terms shall have
9 the meanings indicated:

10 (a) "Adverse personnel action" means the discharge,
11 suspension, transfer, or demotion of any employee or the
12 withholding of bonuses, the reduction in salary or benefits,
13 or any other adverse action taken against an employee within
14 the terms and conditions of employment by an assisted living
15 facility or independent contractor.

16 (b) "Agency" means any state, regional, county, local,
17 or municipal government entity, whether executive, judicial,
18 or legislative; or any official, officer, department,
19 division, bureau, commission, authority, or political
20 subdivision thereof.

21 (c) "Employee" means a person who performs services
22 for, and under the control and direction of, or contracts
23 with, an assisted living facility or independent contractor
24 for wages or other remuneration.

25 (d) "Gross mismanagement" means a continuous pattern
26 of managerial abuses, wrongful or arbitrary and capricious
27 actions, or fraudulent or criminal conduct which may have a
28 substantial adverse economic impact.

29 (e) "Independent contractor" means a person who is
30 engaged in any business and enters into a contract with an
31 assisted living facility.

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1 (4) ACTIONS PROHIBITED.--

2 (a) An assisted living facility or an independent
3 contractor shall not dismiss, discipline, or take any other
4 adverse personnel action against an employee for disclosing
5 information pursuant to the provisions of this section.

6 (b) An assisted living facility or an independent
7 contractor shall not take any adverse action that affects the
8 rights or interests of a person in retaliation for the
9 person's disclosure of information under this section.

10 (c) The provisions of this subsection shall not be
11 applicable when an employee or person discloses information
12 known by the employee or person to be false.

13 (5) NATURE OF INFORMATION DISCLOSED.--The information
14 disclosed under this section must include:

15 (a) Any violation or suspected violation of any
16 federal, state, or local law, rule, or regulation committed by
17 an employee or agent of an assisted living facility or
18 independent contractor which creates and presents a
19 substantial and specific danger to the assisted living
20 facility resident's health, safety, or welfare.

21 (b) Any act or suspected act of gross mismanagement,
22 malfeasance, misfeasance, gross waste of public funds, or
23 gross neglect of duty committed by an employee or agent of an
24 assisted living facility or independent contractor.

25 (6) TO WHOM INFORMATION DISCLOSED.--The information
26 disclosed under this section must be disclosed to any agency
27 or Federal Government entity or person designated in s.
28 400.022(1)(c) having the authority to investigate, police,
29 manage, or otherwise remedy the violation or act.

30 (7) EMPLOYEES AND PERSONS PROTECTED.--This section
31 protects employees and persons who disclose information on

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1 their own initiative in a written and signed complaint; who
2 are requested to participate in an investigation, hearing, or
3 other inquiry conducted by any agency or Federal Government
4 entity; who refuse to participate in any adverse action
5 prohibited by this section; or who initiate a complaint
6 through any appropriate complaint hotline. No remedy or other
7 protection under this section applies to any person who has
8 committed or intentionally participated in committing the
9 violation or suspected violation for which protection under
10 this section is being sought.

11 (8) REMEDIES.--Any person protected by this section
12 may bring a civil action in any court of competent
13 jurisdiction against an assisted living facility for any
14 action prohibited by this section.

15 (9) RELIEF.--In any action brought under this section,
16 the relief may include the following:

17 (a) Reinstatement of the employee to the same position
18 held before the adverse action was commenced or to an
19 equivalent position, or reasonable front pay as alternative
20 relief.

21 (b) Reinstatement of the employee's full fringe
22 benefits and seniority rights, as appropriate.

23 (c) Compensation, if appropriate, for lost wages, lost
24 benefits, or other lost remuneration caused by the adverse
25 action.

26 (d) Payment of reasonable costs, including attorney's
27 fees, to a substantially prevailing employee, or to the
28 prevailing employer if the employee filed a frivolous action
29 in bad faith.

30 (e) Issuance of an injunction, if appropriate, by a
31 court of competent jurisdiction.

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1 (f) Temporary reinstatement to the employee's former
2 position or to an equivalent position, pending the final
3 outcome on the complaint, if an employee complains of being
4 discharged in retaliation for a protected disclosure and if a
5 court of competent jurisdiction determines that the disclosure
6 was not made in bad faith or for a wrongful purpose or
7 occurred after an assisted living facility's or independent
8 contractor's initiation of a personnel action against the
9 employee which includes documentation of the employee's
10 violation of a disciplinary standard or performance
11 deficiency.

12 (10) DEFENSES.--It shall be an affirmative defense to
13 any action brought pursuant to this section that the adverse
14 action was predicated upon grounds other than, and would have
15 been taken absent, the employee's or person's exercise of
16 rights protected by this section.

17 (11) EXISTING RIGHTS.--This section does not diminish
18 the rights, privileges, or remedies of an employee under any
19 other law or rule or under any collective bargaining agreement
20 or employment contract.

21 Section 36. Section 400.449, Florida Statutes, is
22 created to read:

23 400.449 Altering, defacing, or falsifying records;
24 penalties.--

25 (1) Any person who fraudulently alters, defaces, or
26 falsifies any medical, care, or other record of an assisted
27 living facility, or causes or procures any such offense to be
28 committed, commits a misdemeanor of the second degree,
29 punishable as provided in s. 775.082 or s. 775.083.

30 (2) A conviction under subsection (1) is also grounds
31 for restriction, suspension, or termination of such person's

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1 license or certification privileges.

2 Section 37. Paragraph (b) of subsection (2) of section
3 409.908, Florida Statutes, is amended to read:

4 409.908 Reimbursement of Medicaid providers.--Subject
5 to specific appropriations, the agency shall reimburse
6 Medicaid providers, in accordance with state and federal law,
7 according to methodologies set forth in the rules of the
8 agency and in policy manuals and handbooks incorporated by
9 reference therein. These methodologies may include fee
10 schedules, reimbursement methods based on cost reporting,
11 negotiated fees, competitive bidding pursuant to s. 287.057,
12 and other mechanisms the agency considers efficient and
13 effective for purchasing services or goods on behalf of
14 recipients. Payment for Medicaid compensable services made on
15 behalf of Medicaid eligible persons is subject to the
16 availability of moneys and any limitations or directions
17 provided for in the General Appropriations Act or chapter 216.
18 Further, nothing in this section shall be construed to prevent
19 or limit the agency from adjusting fees, reimbursement rates,
20 lengths of stay, number of visits, or number of services, or
21 making any other adjustments necessary to comply with the
22 availability of moneys and any limitations or directions
23 provided for in the General Appropriations Act, provided the
24 adjustment is consistent with legislative intent.

25 (2)

26 (b) Subject to any limitations or directions provided
27 for in the General Appropriations Act, the agency shall
28 establish and implement a Florida Title XIX Long-Term Care
29 Reimbursement Plan (Medicaid) for nursing home care in order
30 to provide care and services in conformance with the
31 applicable state and federal laws, rules, regulations, and

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1 quality and safety standards and to ensure that individuals
2 eligible for medical assistance have reasonable geographic
3 access to such care. The agency shall amend the long-term care
4 reimbursement plan to create a direct care and indirect care
5 patient component. These two subcomponents together shall
6 equal the patient care component of the per diem rate. The
7 direct care subcomponent shall include only the salaries and
8 employee benefits of direct care staff who provide nursing
9 services to the residents of the nursing facility. "Direct
10 care staff" is defined for this purpose as registered nurses,
11 licensed practical nurses, and certified nurse assistants who
12 deliver care directly to residents in nursing home facilities.
13 There shall be no cost directly or indirectly allocated to the
14 direct care subcomponent from a home office or management
15 company. Separate cost-based class ceilings shall be
16 calculated for each patient care subcomponent, and the direct
17 care subcomponent shall be limited by the cost-based class
18 ceiling and the indirect care subcomponent shall be limited by
19 the individual provider target, target rate class ceiling, or
20 the cost-based ceiling. The agency shall make the required
21 changes to the nursing home cost reporting forms to implement
22 this requirement effective January 1, 2002.~~Under the plan,~~
23 ~~interim rate adjustments shall not be granted to reflect~~
24 ~~increases in the cost of general or professional liability~~
25 ~~insurance for nursing homes unless the following criteria are~~
26 ~~met: have at least a 65 percent Medicaid utilization in the~~
27 ~~most recent cost report submitted to the agency, and the~~
28 ~~increase in general or professional liability costs to the~~
29 ~~facility for the most recent policy period affects the total~~
30 ~~Medicaid per diem by at least 5 percent. This rate adjustment~~
31 ~~shall not result in the per diem exceeding the class ceiling.~~

