

Bill No. CS for CS for CS for SB 1202, 2nd Eng.

Amendment No. Barcode 260568

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Brown-Waite moved the following amendment to amendment		
12	(341895):		
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14	Senate Amendment (with title amendment)		
15	On page 1, line 17, through page 129, line 7, delete		
16	those lines		
17			
18	and insert:		
19	Section 1. Subsection (4) of section 400.0073, Florida		
20	Statutes, is amended to read:		
21	400.0073 State and local ombudsman council		
22	investigations.--		
23	(4) In addition to any specific investigation made		
24	pursuant to a complaint, the local ombudsman council shall		
25	conduct, at least annually, an investigation, which shall		
26	consist, in part, of an onsite administrative inspection, of		
27	each nursing home or long-term care facility within its		
28	jurisdiction. <u>This inspection shall focus on the rights,</u>		
29	<u>health, safety, and welfare of the residents.</u>		
30	Section 2. Section 400.021, Florida Statutes, is		
31	amended to read:		

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1 ~~(7)(6)~~ "Department" means the Department of Children
2 and Family Services.

3 ~~(8)(7)~~ "Facility" means any institution, building,
4 residence, private home, or other place, whether operated for
5 profit or not, including a place operated by a county or
6 municipality, which undertakes through its ownership or
7 management to provide for a period exceeding 24-hour nursing
8 care, personal care, or custodial care for three or more
9 persons not related to the owner or manager by blood or
10 marriage, who by reason of illness, physical infirmity, or
11 advanced age require such services, but does not include any
12 place providing care and treatment primarily for the acutely
13 ill. A facility offering services for fewer than three persons
14 is within the meaning of this definition if it holds itself
15 out to the public to be an establishment which regularly
16 provides such services.

17 ~~(9)(8)~~ "Geriatric outpatient clinic" means a site for
18 providing outpatient health care to persons 60 years of age or
19 older, which is staffed by a registered nurse or a physician
20 assistant.

21 ~~(10)(9)~~ "Geriatric patient" means any patient who is
22 60 years of age or older.

23 ~~(11)(10)~~ "Local ombudsman council" means a local
24 long-term care ombudsman council established pursuant to s.
25 400.0069, located within the Older Americans Act planning and
26 service areas.

27 ~~(12)(11)~~ "Nursing home bed" means an accommodation
28 which is ready for immediate occupancy, or is capable of being
29 made ready for occupancy within 48 hours, excluding provision
30 of staffing; and which conforms to minimum space requirements,
31 including the availability of appropriate equipment and

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1 furnishings within the 48 hours, as specified by rule of the
2 agency, for the provision of services specified in this part
3 to a single resident.

4 (13)~~(12)~~ "Nursing home facility" means any facility
5 which provides nursing services as defined in part I of
6 chapter 464 and which is licensed according to this part.

7 (14)~~(13)~~ "Nursing service" means such services or acts
8 as may be rendered, directly or indirectly, to and in behalf
9 of a person by individuals as defined in s. 464.003.

10 (15)~~(14)~~ "Planning and service area" means the
11 geographic area in which the Older Americans Act programs are
12 administered and services are delivered by the Department of
13 Elderly Affairs.

14 (16)~~(15)~~ "Respite care" means admission to a nursing
15 home for the purpose of providing a short period of rest or
16 relief or emergency alternative care for the primary caregiver
17 of an individual receiving care at home who, without
18 home-based care, would otherwise require institutional care.

19 (17)~~(16)~~ "Resident care plan" means a written plan
20 developed, maintained, and reviewed not less than quarterly by
21 a registered nurse, with participation from other facility
22 staff and the resident or his or her designee or legal
23 representative, which includes a comprehensive assessment of
24 the needs of an individual resident, the type and frequency of
25 services required to provide the necessary care for the
26 resident to attain or maintain the highest practicable
27 physical, mental, and psychosocial well-being, a listing of
28 services provided within or outside the facility to meet those
29 needs, and an explanation of service goals. The resident care
30 plan must be signed by the director of nursing and the
31 resident, the resident's designee, or the resident's legal

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1 representative.

2 (18)(17) "Resident designee" means a person, other
3 than the owner, administrator, or employee of the facility,
4 designated in writing by a resident or a resident's guardian,
5 if the resident is adjudicated incompetent, to be the
6 resident's representative for a specific, limited purpose.

7 (19)(18) "State ombudsman council" means the State
8 Long-Term Care Ombudsman Council established pursuant to s.
9 400.0067.

10 (20) "Voluntary board member" means a director of a
11 not-for-profit corporation or organization who serves solely
12 in a voluntary capacity for the corporation or organization,
13 does not receive any remuneration for his or her services on
14 the board of directors, and has no financial interest in the
15 corporation or organization. The agency shall recognize a
16 person as a voluntary board member following submission of a
17 statement to the agency by the director and the not-for-profit
18 corporation or organization which affirms that the director
19 conforms to this definition. The statement affirming the
20 status of the director must be submitted to the agency on a
21 form provided by the agency.

22 Section 3. The Agency for Health Care Administration
23 and the Office of the Attorney General shall jointly study the
24 potential use of electronic monitoring devices in nursing home
25 facilities licensed under part II of chapter 400, Florida
26 Statutes. The study shall include, but not be limited to, a
27 review of the current use of electronic monitoring devices by
28 nursing home facilities and their residents and other health
29 care facilities; an analysis of other state laws and proposed
30 legislation related to the mandated use of electronic
31 monitoring devices in nursing home facilities; an analysis of

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1 the potential ramifications of requiring facilities to install
2 such devices when requested by or on behalf of a resident; the
3 impact of the devices on the privacy and dignity of the
4 resident on whose behalf the device is installed and other
5 residents who may be affected by the device; the potential
6 impact on improving the care of residents; the potential
7 impact on the care environment and on staff recruitment and
8 retention; appropriate uses of any tapes if mandated by law,
9 including methods and timeframes for reporting any
10 questionable incidents to the facility and appropriate
11 regulatory agencies; appropriate security needed to protect
12 the integrity of tapes for the protection of the resident and
13 direct-care staff; and the potential ramifications on the care
14 environment of allowing the use of recorded tapes in legal
15 proceedings, including any exceptions that should apply if
16 prohibited. The Agency for Health Care Administration shall
17 lead the study and shall submit the findings and
18 recommendations of the study to the Governor, the President of
19 the Senate, and Speaker of the House of Representatives by
20 January 1, 2002.