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1 ~~This provision shall apply only to fiscal year 2000-2001 and~~
2 ~~shall be implemented to the extent existing appropriations are~~
3 ~~available. The agency shall report to the Governor, the~~
4 ~~Speaker of the House of Representatives, and the President of~~
5 ~~the Senate by December 31, 2000, on the cost of liability~~
6 ~~insurance for Florida nursing homes for fiscal years 1999 and~~
7 ~~2000 and the extent to which these costs are not being~~
8 ~~compensated by the Medicaid program. Medicaid-participating~~
9 ~~nursing homes shall be required to report to the agency~~
10 ~~information necessary to compile this report. Effective no~~
11 ~~earlier than the rate-setting period beginning April 1, 1999,~~
12 ~~the agency shall establish a case-mix reimbursement~~
13 ~~methodology for the rate of payment for long-term care~~
14 ~~services for nursing home residents. The agency shall compute~~
15 ~~a per diem rate for Medicaid residents, adjusted for case mix,~~
16 ~~which is based on a resident classification system that~~
17 ~~accounts for the relative resource utilization by different~~
18 ~~types of residents and which is based on level-of-care data~~
19 ~~and other appropriate data. The case-mix methodology developed~~
20 ~~by the agency shall take into account the medical, behavioral,~~
21 ~~and cognitive deficits of residents. In developing the~~
22 ~~reimbursement methodology, the agency shall evaluate and~~
23 ~~modify other aspects of the reimbursement plan as necessary to~~
24 ~~improve the overall effectiveness of the plan with respect to~~
25 ~~the costs of patient care, operating costs, and property~~
26 ~~costs. In the event adequate data are not available, the~~
27 ~~agency is authorized to adjust the patient's care component or~~
28 ~~the per diem rate to more adequately cover the cost of~~
29 ~~services provided in the patient's care component. The agency~~
30 ~~shall work with the Department of Elderly Affairs, the Florida~~
31 ~~Health Care Association, and the Florida Association of Homes~~

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1 ~~for the Aging in developing the methodology. It is the intent~~
2 ~~of the Legislature that the reimbursement plan achieve the~~
3 ~~goal of providing access to health care for nursing home~~
4 ~~residents who require large amounts of care while encouraging~~
5 ~~diversion services as an alternative to nursing home care for~~
6 ~~residents who can be served within the community. The agency~~
7 ~~shall base the establishment of any maximum rate of payment,~~
8 ~~whether overall or component, on the available moneys as~~
9 ~~provided for in the General Appropriations Act. The agency may~~
10 ~~base the maximum rate of payment on the results of~~
11 ~~scientifically valid analysis and conclusions derived from~~
12 ~~objective statistical data pertinent to the particular maximum~~
13 ~~rate of payment.~~

14 Section 38. Section 415.1111, Florida Statutes, is
15 amended to read:

16 415.1111 Civil actions.--A vulnerable adult who has
17 been abused, neglected, or exploited as specified in this
18 chapter has a cause of action against any perpetrator and may
19 recover actual and punitive damages for such abuse, neglect,
20 or exploitation. The action may be brought by the vulnerable
21 adult, or that person's guardian, by a person or organization
22 acting on behalf of the vulnerable adult with the consent of
23 that person or that person's guardian, or by the personal
24 representative of the estate of a deceased victim without
25 regard to whether the cause of death resulted from the abuse,
26 neglect, or exploitation. The action may be brought in any
27 court of competent jurisdiction to enforce such action and to
28 recover actual and punitive damages for any deprivation of or
29 infringement on the rights of a vulnerable adult. A party who
30 prevails in any such action may be entitled to recover
31 reasonable attorney's fees, costs of the action, and damages.

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1 The remedies provided in this section are in addition to and
2 cumulative with other legal and administrative remedies
3 available to a vulnerable adult. This section shall not apply
4 to civil actions for damages against licensees under parts II
5 and III of chapter 400.

6 Section 39. Subsection (3) of section 430.708, Florida
7 Statutes, is amended to read:

8 430.708 Certificate of need.--To ensure that Medicaid
9 community diversion pilot projects result in a reduction in
10 the projected average monthly nursing home caseload, the
11 agency shall, in accordance with the provisions of s.
12 408.034(4):

13 ~~(3) Adopt rules to reduce the number of beds in~~
14 ~~Medicaid-participating nursing homes eligible for Medicaid,~~
15 ~~through a Medicaid-selective contracting process or some other~~
16 ~~appropriate method.~~

17 Section 40. Notwithstanding the establishment of need
18 as provided for in chapter 408, Florida Statutes, no
19 certificate of need for additional community nursing home beds
20 shall be approved by the agency until July 1, 2006. The
21 Legislature finds that the continued growth in the Medicaid
22 budget for nursing home care has constrained the ability of
23 the state to meet the needs of its elderly residents through
24 the use of less restrictive and less institutional methods of
25 long-term care. It is therefore the intent of the Legislature
26 to limit the increase in Medicaid nursing home expenditures in
27 order to provide funds to invest in long-term care that is
28 community-based and provides supportive services in a manner
29 that is both more cost-effective and more in keeping with the
30 wishes of the elderly residents of this state. This moratorium
31 on certificates of need shall not apply to nursing home beds

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1 that are not eligible for Medicaid reimbursement in a
2 continuing care retirement community certified by the
3 Department of Insurance pursuant to chapter 651, Florida
4 Statutes.

5 Section 41. Subsections (2) and (3) of section
6 430.709, Florida Statutes, are amended to read:

7 430.709 Reports and evaluations.--

8 (2) The agency, in consultation with the department,
9 shall contract for an independent evaluation of the community
10 diversion pilot projects. Such evaluation must include a
11 careful review and assessment of the actual cost for the
12 provision of services to enrollees participants. No later than
13 120 days after the effective date of this section, the agency
14 shall select a contractor with experience and expertise in
15 evaluating capitation rates for managed care organizations
16 serving a disabled or frail elderly population to conduct the
17 evaluation of the community diversion pilot project as defined
18 in s. 430.703. The contractor shall demonstrate the capacity
19 to evaluate managed care arrangements that seek to test the
20 blending of Medicaid and Medicare capitation as a strategy to
21 provide efficient, cost-effective care. The contractor shall
22 report to the agency and the Legislature the specific array of
23 services provided to each enrollee, the average number of
24 times per week each service was provided, the unit cost and
25 total cost per week to provide the service, the total cost of
26 all services provided to the enrollee, and the enrollment
27 period for which total costs were calculated. In addition, the
28 contractor shall report to the agency and the Legislature the
29 total number of enrollees to date; the total payment to the
30 managed care organization for enrollees; the number of
31 enrollees who have been admitted to a nursing facility; the

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1 total number of days enrollees have spent in nursing home
2 facilities; the number of enrollees who have disenrolled from
3 the project; the average length of time participants were
4 enrolled, expressed as the mean number of days and standard
5 deviation; the number of persons who disenrolled and
6 subsequently became nursing home residents; the number of
7 enrollees who have died while enrolled in the project and the
8 mean number of days enrolled prior to death; the list of
9 available services delivered in-home by percentage of
10 enrollees receiving the service; and the list of available
11 services delivered out-of-home by percentage of enrollees
12 receiving the service. The evaluation contractor shall analyze
13 and report the individual services and the array of services
14 most associated with effective diversion of frail elderly
15 enrollees from nursing home placement. Further, the contractor
16 will evaluate the project responses to at least the following
17 questions:

18 (a) Was the cost of the diversion project per person
19 less than the cost of providing services through
20 fee-for-service Medicaid?

21 (b) Did the diversion project increase access to
22 physical health care, mental health care, and social services?

23 (c) Did the diversion project maintain or improve the
24 quality of care and quality of life of the participants?

25 (d) What was the functional status of participants
26 before enrolling in the diversion project, and what was the
27 functional status at various points during and after
28 enrollment?

29 (e) How many participants disenrolled and at what
30 point after enrolling?

31 (f) Why did participants disenroll?

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- 1 (g) Did the department develop specialized contract
2 standards and quality assurance measures?
- 3 (h) Did the department assess quality of care,
4 appropriateness of care claims data analysis, and consumer
5 self-report data?
- 6 (i) Does the cost analysis show savings to the state?
- 7 (j) What were the results of recipient profile and
8 enrollment analyses?
- 9 (k) What were the results of the family satisfaction
10 and consumer outcome analyses?
- 11 (l) How did hospital admissions and preventable
12 readmissions differ among nursing home enrollees in the
13 diversion project, nursing home residents not in the project,
14 and frail elders living in the community? Did payer or
15 provider type have a significant relationship to the number of
16 hospital admissions?
- 17 (m) What agencies or providers did the diversion
18 project contractor engage to provide noninstitutional
19 services?
- 20 (n) Was there a volume-outcome or dose-response
21 relationship between the utilization rate of noninstitutional
22 services, functional assessment, and the ability of the
23 enrollee to remain in the community?
- 24 (3) Subsequent to the completion of the evaluation and
25 submission of the evaluation report to the Legislature, the
26 agency, in consultation with the department, ~~in consultation~~
27 ~~with the agency,~~ shall assess and make specific
28 recommendations to the Legislature as to the feasibility of
29 implementing a managed long-term care system throughout the
30 state to serve appropriate Medicaid-eligible long-term care
31 recipients age 60 years and older.

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1 Section 42. Subsection (3) of section 435.04, Florida
2 Statutes, is amended to read:

3 435.04 Level 2 screening standards.--

4 (3) Standards must also ensure that the person+

5 ~~(a) For employees or employers licensed or registered~~
6 ~~pursuant to chapter 400, does not have a confirmed report of~~
7 ~~abuse, neglect, or exploitation as defined in s. 415.102(6),~~
8 ~~which has been uncontested or upheld under s. 415.103.~~

9 (b) has not committed an act that constitutes domestic
10 violence as defined in s. 741.30.

11 Section 43. Paragraph (a) of subsection (1) of section
12 464.201, Florida Statutes, is amended to read:

13 464.201 Definitions.--As used in this part, the term:

14 (1) "Approved training program" means:

15 (a) A program offered by Enterprise Florida Jobs and
16 Education Partnership Grant or a course of training conducted
17 by a public sector or private sector educational center
18 licensed by the Department of Education to implement the basic
19 curriculum for nursing assistants which is approved by the
20 Department of Education. Beginning October 1, 2000, the board
21 shall assume responsibility for approval of training programs
22 under this paragraph.

23 Section 44. Paragraph (e) is added to subsection (2)
24 of section 464.2085, Florida Statutes, to read:

25 464.2085 Council on Certified Nursing Assistants.--The
26 Council on Certified Nursing Assistants is created within the
27 department, under the Board of Nursing.

28 (2) The council shall:

29 (e) Develop special certifications or other
30 designations that indicate a certified nursing assistant's
31 advanced competence in significant areas of nursing home

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1 practice including: care for persons with dementia, care at
2 the end of life, care for the mentally ill, care for persons
3 at risk of malnutrition or dehydration, transfer and movement
4 of persons with special needs, training as a mentor or coach
5 for newly hired certified nursing assistants, and such other
6 areas as determined by the council.

7 Section 45. Subsection (1) of section 101.655, Florida
8 Statutes, is amended to read:

9 101.655 Supervised voting by absent electors in
10 certain facilities.--

11 (1) The supervisor of elections of a county shall
12 provide supervised voting for absent electors residing in any
13 assisted living facility, as defined in s. 400.402, or nursing
14 home ~~facility~~, as defined in s. 400.021, within that county at
15 the request of any administrator of such a facility. Such
16 request for supervised voting in the facility shall be made by
17 submitting a written request to the supervisor of elections no
18 later than 21 days prior to the election for which that
19 request is submitted. The request shall specify the name and
20 address of the facility and the name of the electors who wish
21 to vote absentee in that election. If the request contains
22 the names of fewer than five voters, the supervisor of
23 elections is not required to provide supervised voting.

24 Section 46. Subsection (2) of section 397.405, Florida
25 Statutes, is amended to read:

26 397.405 Exemptions from licensure.--The following are
27 exempt from the licensing provisions of this chapter:

28 (2) A nursing home ~~facility~~ as defined in s.
29 400.021~~(12)~~.

30

31 The exemptions from licensure in this section do not apply to

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1 any facility or entity which receives an appropriation, grant,
2 or contract from the state to operate as a service provider as
3 defined in this chapter or to any substance abuse program
4 regulated pursuant to s. 397.406. No provision of this
5 chapter shall be construed to limit the practice of a
6 physician licensed under chapter 458 or chapter 459, a
7 psychologist licensed under chapter 490, or a psychotherapist
8 licensed under chapter 491, providing outpatient or inpatient
9 substance abuse treatment to a voluntary patient, so long as
10 the physician, psychologist, or psychotherapist does not
11 represent to the public that he or she is a licensed service
12 provider under this act. Failure to comply with any
13 requirement necessary to maintain an exempt status under this
14 section is a misdemeanor of the first degree, punishable as
15 provided in s. 775.082 or s. 775.083.

16 Section 47. Subsection (3) of section 400.0069,
17 Florida Statutes, is amended to read:

18 400.0069 Local long-term care ombudsman councils;
19 duties; membership.--

20 (3) In order to carry out the duties specified in
21 subsection (2), the local ombudsman council is authorized,
22 pursuant to ss. 400.19(1) and 400.434, to enter any long-term
23 care facility without notice or first obtaining a warrant,
24 subject to the provisions of s. 400.0073~~(7)~~⁽⁵⁾.

25 Section 48. The Auditor General shall develop a
26 standard chart of accounts to govern the content and manner of
27 presentation of financial information to be submitted by
28 Medicaid long-term care providers in their cost reports. The
29 Auditor General shall submit the standard chart of accounts to
30 the Agency for Health Care Administration not later than
31 December 31, 2001. The agency shall amend the Florida Title

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1 XIX Long-Term Care Reimbursement Plan to incorporate this
2 standard chart of accounts and shall implement use of this
3 standard chart of accounts effective January 1, 2002. The
4 standard chart of accounts shall include specific accounts for
5 each component of direct care staff by type of personnel and
6 may not be revised without the written consent of the Auditor
7 General.

8 Section 49. The Agency for Health Care Administration
9 shall amend the Medicaid Title XIX Long-Term Care
10 Reimbursement Plan effective December 31, 2001, to include the
11 following provisions:

12 (1) COST REPORT FILING.--

13 (a) Effective December 31, 2001, cost reports shall be
14 submitted electronically in a format and manner prescribed by
15 the agency.

16 (b) Effective with nursing facility cost reports filed
17 for the period ended December 31, 2001, or after, the cost
18 report shall contain detailed information on the salary,
19 benefits, agency, and overtime costs and corresponding hours
20 for direct care staffing for registered nurses, licensed
21 practical nurses, and certified nursing assistants.