21 Section 4. Effective May 15, 2001, and applying to
22 causes of action accruing on or after that date, section
23 400.023, Florida Statutes, is amended to read:

24 400.023 Civil enforcement.--

25 (1) Any resident whose rights as specified in this
26 part are violated ~~deprived or infringed upon~~ shall have a
27 cause of action ~~against any licensee responsible for the~~
28 ~~violation~~. The action may be brought by the resident or his or
29 her guardian, by a person or organization acting on behalf of
30 a resident with the consent of the resident or his or her
31 guardian, or by the personal representative of the estate of a

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1 deceased resident regardless of the cause of death. If the
2 action alleges a claim for the resident's rights or for
3 negligence that caused the death of the resident, the claimant
4 shall be required to elect either survival damages pursuant to
5 s. 46.021 or wrongful death damages pursuant to s. 768.21 when
6 the cause of death resulted from the deprivation or
7 infringement of the decedent's rights. If the action alleges a
8 claim for the resident's rights or for negligence that did not
9 cause the death of the resident, the personal representative
10 of the estate may recover damages for the negligence that
11 caused injury to the resident. The action may be brought in
12 any court of competent jurisdiction to enforce such rights and
13 to recover actual and punitive damages for any violation of
14 deprivation or infringement on the rights of a resident or for
15 negligence. Any resident who prevails in seeking injunctive
16 relief or a claim for an administrative remedy is entitled to
17 recover the costs of the action, and a reasonable attorney's
18 fee assessed against the defendant not to exceed \$25,000. Fees
19 shall be awarded solely for the injunctive or administrative
20 relief and not for any claim or action for damages whether
21 such claim or action is brought together with a request for an
22 injunction or administrative relief or as a separate action,
23 except as provided under s. 768.79 or the Florida Rules of
24 Civil Procedure. Sections 400.023-400.0238 provide the
25 exclusive remedy for a cause of action for recovery of damages
26 for the personal injury or death of a nursing home resident
27 arising out of negligence or a violation of rights specified
28 in s. 400.022. This section does not preclude theories of
29 recovery not arising out of negligence or s. 400.022 which are
30 available to a resident or to the agency. The provisions of
31 chapter 766 do not apply to any cause of action brought under

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1 ~~ss. 400.023-400.0238. Any plaintiff who prevails in any such~~
2 ~~action may be entitled to recover reasonable attorney's fees,~~
3 ~~costs of the action, and damages, unless the court finds that~~
4 ~~the plaintiff has acted in bad faith, with malicious purpose,~~
5 ~~and that there was a complete absence of a justiciable issue~~
6 ~~of either law or fact. A prevailing defendant may be entitled~~
7 ~~to recover reasonable attorney's fees pursuant to s. 57.105.~~
8 ~~The remedies provided in this section are in addition to and~~
9 ~~cumulative with other legal and administrative remedies~~
10 ~~available to a resident and to the agency.~~

11 (2) In any claim brought pursuant to this part
12 alleging a violation of resident's rights or negligence
13 causing injury to or the death of a resident, the claimant
14 shall have the burden of proving, by a preponderance of the
15 evidence, that:

- 16 (a) The defendant owed a duty to the resident;
17 (b) The defendant breached the duty to the resident;
18 (c) The breach of the duty is a legal cause of loss,
19 injury, death, or damage to the resident; and
20 (d) The resident sustained loss, injury, death, or
21 damage as a result of the breach.

22
23 Nothing in this part shall be interpreted to create strict
24 liability. A violation of the rights set forth in s. 400.022
25 or in any other standard or guidelines specified in this part
26 or in any applicable administrative standard or guidelines of
27 this state or a federal regulatory agency shall be evidence of
28 negligence but shall not be considered negligence per se.

29 ~~(2) Attorneys' fees shall be based on the following~~
30 ~~criteria:~~

31 ~~(a) The time and labor required;~~

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- 1 ~~(b) The novelty and difficulty of the questions;~~
- 2 ~~(c) The skill requisite to perform the legal service~~
- 3 ~~properly;~~
- 4 ~~(d) The preclusion of other employment by the attorney~~
- 5 ~~due to the acceptance of the case;~~
- 6 ~~(e) The customary fee;~~
- 7 ~~(f) Whether the fee is fixed or contingent;~~
- 8 ~~(g) The amount involved or the results obtained;~~
- 9 ~~(h) The experience, reputation, and ability of the~~
- 10 ~~attorneys;~~
- 11 ~~(i) The costs expended to prosecute the claim;~~
- 12 ~~(j) The type of fee arrangement between the attorney~~
- 13 ~~and the client;~~
- 14 ~~(k) Whether the relevant market requires a contingency~~
- 15 ~~fee multiplier to obtain competent counsel;~~
- 16 ~~(l) Whether the attorney was able to mitigate the risk~~
- 17 ~~of nonpayment in any way.~~
- 18 (3) In any claim brought pursuant to s. 400.023, a
- 19 licensee, person, or entity shall have a duty to exercise
- 20 reasonable care. Reasonable care is that degree of care which
- 21 a reasonably careful licensee, person, or entity would use
- 22 under like circumstances.
- 23 (4) In any claim for resident's rights violation or
- 24 negligence by a nurse licensed under part I of chapter 464,
- 25 such nurse shall have the duty to exercise care consistent
- 26 with the prevailing professional standard of care for a nurse.
- 27 The prevailing professional standard of care for a nurse shall
- 28 be that level of care, skill, and treatment which, in light of
- 29 all relevant surrounding circumstances is recognized as
- 30 acceptable and appropriate by reasonably prudent similar
- 31 nurses.

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1 (5)(3) A licensee shall not be liable for the medical
2 negligence of any physician rendering care or treatment to the
3 resident except for the administrative services of a medical
4 director as required in this part. Nothing in this subsection
5 shall be construed to protect a licensee, person, or entity
6 from liability for failure to provide a resident with
7 appropriate observation, assessment, nursing diagnosis,
8 planning, intervention, and evaluation of care by nursing
9 staff.

10 (6) The resident or the resident's legal
11 representative shall serve a copy of any complaint alleging in
12 whole or in part a violation of any rights specified in this
13 part to the Agency for Health Care Administration at the time
14 of filing the initial complaint with the clerk of the court
15 for the county in which the action is pursued. The requirement
16 of providing a copy of the complaint to the agency does not
17 impair the resident's legal rights or ability to seek relief
18 for his or her claim.

19 (7) An action under this part for a violation of
20 rights or negligence recognized herein is not a claim for
21 medical malpractice, and the provision of s. 768.21(8) do not
22 apply to a claim alleging death of the resident.