22 (2) LIMITATIONS ON ALLOWABLE COSTS.--

23 (a) Costs attributable to the membership in a nursing
24 home industry trade association shall be limited to a maximum
25 amount of \$5 per bed per year prorated based on the percentage
26 of Medicaid patient days to total patient days for the
27 facility as an allowable Medicaid cost. Individual member dues
28 are not an allowable Medicaid cost.

29 (b) Executive compensation included in home office
30 costs shall be limited to a maximum allowable per person
31 annual amount of \$250,000 of compensation per year. A list of

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1 executive compensation shall be included in the information
2 filing of the home office cost reports for any individual
3 whose total compensation exceeds \$250,000 per year.

4 (c) Costs attributable to legal settlements and jury
5 verdicts where there has been a finding or admission of
6 liability by the nursing home, or its owners, operators,
7 management companies, or employees, shall not be allowable
8 costs for Medicaid reimbursement purposes. Such costs include
9 legal costs, accounting fees, administrative costs,
10 investigative costs, travel costs, court costs, expert witness
11 costs, compensatory damage costs, punitive damage costs,
12 records and transcription costs, or any other cost associated
13 with the settlement or verdict.

14 (3) RECOUPMENT.--Any provider participating in the
15 Florida Medicaid nursing home program who has failed to
16 provide the goods and services in accordance with federal and
17 state requirements may be subject to recoupment of costs by
18 the agency.

19 Section 50. The Board of Nursing is directed to
20 develop standards and procedures for recognizing professional
21 nurses whose commitment to the practice of nursing in
22 long-term care settings is worthy of commendation.

23 Section 51. The Agency for Health Care Administration
24 shall require that a portion of each nursing facility's
25 Medicaid rate be used exclusively for wage and benefit
26 increases for nursing home direct care staff. Such funds shall
27 be used only for actual wage or benefit improvements. Eligible
28 staff members include all direct care workers (including RNs,
29 LPNs, and CNAs) and all dietary, housekeeping, laundry, and
30 maintenance workers. Temporary, contract, agency, and pool
31 employees are excluded. The agency shall develop

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1 cost-reporting systems to ensure that the funds the agency has
2 required to be used for wage and benefit increases for direct
3 care staff are used for this purpose. On January 1 of each
4 year, the agency shall report to the Legislature the effect of
5 such wage and benefit increases for employees in nursing
6 facilities in this state.

7 Section 52. Subsection (11) of section 400.021,
8 Florida Statutes, as created by section 1 of chapter 2000-350,
9 Laws of Florida, is reenacted to read:

10 400.021 Definitions.--When used in this part, unless
11 the context otherwise requires, the term:

12 (11) "Nursing home bed" means an accommodation which
13 is ready for immediate occupancy, or is capable of being made
14 ready for occupancy within 48 hours, excluding provision of
15 staffing; and which conforms to minimum space requirements,
16 including the availability of appropriate equipment and
17 furnishings within the 48 hours, as specified by rule of the
18 agency, for the provision of services specified in this part
19 to a single resident.

20 Section 53. Section 400.0225, Florida Statutes, as
21 amended by section 2 of chapter 2000-350, Laws of Florida, is
22 reenacted to read:

23 400.0225 Consumer satisfaction surveys.--The agency,
24 or its contractor, in consultation with the nursing home
25 industry and consumer representatives, shall develop an
26 easy-to-use consumer satisfaction survey, shall ensure that
27 every nursing facility licensed pursuant to this part
28 participates in assessing consumer satisfaction, and shall
29 establish procedures to ensure that, at least annually, a
30 representative sample of residents of each facility is
31 selected to participate in the survey. The sample shall be of

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1 sufficient size to allow comparisons between and among
2 facilities. Family members, guardians, or other resident
3 designees may assist the resident in completing the survey.
4 Employees and volunteers of the nursing facility or of a
5 corporation or business entity with an ownership interest in
6 the facility are prohibited from assisting a resident with or
7 attempting to influence a resident's responses to the consumer
8 satisfaction survey. The agency, or its contractor, shall
9 survey family members, guardians, or other resident designees.
10 The agency, or its contractor, shall specify the protocol for
11 conducting and reporting the consumer satisfaction surveys.
12 Reports of consumer satisfaction surveys shall protect the
13 identity of individual respondents. The agency shall contract
14 for consumer satisfaction surveys and report the results of
15 those surveys in the consumer information materials prepared
16 and distributed by the agency. The agency may adopt rules as
17 necessary to administer this section.

18 Section 54. Subsections (3) and (8) of section
19 400.0255, Florida Statutes, as amended by section 138 of
20 chapter 2000-349, section 3 of chapter 2000-350, and section
21 58 of chapter 2000-367, Laws of Florida, are reenacted to
22 read:

23 400.0255 Resident transfer or discharge; requirements
24 and procedures; hearings.--

25 (3) When a discharge or transfer is initiated by the
26 nursing home, the nursing home administrator employed by the
27 nursing home that is discharging or transferring the resident,
28 or an individual employed by the nursing home who is
29 designated by the nursing home administrator to act on behalf
30 of the administration, must sign the notice of discharge or
31 transfer. Any notice indicating a medical reason for transfer

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1 or discharge must either be signed by the resident's attending
2 physician or the medical director of the facility, or include
3 an attached written order for the discharge or transfer. The
4 notice or the order must be signed by the resident's
5 physician, medical director, treating physician, nurse
6 practitioner, or physician assistant.

7 (8) The notice required by subsection (7) must be in
8 writing and must contain all information required by state and
9 federal law, rules, or regulations applicable to Medicaid or
10 Medicare cases. The agency shall develop a standard document
11 to be used by all facilities licensed under this part for
12 purposes of notifying residents of a discharge or transfer.
13 Such document must include a means for a resident to request
14 the local long-term care ombudsman council to review the
15 notice and request information about or assistance with
16 initiating a fair hearing with the department's Office of
17 Appeals Hearings. In addition to any other pertinent
18 information included, the form shall specify the reason
19 allowed under federal or state law that the resident is being
20 discharged or transferred, with an explanation to support this
21 action. Further, the form shall state the effective date of
22 the discharge or transfer and the location to which the
23 resident is being discharged or transferred. The form shall
24 clearly describe the resident's appeal rights and the
25 procedures for filing an appeal, including the right to
26 request the local ombudsman council to review the notice of
27 discharge or transfer. A copy of the notice must be placed in
28 the resident's clinical record, and a copy must be transmitted
29 to the resident's legal guardian or representative and to the
30 local ombudsman council within 5 business days after signature
31 by the resident or resident designee.

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1 Section 55. Subsections (4) and (5) of section
2 400.141, Florida Statutes, as renumbered and amended by
3 section 4 of chapter 2000-350, Laws of Florida, are reenacted
4 to read:

5 400.141 Administration and management of nursing home
6 facilities.--Every licensed facility shall comply with all
7 applicable standards and rules of the agency and shall:

8 (4) Provide for resident use of a community pharmacy
9 as specified in s. 400.022(1)(q). Any other law to the
10 contrary notwithstanding, a registered pharmacist licensed in
11 Florida, that is under contract with a facility licensed under
12 this chapter, shall repackage a nursing facility resident's
13 bulk prescription medication which has been packaged by
14 another pharmacist licensed in any state in the United States
15 into a unit dose system compatible with the system used by the
16 nursing facility, if the pharmacist is requested to offer such
17 service. To be eligible for repackaging, a resident or the
18 resident's spouse must receive prescription medication
19 benefits provided through a former employer as part of his or
20 her retirement benefits a qualified pension plan as specified
21 in s. 4972 of the Internal Revenue Code, a federal retirement
22 program as specified under 5 C.F.R. s. 831, or a long-term
23 care policy as defined in s. 627.9404(1). A pharmacist who
24 correctly repackages and relabels the medication and the
25 nursing facility which correctly administers such repackaged
26 medication under the provisions of this subsection shall not
27 be held liable in any civil or administrative action arising
28 from the repackaging. In order to be eligible for the
29 repackaging, a nursing facility resident for whom the
30 medication is to be repackaged shall sign an informed consent
31 form provided by the facility which includes an explanation of

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1 the repackaging process and which notifies the resident of the
2 immunities from liability provided herein. A pharmacist who
3 repackages and relabels prescription medications, as
4 authorized under this subsection, may charge a reasonable fee
5 for costs resulting from the implementation of this provision.