23 ~~(4) Claimants alleging a deprivation or infringement~~
24 ~~of adequate and appropriate health care pursuant to s.~~
25 ~~400.022(1)(k) which resulted in personal injury to or the~~
26 ~~death of a resident shall conduct an investigation which shall~~
27 ~~include a review by a licensed physician or registered nurse~~
28 ~~familiar with the standard of nursing care for nursing home~~
29 ~~residents pursuant to this part. Any complaint alleging such~~
30 ~~a deprivation or infringement shall be accompanied by a~~
31 ~~verified statement from the reviewer that there exists reason~~

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1 ~~to believe that a deprivation or infringement occurred during~~
2 ~~the resident's stay at the nursing home. Such opinion shall~~
3 ~~be based on records or other information available at the time~~
4 ~~that suit is filed. Failure to provide records in accordance~~
5 ~~with the requirements of this chapter shall waive the~~
6 ~~requirement of the verified statement.~~

7 ~~(5) For the purpose of this section, punitive damages~~
8 ~~may be awarded for conduct which is willful, wanton, gross or~~
9 ~~flagrant, reckless, or consciously indifferent to the rights~~
10 ~~of the resident.~~

11 ~~(6) To recover attorney's fees under this section, the~~
12 ~~following conditions precedent must be met:~~

13 ~~(a) Within 120 days after the filing of a responsive~~
14 ~~pleading or defensive motion to a complaint brought under this~~
15 ~~section and before trial, the parties or their designated~~
16 ~~representatives shall meet in mediation to discuss the issues~~
17 ~~of liability and damages in accordance with this paragraph for~~
18 ~~the purpose of an early resolution of the matter.~~

19 ~~1. Within 60 days after the filing of the responsive~~
20 ~~pleading or defensive motion, the parties shall:~~

21 ~~a. Agree on a mediator. If the parties cannot agree on~~
22 ~~a mediator, the defendant shall immediately notify the court,~~
23 ~~which shall appoint a mediator within 10 days after such~~
24 ~~notice.~~

25 ~~b. Set a date for mediation.~~

26 ~~c. Prepare an order for the court that identifies the~~
27 ~~mediator, the scheduled date of the mediation, and other terms~~
28 ~~of the mediation. Absent any disagreement between the parties,~~
29 ~~the court may issue the order for the mediation submitted by~~
30 ~~the parties without a hearing.~~

31 ~~2. The mediation must be concluded within 120 days~~

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1 ~~after the filing of a responsive pleading or defensive motion.~~
2 ~~The date may be extended only by agreement of all parties~~
3 ~~subject to mediation under this subsection.~~

4 ~~3. The mediation shall be conducted in the following~~
5 ~~manner:~~

6 ~~a. Each party shall ensure that all persons necessary~~
7 ~~for complete settlement authority are present at the~~
8 ~~mediation.~~

9 ~~b. Each party shall mediate in good faith.~~

10 ~~4. All aspects of the mediation which are not~~
11 ~~specifically established by this subsection must be conducted~~
12 ~~according to the rules of practice and procedure adopted by~~
13 ~~the Supreme Court of this state.~~

14 ~~(b) If the parties do not settle the case pursuant to~~
15 ~~mediation, the last offer of the defendant made at mediation~~
16 ~~shall be recorded by the mediator in a written report that~~
17 ~~states the amount of the offer, the date the offer was made in~~
18 ~~writing, and the date the offer was rejected. If the matter~~
19 ~~subsequently proceeds to trial under this section and the~~
20 ~~plaintiff prevails but is awarded an amount in damages,~~
21 ~~exclusive of attorney's fees, which is equal to or less than~~
22 ~~the last offer made by the defendant at mediation, the~~
23 ~~plaintiff is not entitled to recover any attorney's fees.~~

24 ~~(c) This subsection applies only to claims for~~
25 ~~liability and damages and does not apply to actions for~~
26 ~~injunctive relief.~~

27 ~~(d) This subsection applies to all causes of action~~
28 ~~that accrue on or after October 1, 1999.~~

29 ~~(7) Discovery of financial information for the purpose~~
30 ~~of determining the value of punitive damages may not be had~~
31 ~~unless the plaintiff shows the court by proffer or evidence in~~

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1 ~~the record that a reasonable basis exists to support a claim~~
2 ~~for punitive damages.~~

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

8 Section 5. Effective May 15, 2001, and applying to
9 causes of action accruing on or after that date, section
10 400.0233, Florida Statutes, is created to read:

11 400.0233 Presuit notice; investigation; notification
12 of violation of resident's rights or alleged negligence;
13 claims evaluation procedure; informal discovery; review.--

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

15 (a) "Claim for resident's rights violation or
16 negligence" means a negligence claim alleging injury to or the
17 death of a resident arising out of an asserted violation of
18 the rights of a resident under s. 400.022 or an asserted
19 deviation from the applicable standard of care.

20 (b) "Insurer" means any self-insurer authorized under
21 s. 627.357, liability insurance carrier, joint underwriting
22 association, or uninsured prospective defendant.

23 (2) Prior to filing a claim for a violation of a
24 resident's rights or a claim for negligence, a claimant
25 alleging injury to or the death of a resident shall notify
26 each prospective defendant by certified mail, return receipt
27 requested, of an asserted violation of a resident's rights
28 provided in s. 400.022 or deviation from the standard of care.
29 Such notification shall include an identification of the
30 rights the prospective defendant has violated and the
31 negligence alleged to have caused the incident or incidents

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1 and a brief description of the injuries sustained by the
2 resident which are reasonably identifiable at the time of
3 notice. The notice shall contain a certificate of counsel that
4 counsel's reasonable investigation gave rise to a good-faith
5 belief that grounds exist for an action against each
6 prospective defendant.

7 (3)(a) No suit may be filed for a period of 75 days
8 after notice is mailed to any prospective defendant. During
9 the 75-day period, the prospective defendants or their
10 insurers shall conduct an evaluation of the claim to determine
11 the liability of each defendant and to evaluate the damages of
12 the claimants. Each defendant or insurer of the defendant
13 shall have a procedure for the prompt evaluation of claims
14 during the 75-day period. The procedure shall include one or
15 more of the following:

16 1. Internal review by a duly qualified facility risk
17 manager or claims adjuster;

18 2. Internal review by counsel for each prospective
19 defendant;

20 3. A quality assurance committee authorized under any
21 applicable state or federal statutes or regulations; or

22 4. Any other similar procedure that fairly and
23 promptly evaluates the claims.

24
25 Each defendant or insurer of the defendant shall evaluate the
26 claim in good faith.

27 (b) At or before the end of the 75 days, the defendant
28 or insurer of the defendant shall provide the claimant with a
29 written response:

30 1. Rejecting the claim; or

31 2. Making a settlement offer.

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1 (c) The response shall be delivered to the claimant if
2 not represented by counsel or to the claimant's attorney, by
3 certified mail, return receipt requested. Failure of the
4 prospective defendant or insurer of the defendant to reply to
5 the notice within 75 days after receipt shall be deemed a
6 rejection of the claim for purposes of this section.

7 (4) The notification of a violation of a resident's
8 rights or alleged negligence shall be served within the
9 applicable statute of limitations period; however, during the
10 75-day period, the statute of limitations is tolled as to all
11 prospective defendants. Upon stipulation by the parties, the
12 75-day period may be extended and the statute of limitations
13 is tolled during any such extension. Upon receiving written
14 notice by certified mail, return receipt requested, of
15 termination of negotiations in an extended period, the
16 claimant shall have 60 days or the remainder of the period of
17 the statute of limitations, whichever is greater, within which
18 to file suit.

19 (5) No statement, discussion, written document,
20 report, or other work product generated by presuit claims
21 evaluation procedures under this section is discoverable or
22 admissible in any civil action for any purpose by the opposing
23 party. All participants, including, but not limited to,
24 physicians, investigators, witnesses, and employees or
25 associates of the defendant, are immune from civil liability
26 arising from participation in the presuit claims evaluation
27 procedure. Any licensed physician or registered nurse may be
28 retained by either party to provide an opinion regarding the
29 reasonable basis of the claim. The presuit opinions of the
30 expert are not discoverable or admissible in any civil action
31 for any purpose by the opposing party.

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1 (6) Upon receipt by a prospective defendant of a
2 notice of claim, the parties shall make discoverable
3 information available without formal discovery as provided in
4 subsection (7).

5 (7) Informal discovery may be used by a party to
6 obtain unsworn statements and the production of documents or
7 things as follows:

8 (a) Unsworn statements.--Any party may require other
9 parties to appear for the taking of an unsworn statement.
10 Such statements may be used only for the purpose of claims
11 evaluation and are not discoverable or admissible in any civil
12 action for any purpose by any party. A party seeking to take
13 the unsworn statement of any party must give reasonable notice
14 in writing to all parties. The notice must state the time and
15 place for taking the statement and the name and address of the
16 party to be examined. Unless otherwise impractical, the
17 examination of any party must be done at the same time by all
18 other parties. Any party may be represented by counsel at the
19 taking of an unsworn statement. An unsworn statement may be
20 recorded electronically, stenographically, or on videotape.
21 The taking of unsworn statements is subject to the provisions
22 of the Florida Rules of Civil Procedure and may be terminated
23 for abuses.

24 (b) Documents or things.--Any party may request
25 discovery of relevant documents or things. The documents or
26 things must be produced, at the expense of the requesting
27 party, within 20 days after the date of receipt of the
28 request. A party is required to produce relevant and
29 discoverable documents or things within that party's
30 possession or control, if in good faith it can reasonably be
31 done within the timeframe of the claims evaluation process.

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1 (8) Each request for and notice concerning informal
2 discovery pursuant to this section must be in writing, and a
3 copy thereof must be sent to all parties. Such a request or
4 notice must bear a certificate of service identifying the name
5 and address of the person to whom the request or notice is
6 served, the date of the request or notice, and the manner of
7 service thereof.

8 (9) If a prospective defendant makes a written
9 settlement offer, the claimant shall have 15 days from the
10 date of receipt to accept the offer. An offer shall be deemed
11 rejected unless accepted by delivery of a written notice of
12 acceptance.

13 (10) To the extent not inconsistent with this part,
14 the provisions of the Florida Mediation Code, Florida Rules of
15 Civil Procedure, shall be applicable to such proceedings.

16 (11) Within 30 days after the claimant's receipt of
17 the defendant's response to the claim, the parties or their
18 designated representatives shall meet in mediation to discuss
19 the issues of liability and damages in accordance with the
20 mediation rules of practice and procedures adopted by the
21 Supreme Court. Upon stipulation of the parties, this 30-day
22 period may be extended and the statute of limitations is
23 tolled during the mediation and any such extension. At the
24 conclusion of mediation the claimant shall have 60 days or the
25 remainder of the period of the statute of limitations,
26 whichever is greater, within which to file suit.

27 Section 6. Effective May 15, 2001, and applying to
28 causes of action accruing on or after that date, section
29 400.0234, Florida Statutes, is created to read:

30 400.0234 Availability of facility records for
31 investigation of resident's rights violations and defenses;

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1 penalty.--

2 (1) Failure to provide complete copies of a resident's
3 records, including, but not limited to, all medical records
4 and the resident's chart, within the control or possession of
5 the facility in accordance with s. 400.145 shall constitute
6 evidence of failure of that party to comply with good-faith
7 discovery requirements and shall waive the good-faith
8 certificate and presuit notice requirements under this part by
9 the requesting party.

10 (2) No facility shall be held liable for any civil
11 damages as a result of complying with this section.

12 Section 7. Effective May 15, 2001, and applying to
13 causes of action accruing on or after that date, section
14 400.0235, Florida Statutes, is created to read:

15 400.0235 Certain provisions not applicable to actions
16 under this part.--An action under this part for a violation of
17 rights or negligence recognized under this part is not a claim
18 for medical malpractice, and the provisions of s. 768.21(8) do
19 not apply to a claim alleging death of the resident.

20 Section 8. Effective May 15, 2001, section 400.0236,
21 Florida Statutes, is created to read:

22 400.0236 Statute of limitations.--

23 (1) Any action for damages brought under this part
24 shall be commenced within 2 years from the time the incident
25 giving rise to the action occurred or within 2 years from the
26 time the incident is discovered or should have been discovered
27 with the exercise of due diligence; however, in no event shall
28 the action be commenced later than 4 years from the date of
29 the incident or occurrence out of which the cause of action
30 accrued.

31 (2) In those actions covered by this subsection in

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1 which it can be shown that fraudulent concealment or
2 intentional misrepresentation of fact prevented the discovery
3 of the injury, the period of limitations is extended forward 2
4 years from the time that the injury is discovered with the
5 exercise of due diligence, but in no event for more than 6
6 years from the date the incident giving rise to the injury
7 occurred.

8 (3) This section shall apply to causes of action that
9 have accrued prior to the effective date of this section;
10 however, any such cause of action that would not have been
11 barred under prior law may be brought within the time allowed
12 by prior law or within 2 years after the effective date of
13 this section, whichever is earlier, and will be barred
14 thereafter. In actions where it can be shown that fraudulent
15 concealment or intentional misrepresentation of fact prevented
16 the discovery of the injury, the period of limitations is
17 extended forward 2 years from the time that the injury is
18 discovered with the exercise of due diligence, but in no event
19 more than 4 years from the effective date of this section.

20 Section 9. Section 400.0237, Florida Statutes, is
21 created to read:

22 400.0237 Punitive damages; pleading; burden of
23 proof.--

24 (1) In any action for damages brought under this part,
25 no claim for punitive damages shall be permitted unless there
26 is a reasonable showing by evidence in the record or proffered
27 by the claimant which would provide a reasonable basis for
28 recovery of such damages. The claimant may move to amend her
29 or his complaint to assert a claim for punitive damages as
30 allowed by the rules of civil procedure. The rules of civil
31 procedure shall be liberally construed so as to allow the

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1 claimant discovery of evidence which appears reasonably
2 calculated to lead to admissible evidence on the issue of
3 punitive damages. No discovery of financial worth shall
4 proceed until after the pleading concerning punitive damages
5 is permitted.

6 (2) A defendant may be held liable for punitive
7 damages only if the trier of fact, based on clear and
8 convincing evidence, finds that the defendant was personally
9 guilty of intentional misconduct or gross negligence. As used
10 in this section, the term:

11 (a) "Intentional misconduct" means that the defendant
12 had actual knowledge of the wrongfulness of the conduct and
13 the high probability that injury or damage to the claimant
14 would result and, despite that knowledge, intentionally
15 pursued that course of conduct, resulting in injury or damage.