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

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

24 Section 56. Subsection (2) of section 400.191, Florida
25 Statutes, as amended by section 5 of chapter 2000-350, Laws of
26 Florida, and subsection (6) of section 400.191, Florida
27 Statutes, as created by section 5 of chapter 2000-350, Laws of
28 Florida, are reenacted to read:

29 400.191 Availability, distribution, and posting of
30 reports and records.--

31 (2) The agency shall provide additional information in

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1 consumer-friendly printed and electronic formats to assist
2 consumers and their families in comparing and evaluating
3 nursing home facilities.

4 (a) The agency shall provide an Internet site which
5 shall include at least the following information either
6 directly or indirectly through a link to another established
7 site or sites of the agency's choosing:

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

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

12 3. The current owner of the facility's license and the
13 year that that entity became the owner of the license.

14 4. The name of the owner or owners of each facility
15 and whether the facility is affiliated with a company or other
16 organization owning or managing more than one nursing facility
17 in this state.

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

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

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

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

25 9. Whether or not each facility accepts Medicare or
26 Medicaid recipients or insurance, health maintenance
27 organization, Veterans Administration, CHAMPUS program, or
28 workers' compensation coverage.

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

31 11. Special care units or programs offered at each

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1 facility.

2 12. Whether the facility is a part of a retirement
3 community that offers other services pursuant to part III,
4 part IV, or part V.

5 13. The results of consumer and family satisfaction
6 surveys for each facility, as described in s. 400.0225. The
7 results may be converted to a score or scores, which may be
8 presented in either numeric or symbolic form for the intended
9 consumer audience.

10 14. Survey and deficiency information contained on the
11 Online Survey Certification and Reporting (OSCAR) system of
12 the federal Health Care Financing Administration, including
13 annual survey, revisit, and complaint survey information, for
14 each facility for the past 45 months. For noncertified
15 nursing homes, state survey and deficiency information,
16 including annual survey, revisit, and complaint survey
17 information for the past 45 months shall be provided.

18 15. A summary of the Online Survey Certification and
19 Reporting (OSCAR) data for each facility over the past 45
20 months. Such summary may include a score, rating, or
21 comparison ranking with respect to other facilities based on
22 the number of citations received by the facility of annual,
23 revisit, and complaint surveys; the severity and scope of the
24 citations; and the number of annual recertification surveys
25 the facility has had during the past 45 months. The score,
26 rating, or comparison ranking may be presented in either
27 numeric or symbolic form for the intended consumer audience.

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

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

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- 1 2. Whether such nursing home facilities are
- 2 proprietary or nonproprietary.
- 3 3. The current owner or owners of the facility's
- 4 license and the year that entity became the owner of the
- 5 license.
- 6 4. The total number of beds, and of private and
- 7 semiprivate rooms, in each facility.
- 8 5. The religious affiliation, if any, of each
- 9 facility.
- 10 6. The name of the owner of each facility and whether
- 11 the facility is affiliated with a company or other
- 12 organization owning or managing more than one nursing facility
- 13 in this state.
- 14 7. The languages spoken by the administrator and staff
- 15 of each facility.
- 16 8. Whether or not each facility accepts Medicare or
- 17 Medicaid recipients or insurance, health maintenance
- 18 organization, Veterans Administration, CHAMPUS program, or
- 19 workers' compensation coverage.
- 20 9. Recreational programs, special care units, and
- 21 other programs available at each facility.
- 22 10. The results of consumer and family satisfaction
- 23 surveys for each facility, as described in s. 400.0225. The
- 24 results may be converted to a score or scores, which may be
- 25 presented in either numeric or symbolic form for the intended
- 26 consumer audience.
- 27 11. The Internet address for the site where more
- 28 detailed information can be seen.
- 29 12. A statement advising consumers that each facility
- 30 will have its own policies and procedures related to
- 31 protecting resident property.

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1 13. A summary of the Online Survey Certification and
2 Reporting (OSCAR) data for each facility over the past 45
3 months. Such summary may include a score, rating, or
4 comparison ranking with respect to other facilities based on
5 the number of citations received by the facility on annual,
6 revisit, and complaint surveys; the severity and scope of the
7 citations; the number of citations; and the number of annual
8 recertification surveys the facility has had during the past
9 45 months. The score, rating, or comparison ranking may be
10 presented in either numeric or symbolic form for the intended
11 consumer audience.

12 (c) For purposes of this subsection, references to the
13 Online Survey Certification and Reporting (OSCAR) system shall
14 refer to any future system that the Health Care Financing
15 Administration develops to replace the current OSCAR system.

16 (d) The agency may provide the following additional
17 information on an Internet site or in printed form as the
18 information becomes available:

- 19 1. The licensure status history of each facility.
- 20 2. The rating history of each facility.
- 21 3. The regulatory history of each facility, which may
22 include federal sanctions, state sanctions, federal fines,
23 state fines, and other actions.
- 24 4. Whether the facility currently possesses the Gold
25 Seal designation awarded pursuant to s. 400.235.
- 26 5. Internet links to the Internet sites of the
27 facilities or their affiliates.

28 (6) The agency may adopt rules as necessary to
29 administer this section.

30 Section 57. Subsection (5) of section 400.23, Florida
31 Statutes, as amended by section 6 of chapter 2000-350, Laws of

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1 Florida, is reenacted to read:

2 400.23 Rules; evaluation and deficiencies; licensure
3 status.--

4 (5) The agency, in collaboration with the Division of
5 Children's Medical Services of the Department of Health, must,
6 no later than December 31, 1993, adopt rules for minimum
7 standards of care for persons under 21 years of age who reside
8 in nursing home facilities. The rules must include a
9 methodology for reviewing a nursing home facility under ss.
10 408.031-408.045 which serves only persons under 21 years of
11 age. A facility may be exempt from these standards for
12 specific persons between 18 and 21 years of age, if the
13 person's physician agrees that minimum standards of care based
14 on age are not necessary.

15 Section 58. Paragraph (a) of subsection (3),
16 subsection (4), and paragraph (e) of subsection (5) of section
17 400.235, Florida Statutes, as amended by section 12 of chapter
18 2000-305 and section 7 of chapter 2000-350, Laws of Florida,
19 and subsection (9) of section 400.235, Florida Statutes, as
20 created by section 7 of chapter 2000-350, are reenacted to
21 read:

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

24 (3)(a) The Gold Seal Program shall be developed and
25 implemented by the Governor's Panel on Excellence in Long-Term
26 Care which shall operate under the authority of the Executive
27 Office of the Governor. The panel shall be composed of three
28 persons appointed by the Governor, to include a consumer
29 advocate for senior citizens and two persons with expertise in
30 the fields of quality management, service delivery excellence,
31 or public sector accountability; three persons appointed by

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1 the Secretary of Elderly Affairs, to include an active member
2 of a nursing facility family and resident care council and a
3 member of the University Consortium on Aging; the State
4 Long-Term Care Ombudsman; one person appointed by the Florida
5 Life Care Residents Association; one person appointed by the
6 Secretary of Health; two persons appointed by the Secretary of
7 Health Care Administration; one person appointed by the
8 Florida Association of Homes for the Aging; and one person
9 appointed by the Florida Health Care Association. Vacancies on
10 the panel shall be filled in the same manner as the original
11 appointments.

12 (4) The panel shall consider the quality of care
13 provided to residents when evaluating a facility for the Gold
14 Seal Program. The panel shall determine the procedure or
15 procedures for measuring the quality of care.

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

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

24
25 A facility assigned a conditional licensure status may not
26 qualify for consideration for the Gold Seal Program until
27 after it has operated for 30 months with no class I or class
28 II deficiencies and has completed a regularly scheduled
29 relicensure survey.

30 (9) The agency may adopt rules as necessary to
31 administer this section.

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1 Section 59. The repeal of paragraph (h) of subsection
2 (5) of section 400.235, Florida Statutes, 1999, by section 7
3 of chapter 2000-350, Laws of Florida, is reenacted.

4 Section 60. Subsection (1) of section 400.962, Florida
5 Statutes, as amended by section 8 of chapter 2000-350, Laws of
6 Florida, is reenacted to read:

7 400.962 License required; license application.--

8 (1) It is unlawful to operate an intermediate care
9 facility for the developmentally disabled without a license.

10 Section 61. Subsection (2) of section 397.405, Florida
11 Statutes, as amended by section 9 of chapter 2000-350, Laws of
12 Florida, is reenacted to read:

13 397.405 Exemptions from licensure.--The following are
14 exempt from the licensing provisions of this chapter:

15 (2) A nursing home facility as defined in s.
16 400.021(12).

17
18 The exemptions from licensure in this section do not apply to
19 any facility or entity which receives an appropriation, grant,
20 or contract from the state to operate as a service provider as
21 defined in this chapter or to any substance abuse program
22 regulated pursuant to s. 397.406. No provision of this
23 chapter shall be construed to limit the practice of a
24 physician licensed under chapter 458 or chapter 459, a
25 psychologist licensed under chapter 490, or a psychotherapist
26 licensed under chapter 491, providing outpatient or inpatient
27 substance abuse treatment to a voluntary patient, so long as
28 the physician, psychologist, or psychotherapist does not
29 represent to the public that he or she is a licensed service
30 provider under this act. Failure to comply with any
31 requirement necessary to maintain an exempt status under this

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1 section is a misdemeanor of the first degree, punishable as
2 provided in s. 775.082 or s. 775.083.

3 Section 62. Section 10 of chapter 2000-350, Laws of
4 Florida, is reenacted to read:

5 Section 10. The Board of Pharmacy, in cooperation with
6 the Agency for Health Care Administration, shall undertake a
7 study of the feasibility, efficiency, cost-effectiveness, and
8 safety of using automated medication dispensing machines in
9 nursing facilities. The board and the agency may authorize the
10 establishment of demonstration projects in up to five nursing
11 facilities with a class I institutional pharmacy as part of
12 the study. Demonstration projects may be allowed to continue
13 for up to 12 months. A report summarizing the results of the
14 study shall be submitted by the board and the agency to the
15 Speaker of the House of Representatives and the President of
16 the Senate by January 1, 2001. If the study determines that
17 such dispensing machines would benefit residents of nursing
18 facilities and should be allowed, the report shall identify
19 those specific statutory changes necessary to allow nursing
20 facilities to use automated medication dispensing machines.

21 Section 63. It is the intent of the Legislature that
22 the reenactment of statutes provided in this act is remedial
23 in nature and is not intended to conflict with any amendment
24 provided in this act to any of the statutes reenacted, but
25 merely serves to settle and provide relief from uncertainty
26 with respect to the provisions of chapter 2000-350, Laws of
27 Florida, relating to nursing homes and related health care
28 facilities, which chapter law may contain more than one
29 subject.

30 Section 64. Present subsection (7) of section 627.351,
31 Florida Statutes, is redesignated as subsection (8), and a new

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1 subsection (7) is added to that section, to read:

2 627.351 Insurance risk apportionment plans.--

3 (7) SENIOR CARE FACILITY JOINT UNDERWRITING
4 ASSOCIATION.--

5 (a) There is created a joint underwriting association
6 for senior-care facilities that are in good faith entitled,
7 but are unable, to procure liability insurance coverage
8 through the voluntary market, which is designated as the
9 Senior Care Facility Joint Underwriting Association. As used
10 in this subsection, the term "senior-care facility" means a
11 long-term care facility as defined in s. 400.0060, a nursing
12 home facility as defined in s. 400.021, a continuing care
13 facility as licensed under s. 651.021, or an assisted living
14 facility as licensed under s. 400.407. A senior-care facility
15 any part of which is licensed under part II or part III of
16 chapter 400 is eligible to participate in a joint underwriting
17 association if it meets criteria in the plan developed
18 pursuant to paragraph (b). The association will be activated
19 when the Insurance Commissioner determines that primary
20 coverage is not generally available from authorized insurers
21 for any one of the following categories of facilities:
22 long-term care facilities defined in s. 400.0060; nursing home
23 facilities defined in s. 400.021; continuing care facilities
24 licensed under s. 651.021; or assisted living facilities
25 licensed under s. 400.407. The association will be activated
26 solely for the category of facilities for which insurance is
27 no longer available. The determination is exempt from any
28 challenges under chapter 120.

29 (b) The association shall operate pursuant to a plan
30 of operation approved by order of the department. The plan is
31 subject to continuous review by the department. The department

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1 may, by order, withdraw approval of all or part of the plan if
2 the department determines that conditions have changed since
3 approval was granted and the purposes of the plan require
4 changes in the plan.

5 (c) All insurers authorized to write one or more
6 subject lines of business in this state must participate in
7 the association. An authorized insurer's participation begins
8 on the first day of the calendar year in which the insurer was
9 issued a certificate of authority to transact insurance for
10 one or more subject lines of business in this state and
11 terminates 1 year after the end of the first calendar year
12 during which the member no longer holds a certificate of
13 authority to transact insurance for subject lines of business
14 in this state. All such insurers shall be referred to in this
15 subsection as "participating insurers." As used in this
16 subsection, the term "subject lines of business" means
17 liability insurance as defined in s. 624.605(1)(b), written in
18 this state which is designated as "Commercial Multi-peril
19 (liability portion)" or "Other liability" on the forms for
20 financial statements approved by the National Associations of
21 Insurance Commissioners, and does not include other casualty
22 insurance lines defined in s. 624.605 or homeowners liability
23 insurance which is reported as property insurance on financial
24 statements submitted to the department.

25 (d) The association shall operate subject to the
26 supervision and approval of a board of governors consisting of
27 seven individuals appointed by the Insurance Commissioner. The
28 Insurance Commissioner shall designate one of the appointees
29 as chair. All board members shall serve at the pleasure of the
30 Insurance Commissioner. All board members, including the
31 chair, shall be appointed to 3-year terms, beginning annually

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1 on the date designated by the plan.

2 (e) The plan of operation of the association must
3 include, but need not be limited to:

4 1. Standards for establishing eligibility of a risk
5 for obtaining liability insurance through the association,
6 including underwriting standards.

7 2. Rules for classifying risks and rates which
8 correspond to past and prospective loss experience. Such rules
9 may reflect whether the facility operates on a for-profit or
10 not-for-profit basis.

11 3. A rating plan that corresponds to the prior claims
12 experience of the insureds.

13 4. The association may offer primary coverage not to
14 exceed \$250,000 per claim and a maximum annual aggregate of
15 \$500,000. However, such limits may not be less than the
16 amounts of insurance required of eligible risks by state law.
17 Any offer of primary coverage by the private market to an
18 insured would make that insured ineligible for underwriting by
19 the association.

20 5. A risk management program for insureds of the
21 association. This program must include, but need not be
22 limited to:

23 a. Investigation and analysis of the frequency,
24 severity, and causes of claims.