16 (b) "Gross negligence" means that the defendant's
17 conduct was so reckless or wanting in care that it constituted
18 a conscious disregard or indifference to the life, safety, or
19 rights of persons exposed to such conduct.

20 (3) In the case of an employer, principal,
21 corporation, or other legal entity, punitive damages may be
22 imposed for the conduct of an employee or agent only if the
23 conduct of the employee or agent meets the criteria specified
24 in subsection (2) and:

25 (a) The employer, principal, corporation, or other
26 legal entity actively and knowingly participated in such
27 conduct;

28 (b) The officers, directors, or managers of the
29 employer, principal, corporation, or other legal entity
30 condoned, ratified, or consented to such conduct; or

31 (c) The employer, principal, corporation, or other

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1 legal entity engaged in conduct that constituted gross
2 negligence and that contributed to the loss, damages, or
3 injury suffered by the claimant.

4 (4) The plaintiff must establish at trial, by clear
5 and convincing evidence, its entitlement to an award of
6 punitive damages. The "greater weight of the evidence" burden
7 of proof applies to a determination of the amount of damages.

8 (5) This section is remedial in nature and shall take
9 effect upon becoming a law.

10 Section 10. Section 400.0238, Florida Statutes, is
11 created to read:

12 400.0238 Punitive damages; limitation.--

13 (1)(a) Except as provided in paragraphs (b) and (c),
14 an award of punitive damages may not exceed the greater of:

15 1. Three times the amount of compensatory damages
16 awarded to each claimant entitled thereto, consistent with the
17 remaining provisions of this section; or

18 2. The sum of \$1 million.

19 (b) Where the fact finder determines that the wrongful
20 conduct proven under this section was motivated primarily by
21 unreasonable financial gain and determines that the
22 unreasonably dangerous nature of the conduct, together with
23 the high likelihood of injury resulting from the conduct, was
24 actually known by the managing agent, director, officer, or
25 other person responsible for making policy decisions on behalf
26 of the defendant, it may award an amount of punitive damages
27 not to exceed the greater of:

28 1. Four times the amount of compensatory damages
29 awarded to each claimant entitled thereto, consistent with the
30 remaining provisions of this section; or

31 2. The sum of \$4 million.

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1 (c) Where the fact finder determines that at the time
2 of injury the defendant had a specific intent to harm the
3 claimant and determines that the defendant's conduct did in
4 fact harm the claimant, there shall be no cap on punitive
5 damages.

6 (d) This subsection is not intended to prohibit an
7 appropriate court from exercising its jurisdiction under s.
8 768.74 in determining the reasonableness of an award of
9 punitive damages that is less than three times the amount of
10 compensatory damages.

11 (e) In any case in which the findings of fact support
12 an award of punitive damages pursuant to paragraph (b) or
13 paragraph (c), the clerk of the court shall refer the case to
14 the appropriate law enforcement agencies, to the state
15 attorney in the circuit where the long-term care facility that
16 is the subject of the underlying civil cause of action is
17 located, and, for multijurisdictional facility owners, to the
18 Office of the Statewide Prosecutor; and such agencies, state
19 attorney, or Office of the Statewide Prosecutor shall initiate
20 a criminal investigation into the conduct giving rise to the
21 award of punitive damages. All findings by the trier of fact
22 which support an award of punitive damages under this
23 paragraph shall be admissible as evidence in any subsequent
24 civil or criminal proceeding relating to the acts giving rise
25 to the award of punitive damages under this paragraph.

26 (2) The claimant's attorney's fees, if payable from
27 the judgment, are, to the extent that the fees are based on
28 the punitive damages, calculated based on the final judgment
29 for punitive damages. This subsection does not limit the
30 payment of attorney's fees based upon an award of damages
31 other than punitive damages.

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1 (3) The jury may neither be instructed nor informed as
2 to the provisions of this section.

3 (4) Notwithstanding any other law to the contrary, the
4 amount of punitive damages awarded pursuant to this section
5 shall be equally divided between the claimant and the Quality
6 of Long-Term Care Facility Improvement Trust Fund, in
7 accordance with the following provisions:

8 (a) The clerk of the court shall transmit a copy of
9 the jury verdict to the State Treasurer by certified mail. In
10 the final judgment the court shall order the percentages of
11 the award, payable as provided herein.

12 (b) A settlement agreement entered into between the
13 original parties to the action after a verdict has been
14 returned must provide a proportionate share payable to the
15 Quality of Long-Term Care Facility Improvement Trust Fund
16 specified herein. For purposes of this paragraph, a
17 proportionate share is a 50-percent share of that percentage
18 of the settlement amount which the punitive damages portion of
19 the verdict bore to the total of the compensatory and punitive
20 damages in the verdict.

21 (c) The Department of Banking and Finance shall
22 collect or cause to be collected all payments due the state
23 under this section. Such payments are made to the Comptroller
24 and deposited in the appropriate fund specified in this
25 subsection.

26 (d) If the full amount of punitive damages awarded
27 cannot be collected, the claimant and the other recipient
28 designated pursuant to this subsection are each entitled to a
29 proportionate share of the punitive damages collected.

30 (5) This section is remedial in nature and shall take
31 effect upon becoming a law.

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1 Section 11. Subsection (1) and paragraph (a) of
2 subsection (2) of section 768.735, Florida Statutes, are
3 amended and subsection (3) is added to that section to read:

4 768.735 Punitive damages; exceptions; limitation.--

5 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
6 apply to any civil action based upon child abuse, abuse of the
7 elderly under chapter 415, or abuse of the developmentally
8 disabled ~~or any civil action arising under chapter 400~~. Such
9 actions are governed by applicable statutes and controlling
10 judicial precedent. This section does not apply to claims
11 brought pursuant to s. 400.023 or s. 400.429.

12 (2)(a) In any civil action based upon child abuse,
13 abuse of the elderly under chapter 415, or abuse of the
14 developmentally disabled, ~~or actions arising under chapter 400~~
15 and involving the award of punitive damages, the judgment for
16 the total amount of punitive damages awarded to a claimant may
17 not exceed three times the amount of compensatory damages
18 awarded to each person entitled thereto by the trier of fact,
19 except as provided in paragraph (b). This subsection does not
20 apply to any class action.

21 (3) This section is remedial in nature and shall take
22 effect upon becoming a law.