25 b. Developmental measures to avoid and control claims.

26 c. Systematic reporting of accidents or injuries to
27 facility residents.

28 d. Investigation and analysis of resident complaints.

29 e. Auditing of association members to ensure
30 implementation of this program.

31 6. A requirement that coverage by the association

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1 exclude coverage for punitive damages.

2 7. A requirement that coverage by the association does
3 not include coverage for the professional liability of persons
4 or entities providing professional services, pursuant to
5 professional licensure, through or on behalf of the facility.

6 8. A requirement that coverage be limited to claims
7 made.

8 (f) The association may refuse to insure any facility
9 that fails to comply with the risk-management program required
10 by the plan.

11 (g) If an operating deficit, determined on the basis
12 of generally accepted accounting principles, exists for any
13 calendar year the plan is in effect, any surplus that has
14 accrued from previous years and is not projected within
15 reasonable actuarial certainty to be needed for payment of
16 claims in the year the surplus arose shall be used to offset
17 the deficit to the extent available.

18 1. If an operating deficit remains, each policyholder
19 who had an in-force policy at any time during the calendar
20 year with an operating deficit shall pay to the association a
21 premium contingency assessment that may not exceed one-third
22 of the annual premium payment paid by the policyholder to the
23 association for that in-force policy. The association shall
24 cancel any policy for a policyholder who fails to pay the
25 premium contingency assessment and shall deduct the premium
26 contingency assessment from the policyholder's return premium
27 if any.

28 2. If there is any remaining operating deficit under
29 the plan after maximum billing of the premium contingency
30 assessment, the association shall levy and collect assessments
31 from participating insurers in an amount sufficient to offset

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1 such deficit. Such assessments must first be levied against
2 the insurers participating in the plan during the year giving
3 rise to the assessment. Any assessments against the
4 participating insurers must be in the proportion that the net
5 direct written premium of each insurer for the subject lines
6 of business during the preceding calendar year bears to the
7 aggregate net direct premium written for the subject lines of
8 business by all participating insurers. The assessment levied
9 against any insurer for any calendar year deficit may not
10 exceed 1 percent of that insurer's net direct written premium
11 for the subject lines of business during the calendar year
12 preceding the deficit. If additional assessments are required
13 to extinguish the deficit incurred by the association for a
14 calendar year, additional assessments shall be made in
15 immediately following calendar years against those
16 participating insurers who were initially assessed for the
17 deficit. These additional assessments may not exceed a total
18 of 5 percent of the insurer's net direct written premium for
19 the subject lines of business during the calendar year
20 immediately preceding the calendar year in which the deficit
21 was incurred. If these assessments are insufficient to
22 completely extinguish the deficit that the association
23 incurred in any calendar year, the amount of the
24 unextinguished deficit incurred shall be carried forward as a
25 deficit of the calendar year immediately following the
26 calendar year in which the deficit was incurred and the
27 unextinguished deficit shall be assessed as a deficit of that
28 calendar year in the manner described in this section until
29 the deficit is completely extinguished.

30 3. The board shall take all reasonable and prudent
31 steps necessary to collect the amount of the assessment due

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1 from each participating insurer, including, if prudent, filing
2 suit to collect such assessment. If the board is unable to
3 collect an assessment from any insurer, the uncollected
4 assessments shall be levied as an additional assessment
5 against the participating insurers. Any participating insurer
6 required to pay an additional assessment as the result of such
7 failure to pay shall have a cause of action against the
8 nonpaying insurer.

9 (h) Rate filings of the association must be made
10 pursuant to s. 627.062, and such rates shall not be
11 competitive with the authorized market.

12 (i) Agent commissions for placing coverage with the
13 association shall be no more than 5 percent of the premium.

14 (j) After July 1, 2004, no new or renewal policies of
15 insurance may be written.

16 Section 65. Effective July 1, 2001, the sum of
17 \$948,782 is appropriated from the General Revenue Fund to the
18 Department of Elderly Affairs for the purpose of paying the
19 salaries and other administrative expenses of the Office of
20 State Long-Term Care Ombudsman to carry out the provisions of
21 this act during the 2001-2002 fiscal year.

22 Section 66. Effective July 1, 2001, there is
23 appropriated from the General Revenue Fund for the Statewide
24 Public Guardianship Office established in part II, chapter
25 744, Florida Statutes, the sum of \$100,000. The office shall
26 use the funds for training and for costs associated with
27 providing assistance to judicial circuits in development of
28 local public guardianship programs, including public
29 guardianship services for residents of long-term care
30 facilities licensed under chapter 400, Florida Statutes.

31 Section 67. The sum of \$500,000 is appropriated from

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1 the General Revenue Fund for the Senior Care Facility Joint
2 Underwriting Association.

3 Section 68. Funding for the increased staffing, wages,
4 and benefits for direct caregivers in long-term care
5 facilities provided in this act is contingent upon no
6 legislation being enacted in the 2001 Legislative Session, and
7 becoming law, that would reduce revenues from intangible taxes
8 in fiscal year 2001-2002 by more than \$135 million.

9 Section 69. Except as otherwise provided herein, this
10 act shall take effect upon becoming a law.

11
12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:
15 remove from the title of the bill: the entire title
16
17 and insert in lieu thereof:

18 A bill to be entitled
19 An act relating to long-term care; amending s.
20 400.0073, F.S., relating to state and local
21 ombudsman council investigations; requiring
22 ombudsman verification and reporting of nursing
23 home staff on duty and the posting thereof;
24 providing penalty for refusal of a nursing home
25 or assisted living facility to allow entry to
26 an ombudsman; amending s. 400.021, F.S.;
27 revising definitions; defining "controlling
28 interest" and "voluntary board member";
29 requiring the Agency for Health Care
30 Administration and the Office of the Attorney
31 General to study the use of electronic

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1 monitoring devices in nursing homes; requiring
2 a report; amending ss. 400.023 and 400.429,
3 F.S.; providing for civil actions to enforce
4 nursing home and assisted living facility
5 residents' rights; providing who may pursue
6 such actions; providing for attorney's fees and
7 costs; providing the burden of proof; providing
8 evidence of breach of duty; providing certain
9 liability; limiting period for commencement of
10 actions; providing definitions; providing for
11 claims involving death of the resident;
12 providing for punitive damages; providing
13 nonenforceability of judgments or agreements
14 concealing certain information; requiring
15 facility report of a judgment or agreement to
16 the Agency for Health Care Administration
17 within a specified period; providing a penalty;
18 providing agency rulemaking authority;
19 providing applicability; creating s. 400.0235,
20 F.S.; providing requirements of the presuit
21 process; creating s. 400.0236, F.S.; providing
22 for presuit screening; creating s. 400.0237,
23 F.S.; providing for presuit notice, review, and
24 investigation; specifying timeframes; creating
25 ss. 400.0238 and 400.430, F.S.; providing for
26 voluntary binding arbitration; providing for
27 selection of an arbitration panel; providing
28 for compensation; providing obligations and
29 procedures; providing rulemaking authority of
30 the Division of Administrative Hearings;
31 providing for the right to jury trial and for

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1 certain limitations on damages; providing
2 procedures; creating s. 400.0239, F.S.;
3 providing for binding arbitration to allocate
4 responsibility among defendants; providing
5 procedures; creating s. 400.024, F.S.;
6 providing for misarbitration; creating s.
7 400.0241, F.S.; providing for payment of an
8 arbitration award; providing for interest;
9 creating s. 400.0242, F.S.; providing for
10 appeal of an arbitration award or allocation of
11 financial responsibility; creating ss. 400.0245
12 and 400.455, F.S.; creating the "Nursing Home
13 Facility Whistleblower's Act" and the "Assisted
14 Living Facility Whistleblower's Act,"
15 respectively; prohibiting retaliatory actions
16 from a facility or independent contractor
17 against an employee for disclosure of certain
18 information; providing legislative intent;
19 providing definitions; specifying the nature of
20 information, to whom disclosed, and persons
21 protected; authorizing civil actions for
22 violation; providing forms of relief; providing
23 penalties; providing reward for information
24 disclosed; requiring facilities to post notice
25 of protections, rewards, and remedies;
26 providing defenses to certain actions;
27 protecting existing rights of employees;
28 amending s. 400.071, F.S.; revising
29 requirements and providing additional
30 requirements for application for a nursing home
31 license; amending s. 400.102, F.S.; providing

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1 additional grounds for administrative or other
2 actions against a nursing home; amending s.
3 400.118, F.S.; requiring agency staff to verify
4 and report staff on duty at a nursing home;
5 providing requirements for resident
6 comprehensive assessment, plan of care, and
7 treatment and services; providing for a
8 resident's incapacity or refusal with regard to
9 the plan of care; creating s. 400.1183, F.S.;
10 requiring nursing homes to have a grievance
11 procedure for residents; providing
12 requirements; requiring recordkeeping and
13 reports to the agency; providing for agency
14 investigations; providing a penalty for
15 noncompliance; amending s. 400.121, F.S.;
16 revising a penalty for violations of pt. II of
17 ch. 400, F.S.; providing additional grounds for
18 denial of a nursing home licensure application;
19 providing for review of administrative
20 proceedings challenging agency licensure
21 enforcement actions; amending s. 400.141, F.S.;
22 providing qualifications for nursing home
23 medical directors and nursing personnel;
24 requiring sufficient nursing staff; requiring a
25 comprehensive resident assessment; requiring
26 daily charting of certain care delivered;
27 requiring report of management agreements;
28 requiring report of staff ratios, turnover, and
29 stability, and bed vacancies; creating s.
30 400.1413, F.S.; requiring nursing homes to
31 establish internal risk management and quality

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1 assurance programs; providing requirements for
2 implementation; defining "adverse incident";
3 requiring reports to the agency; providing
4 agency access to facility records, review of
5 incidents and programs, and report to
6 regulatory boards; limiting liability of risk
7 managers; amending s. 400.1415, F.S.; providing
8 for administrative penalties or a moratorium on
9 admissions for a nursing home where alteration
10 of records has occurred; requiring reporting;
11 requiring referral of personnel for
12 disciplinary action; amending s. 400.19, F.S.;
13 providing for quarterly onsite review of
14 facilities with a conditional licensure status;
15 amending s. 400.191, F.S.; requiring facility
16 posting of the Florida Nursing Home Guide Watch
17 List; amending s. 400.211, F.S.; revising
18 qualifications for temporary employment of
19 nursing assistants; providing performance
20 review and inservice training requirements for
21 certified nursing assistants; amending s.
22 400.23, F.S.; deleting obsolete language and
23 references; deleting requirement for review of
24 local emergency management plans; providing for
25 agency rules relating to consumer satisfaction
26 surveys, posting of reports and records, and
27 quality assurance and risk management;
28 specifying minimum nursing home staffing
29 requirements; providing a moratorium on
30 admissions for certain failure to comply with
31 minimum staffing requirements; providing a

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1 penalty; revising provisions relating to
2 deficient practices and classifications
3 thereof; revising penalties; requiring a
4 report; amending s. 400.241, F.S.; providing a
5 cross reference; providing a penalty; amending
6 s. 400.407, F.S.; correcting a cross reference;
7 amending s. 400.426, F.S.; requiring a daily
8 record of care of residents; providing for
9 access to and maintenance of such records;
10 amending ss. 400.428 and 400.431, F.S.;
11 revising requirement for notice of a resident's
12 relocation or termination from a facility;
13 providing a penalty; creating s. 400.449, F.S.;
14 providing penalties for altering, defacing, or
15 falsifying records of an assisted living
16 facility; amending s. 409.908, F.S.; revising
17 provisions relating to Medicaid reimbursement
18 for long-term care; providing for direct care
19 and indirect care subcomponents; providing for
20 cost reporting; amending s. 415.1111, F.S.;
21 providing that provisions for civil actions
22 under ch. 415, F.S., shall not apply to civil
23 actions under pts. II and III of ch. 400, F.S.;
24 amending s. 430.708, F.S.; deleting a provision
25 relating to certificate-of-need calculations
26 for nursing home beds pursuant to Medicaid
27 community diversion pilot projects; prohibiting
28 the issuance of a certificate of need for
29 additional community nursing home beds;
30 providing intent for such prohibition;
31 providing an exemption; amending s. 430.709,

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1 F.S.; providing requirements for contracts for
2 independent evaluation of long-term care
3 community diversion projects; transferring
4 responsibility from the Department of Elderly
5 Affairs to the agency; requiring reports to the
6 agency and Legislature; amending s. 435.04,
7 F.S.; deleting obsolete language; amending s.
8 464.201, F.S.; revising definition of "approved
9 training program" for nursing assistants;
10 amending s. 464.2085, F.S.; directing the
11 Council on Certified Nursing Assistants to
12 develop advanced competency designations for
13 certified nursing assistants; amending ss.
14 101.655, 397.405, and 400.0069, F.S.;
15 correcting cross references; requiring the
16 Auditor General develop a standard chart of
17 accounts for Medicaid long-term care provider
18 cost reporting; requiring implementation by the
19 agency by a specified date; requiring the
20 agency to amend the Medicaid Title XIX
21 Long-Term Care Reimbursement Plan to include
22 specified provisions; directing the Board of
23 Nursing to provide for commendation of certain
24 professional nurses; requiring wage and benefit
25 increases for nursing home direct care staff;
26 requiring a report; reenacting s. 400.021(11),
27 F.S., relating to the definition of "nursing
28 home bed"; reenacting s. 400.0225, F.S.,
29 relating to consumer satisfaction surveys;
30 reenacting s. 400.0255(3) and (8), F.S.,
31 relating to discharge or transfer of residents;

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1 reenacting s. 400.141(4) and (5), F.S.,
2 relating to the repackaging of residents'
3 medication and access to other health-related
4 services; reenacting s. 400.191(2) and (6),
5 F.S., relating to requirements for providing
6 information to consumers; reenacting s.
7 400.23(5), F.S., relating to rules for
8 standards of care for persons under 21 years of
9 age residing in nursing home facilities;
10 reenacting s. 400.235(3)(a), (4), (5)(e), and
11 (9), F.S., and reenacting the repeal of s.
12 400.235(5)(h), F.S., 1999, relating to
13 designation under the nursing home Gold Seal
14 Program; reenacting s. 400.962(1), F.S.,
15 relating to requirement for licensure under pt.
16 XI of ch. 400, F.S.; reenacting s. 397.405(2),
17 F.S., relating to a cross reference; reenacting
18 s. 10 of ch. 2000-350, Laws of Florida,
19 relating to requirements for a study of the use
20 of automated medication dispensing machines in
21 nursing facilities and for demonstration
22 projects and a report; providing legislative
23 intent; amending s. 627.351, F.S.; creating the
24 Senior Care Facility Joint Underwriting
25 Association; defining the term "senior care
26 facility"; requiring that the association
27 operate under a plan approved by the Department
28 of Insurance; requiring that certain insurers
29 participate in the association; providing for a
30 board of governors appointed by the Insurance
31 Commissioner to administer the association;

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1 providing for terms of office; providing
2 requirements for the plan of operation of the
3 association; requiring that insureds of the
4 association have a risk management program;
5 providing procedures for offsetting an
6 underwriting deficit; providing for assessments
7 to offset a deficit; providing that a
8 participating insurer has a cause of action
9 against a nonpaying insurer to collect an
10 assessment; requiring the department to review
11 and approve rate filings of the association;
12 providing appropriations; providing for
13 contingent funding; providing effective dates.

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