23 Section 12. Effective May 15, 2001, and applying to
24 causes of action accruing on or after that date, section
25 415.1111, Florida Statutes, is amended to read:

26 415.1111 Civil actions.--A vulnerable adult who has
27 been abused, neglected, or exploited as specified in this
28 chapter has a cause of action against any perpetrator and may
29 recover actual and punitive damages for such abuse, neglect,
30 or exploitation. The action may be brought by the vulnerable
31 adult, or that person's guardian, by a person or organization

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1 acting on behalf of the vulnerable adult with the consent of
2 that person or that person's guardian, or by the personal
3 representative of the estate of a deceased victim without
4 regard to whether the cause of death resulted from the abuse,
5 neglect, or exploitation. The action may be brought in any
6 court of competent jurisdiction to enforce such action and to
7 recover actual and punitive damages for any deprivation of or
8 infringement on the rights of a vulnerable adult. A party who
9 prevails in any such action may be entitled to recover
10 reasonable attorney's fees, costs of the action, and damages.
11 The remedies provided in this section are in addition to and
12 cumulative with other legal and administrative remedies
13 available to a vulnerable adult. Notwithstanding the
14 foregoing, any civil action for damages against any licensee
15 or entity who establishes, controls, conducts, manages, or
16 operates a facility licensed under part II of chapter 400
17 relating to its operation of the licensed facility shall be
18 brought pursuant to s. 400.023, or against any licensee or
19 entity who establishes, controls, conducts, manages, or
20 operates a facility licensed under part III of chapter 400
21 relating to its operation of the licensed facility shall be
22 brought pursuant to s. 400.429. Such licensee or entity shall
23 not be vicariously liable for the acts or omissions of its
24 employees or agents or any other third party in an action
25 brought under this section.

26 Section 13. Subsection (17) is added to section
27 400.0255, Florida Statutes, to read:

28 400.0255 Resident transfer or discharge; requirements
29 and procedures; hearings.--

30 (17) The provisions of this section apply to transfers
31 or discharges that are initiated by the nursing home facility,

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1 and not by the resident or by the resident's physician or
2 legal guardian or representative.

3 Section 14. Subsection (3) of section 400.062, Florida
4 Statutes, is amended to read:

5 400.062 License required; fee; disposition; display;
6 transfer.--

7 (3) The annual license fee required for each license
8 issued under this part shall be comprised of two parts. Part
9 I of the license fee shall be the basic license fee. The rate
10 per bed for the basic license fee shall be established
11 annually and shall be \$50 per bed. The agency may adjust the
12 per bed licensure fees by the Consumer Price Index based on
13 the 12 months immediately preceding the increase ~~must be~~
14 ~~reasonably calculated~~ to cover the cost of regulation under
15 this part, ~~but may not exceed \$35 per bed.~~ Part II of the
16 license fee shall be the resident protection fee, which shall
17 be at the rate of not less than 25 cents per bed. The rate per
18 bed shall be the minimum rate per bed, and such rate shall
19 remain in effect until the effective date of a rate per bed
20 adopted by rule by the agency pursuant to this part. At such
21 time as the amount on deposit in the Resident Protection Trust
22 Fund is less than \$1 million ~~\$500,000~~, the agency may adopt
23 rules to establish a rate which may not exceed \$10 per bed.
24 The rate per bed shall revert back to the minimum rate per bed
25 when the amount on deposit in the Resident Protection Trust
26 Fund reaches \$1 million ~~\$500,000~~, except that any rate
27 established by rule shall remain in effect until such time as
28 the rate has been equally required for each license issued
29 under this part. Any amount in the fund in excess of \$2
30 million ~~\$800,000~~ shall revert to the Health Care Trust Fund
31 and may not be expended without prior approval of the

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1 Legislature. The agency may prorate the annual license fee
2 for those licenses which it issues under this part for less
3 than 1 year. Funds generated by license fees collected in
4 accordance with this section shall be deposited in the
5 following manner:

6 (a) The basic license fee collected shall be deposited
7 in the Health Care Trust Fund, established for the sole
8 purpose of carrying out this part. When the balance of the
9 account established in the Health Care Trust Fund for the
10 deposit of fees collected as authorized under this section
11 exceeds one-third of the annual cost of regulation under this
12 part, the excess shall be used to reduce the licensure fees in
13 the next year.

14 (b) The resident protection fee collected shall be
15 deposited in the Resident Protection Trust Fund for the sole
16 purpose of paying, in accordance with the provisions of s.
17 400.063, for the appropriate alternate placement, care, and
18 treatment of a resident removed from a nursing home facility
19 on a temporary, emergency basis or for the maintenance and
20 care of residents in a nursing home facility pending removal
21 and alternate placement.

22 Section 15. Subsections (2) and (5) of section
23 400.071, Florida Statutes, are amended, and subsections (11)
24 and (12) are added to that section, to read:

25 400.071 Application for license.--

26 (2) The application shall be under oath and shall
27 contain the following:

28 (a) The name, address, and social security number of
29 the applicant if an individual; if the applicant is a firm,
30 partnership, or association, its name, address, and employer
31 identification number (EIN), and the name and address of any

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1 ~~controlling interest every member; if the applicant is a~~
2 ~~corporation, its name, address, and employer identification~~
3 ~~number (EIN), and the name and address of its director and~~
4 ~~officers and of each person having at least a 5 percent~~
5 ~~interest in the corporation; and the name by which the~~
6 facility is to be known.

7 (b) The name of any person whose name is required on
8 the application under the provisions of paragraph (a) and who
9 owns at least a 10 percent interest in any professional
10 service, firm, association, partnership, or corporation
11 providing goods, leases, or services to the facility for which
12 the application is made, and the name and address of the
13 professional service, firm, association, partnership, or
14 corporation in which such interest is held.

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

18 (d) The name of the person or persons under whose
19 management or supervision the facility will be conducted and
20 the name of the ~~its licensed~~ administrator.

21 (e) A signed affidavit disclosing any financial or
22 ownership interest that a person or entity described in
23 paragraph (a) or paragraph (d) has held in the last 5 years in
24 any entity licensed by this state or any other state to
25 provide health or residential care which has closed
26 voluntarily or involuntarily; has filed for bankruptcy; has
27 had a receiver appointed; has had a license denied, suspended,
28 or revoked; or has had an injunction issued against it which
29 was initiated by a regulatory agency. The affidavit must
30 disclose the reason any such entity was closed, whether
31 voluntarily or involuntarily.

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

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

17 ~~(h)(g)~~ Copies of any civil verdict or judgment
18 involving the applicant rendered within the 10 years preceding
19 the application, relating to medical negligence, violation of
20 residents' rights, or wrongful death. As a condition of
21 licensure, the licensee agrees to provide to the agency copies
22 of any new verdict or judgment involving the applicant,
23 relating to such matters, within 30 days after filing with the
24 clerk of the court. The information required in this
25 paragraph shall be maintained in the facility's licensure file
26 and in an agency database which is available as a public
27 record.

28 (5) The applicant shall furnish satisfactory proof of
29 financial ability to operate and conduct the nursing home in
30 accordance with the requirements of this part and all rules
31 adopted under this part, and the agency shall establish

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1 standards for this purpose, including information reported
 2 under paragraph (2)(e). The agency also shall establish
 3 documentation requirements, to be completed by each applicant,
 4 that show anticipated facility revenues and expenditures, the
 5 basis for financing the anticipated cash-flow requirements of
 6 the facility, and an applicant's access to contingency
 7 financing.

8 (11) The agency may issue an inactive license to a
 9 nursing home that will be temporarily unable to provide
 10 services but that is reasonably expected to resume services.
 11 Such designation may be made for a period not to exceed 12
 12 months but may be renewed by the agency for up to 6 additional
 13 months. Any request by a licensee that a nursing home become
 14 inactive must be submitted to the agency and approved by the
 15 agency prior to initiating any suspension of service or
 16 notifying residents. Upon agency approval, the nursing home
 17 shall notify residents of any necessary discharge or transfer
 18 as provided in s. 400.0255.

19 (12) As a condition of licensure, each facility must
 20 establish and submit with its application a plan for quality
 21 assurance and for conducting risk management.

22 Section 16. Subsection (1) of section 400.102, Florida
 23 Statutes, is amended to read:

24 400.102 Action by agency against licensee; grounds.--

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

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

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

31 (c) Failure to follow the criteria and procedures

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1 provided under part I of chapter 394 relating to the
2 transportation, voluntary admission, and involuntary
3 examination of a nursing home resident;

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

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

9 (f)~~(e)~~ Any act constituting a ground upon which
10 application for a license may be denied.

11 Section 17. Subsections (3) and (4) are added to
12 section 400.111, Florida Statutes, to read:

13 400.111 Expiration of license; renewal.--

14 (3) The agency may not renew a license if the
15 applicant has failed to pay any fines assessed by final order
16 of the agency or final order of the Health Care Financing
17 Administration under requirements for federal certification.
18 The agency may renew the license of an applicant following the
19 assessment of a fine by final order if such fine has been paid
20 into an escrow account pending an appeal of a final order.

21 (4) The licensee shall submit a signed affidavit
22 disclosing any financial or ownership interest that a licensee
23 has held within the last 5 years in any entity licensed by the
24 state or any other state to provide health or residential care
25 which entity has closed voluntarily or involuntarily; has
26 filed for bankruptcy; has had a receiver appointed; has had a
27 license denied, suspended, or revoked; or has had an
28 injunction issued against it which was initiated by a
29 regulatory agency. The affidavit must disclose the reason such
30 entity was closed, whether voluntarily or involuntarily.

31 Section 18. Subsection (2) of section 400.118, Florida

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1 Statutes, is amended to read:

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

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

31 (b) Findings of a monitoring visit, both positive and

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

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

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1 introduction of evidence in any civil or administrative action
2 provided for herein shall not apply when the quality-of-care
3 monitor makes a report to the appropriate authorities
4 regarding a threat to the health or safety of a resident.

5 Section 19. Section 400.1183, Florida Statutes, is
6 created to read:

7 400.1183 Resident grievance procedures.--

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

11 (a) An explanation of how to pursue redress of a
12 grievance.

13 (b) The names, job titles, and telephone numbers of
14 the employees responsible for implementing the facility's
15 grievance procedure. The list must include the address and the
16 toll-free telephone numbers of the ombudsman and the agency.

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

21 (d) A procedure for providing assistance to residents
22 who cannot prepare a written grievance without help.

23 (2) Each facility shall maintain records of all
24 grievances and shall report annually to the agency the total
25 number of grievances handled, a categorization of the cases
26 underlying the grievances, and the final disposition of the
27 grievances.

28 (3) Each facility must respond to the grievance within
29 a reasonable time after its submission.

30 (4) The agency may investigate any grievance at any
31 time.

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1 actions by a controlling interest, the applicant or licensee
2 may present factors in mitigation of any proposed penalty
3 based upon a showing that such penalty is inappropriate under
4 the circumstances.

5
6 All hearings shall be held within the county in which the
7 licensee or applicant operates or applies for a license to
8 operate a facility as defined herein.

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

21 (3) The agency shall revoke or deny a nursing home
22 license if the licensee or controlling interest operates a
23 facility in this state that:

24 (a) Has had two moratoria imposed by final order for
25 substandard quality of care, as defined by Title 42, C.F.R.
26 part 483, within any 30-month period;

27 (b) Is conditionally licensed for 180 or more
28 continuous days;

29 (c) Is cited for two class I deficiencies arising from
30 unrelated circumstances during the same survey or
31 investigation; or

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1 (d) Is cited for two class I deficiencies arising from
2 separate surveys or investigations within a 30-month period.

3
4 The licensee may present factors in mitigation of revocation,
5 and the agency may make a determination not to revoke a
6 license based upon a showing that revocation is inappropriate
7 under the circumstances.

8 (4)(3) The agency may issue an order immediately
9 suspending or revoking a license when it determines that any
10 condition in the facility presents a danger to the health,
11 safety, or welfare of the residents in the facility.

12 (5)(4)(a) The agency may impose an immediate
13 moratorium on admissions to any facility when the agency
14 determines that any condition in the facility presents a
15 threat to the health, safety, or welfare of the residents in
16 the facility.

17 (b) Where the agency has placed a moratorium on
18 admissions on any facility two times within a 7-year period,
19 the agency may suspend the license of the nursing home and the
20 facility's management company, if any. ~~The licensee shall be~~
21 ~~afforded an administrative hearing within 90 days after the~~
22 ~~suspension to determine whether the license should be revoked.~~
23 During the suspension, the agency shall take the facility into
24 receivership and shall operate the facility.

25 (6)(5) An action taken by the agency to deny, suspend,
26 or revoke a facility's license under this part, ~~in which the~~
27 ~~agency claims that the facility owner or an employee of the~~
28 ~~facility has threatened the health, safety, or welfare of a~~
29 ~~resident of the facility,~~ shall be heard by the Division of
30 Administrative Hearings of the Department of Management
31 Services within 60 ~~120~~ days after the assignment of an

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1 ~~administrative law judge receipt of the facility's request for~~
2 ~~a hearing~~, unless the time limitation is waived by both
3 parties. The administrative law judge must render a decision
4 within 30 days after receipt of a proposed recommended order.
5 ~~This subsection does not modify the requirement that an~~
6 ~~administrative hearing be held within 90 days after a license~~
7 ~~is suspended under paragraph (4)(b).~~

8 (7)(6) The agency is authorized to require a facility
9 to increase staffing beyond the minimum required by law, if
10 the agency has taken administrative action against the
11 facility for care-related deficiencies directly attributable
12 to insufficient staff. Under such circumstances, the facility
13 may request an expedited interim rate increase. The agency
14 shall process the request within 10 days after receipt of all
15 required documentation from the facility. A facility that
16 fails to maintain the required increased staffing is subject
17 to a fine of \$500 per day for each day the staffing is below
18 the level required by the agency.

19 (8) An administrative proceeding challenging an action
20 taken by the agency pursuant to this section shall be reviewed
21 on the basis of the facts and conditions that resulted in such
22 agency action.

23 (9) Notwithstanding any other provision of law to the
24 contrary, agency action in an administrative proceeding under
25 this section may be overcome by the licensee upon a showing by
26 a preponderance of the evidence to the contrary.

27 (10) In addition to any other sanction imposed under
28 this part, in any final order that imposes sanctions, the
29 agency may assess costs related to the investigation and
30 prosecution of the case. Payment of agency costs shall be
31 deposited into the Health Care Trust Fund.

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1 Section 21. Subsection (12) is added to section
2 400.126, Florida Statutes, to read:

3 400.126 Receivership proceedings.--

4 (12) Concurrently with the appointment of a receiver,
5 the agency and the Department of Elderly Affairs shall
6 coordinate an assessment of each resident in the facility by
7 the Comprehensive Assessment and Review for Long-Term-Care
8 (CARES) Program for the purpose of evaluating each resident's
9 need for the level of care provided in a nursing facility and
10 the potential for providing such care in alternative settings.
11 If the CARES assessment determines that a resident could be
12 cared for in a less restrictive setting or does not meet the
13 criteria for skilled or intermediate care in a nursing home,
14 the department and agency shall refer the resident for such
15 care, as is appropriate for the resident. Residents referred
16 pursuant to this subsection shall be given primary
17 consideration for receiving services under the Community Care
18 for the Elderly program in the same manner as persons
19 classified to receive such services pursuant to s. 430.205.

20 Section 22. Subsections (14), (15), (16), (17), (18),
21 (19), and (20) are added to section 400.141, Florida Statutes,
22 to read:

23 400.141 Administration and management of nursing home
24 facilities.--Every licensed facility shall comply with all
25 applicable standards and rules of the agency and shall:

26 (14) Submit to the agency the information specified in
27 s. 400.071(2)(e) for a management company within 30 days after
28 the effective date of the management agreement.

29 (15) Submit semiannually to the agency, or more
30 frequently if requested by the agency, information regarding
31 facility staff-to-resident ratios, staff turnover, and staff

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1 stability, including information regarding certified nursing
2 assistants, licensed nurses, the director of nursing, and the
3 facility administrator. For purposes of this reporting:

4 (a) Staff-to-resident ratios must be reported in the
5 categories specified in s. 400.23(3)(a) and applicable rules.
6 The ratio must be reported as an average for the most recent
7 calendar quarter.

8 (b) Staff turnover must be reported for the most
9 recent 12-month period ending on the last workday of the most
10 recent calendar quarter prior to the date the information is
11 submitted. The turnover rate must be computed quarterly, with
12 the annual rate being the cumulative sum of the quarterly
13 rates. the turnover rate is the total number of terminations
14 or separations experienced during the quarter, excluding any
15 employee terminated during a probationary period of 3 months
16 or less, divided by the total number of staff employed at the
17 end of the period for which the rate is computed, and
18 expressed as a percentage.

19 (c) The formula for determining staff stability is the
20 total number of employees that have been employed for more
21 than 12 months, divided by the total number of employees
22 employed at the end of the most recent calendar quarter, and
23 expressed as a percentage.

24 (d) A nursing facility that has failed to comply with
25 state minimum-staffing requirements for 2 consecutive days is
26 prohibited from accepting new admissions until the facility
27 has achieved the minimum-staffing requirements for a period of
28 6 consecutive days. For the purposes of this paragraph, any
29 person who was a resident of the facility and was absent from
30 the facility for the purpose of receiving medical care at a
31 separate location or was on a leave of absence is not

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1 considered a new admission. Failure to impose such an
2 admissions moratorium constitutes a class II deficiency.

3 (16) Report monthly the number of vacant beds in the
4 facility which are available for resident occupancy on the day
5 the information is reported.

6 (17) Notify a licensed physician when a resident
7 exhibits signs of dementia or cognitive impairment or has a
8 change of condition in order to rule out the presence of an
9 underlying physiological condition that may be contributing to
10 such dementia or impairment. The notification must occur
11 within 30 days after the acknowledgement of such signs by
12 facility staff. If an underlying condition is determined to
13 exist, the facility shall arrange, with the appropriate health
14 care provider, the necessary care and services to treat the
15 condition.

16 (18) If the facility implements a dining and
17 hospitality attendant program, ensure that the program is
18 developed and implemented under the supervision of the
19 facility director of nursing. A licensed nurse, licensed
20 speech or occupational therapist, or a registered dietitian
21 must conduct training of dining and hospitality attendants. A
22 person employed by a facility as a dining and hospitality
23 attendant must perform tasks under the direct supervision of a
24 licensed nurse.

25 (19) Report to the agency any filing for bankruptcy
26 protection by the facility or its parent corporation,
27 divestiture or spin-off of its assets, or corporate
28 reorganization within 30 days after the completion of such
29 activity.

30 (20) Maintain liability insurance coverage that is in
31 force at all times.

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1 (21) Maintain in the medical record for each resident
2 a daily chart of certified nursing assistant services provided
3 to the resident. The certified nursing assistant who is caring
4 for the resident must complete this record by the end of his
5 or her shift. This record must indicate assistance with
6 activities of daily living, assistance with eating, and
7 assistance with drinking, and must record each offering of
8 nutrition and hydration for those residents whose plan of care
9 or assessment indicates a risk for malnutrition or
10 dehydration.

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

17 Section 23. Section 400.1413, Florida Statutes, is
18 created to read:

19 400.1413 Volunteers in nursing homes.--

20 (1) It is the intent of the Legislature to encourage
21 the involvement of volunteers in nursing homes in this state.
22 The Legislature also acknowledges that the licensee is
23 responsible for all the activities that take place in the
24 nursing home and recognizes the licensee's need to be aware of
25 and coordinate volunteer activities in the nursing home.
26 Therefore, a nursing home may require that volunteers:

27 (a) Sign in and out with staff of the nursing home
28 upon entering or leaving the facility.

29 (b) Wear an identification badge while in the
30 building.

31 (c) Participate in a facility orientation and training

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1 program.

2 (2) This section does not affect the activities of
3 state or local long-term-care ombudsman councils authorized
4 under part I.

5 Section 24. Section 400.147, Florida Statutes, is
6 created to read:

7 400.147 Internal risk management and quality assurance
8 program.--

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

17 (a) A designated person to serve as risk manager, who
18 is responsible for implementation and oversight of the
19 facility's risk management and quality assurance program as
20 required by this section.

21 (b) A risk management and quality assurance committee
22 consisting of the facility risk manager, the administrator,
23 the director of nursing, the medical director, and at least
24 three other members of the facility staff. The risk management
25 and quality assurance committee shall meet at least monthly.

26 (c) Policies and procedures to implement the internal
27 risk management and quality assurance program, which must
28 include the investigation and analysis of the frequency and
29 causes of general categories and specific types of adverse
30 incidents to residents.

31 (d) The development and implementation of an incident

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1 reporting system based upon the affirmative duty of all health
2 care providers and all agents and employees of the licensed
3 health care facility to report adverse incidents to the risk
4 manager, or to his or her designee, within 3 business days
5 after their occurrence.

6 (e) The development of appropriate measures to
7 minimize the risk of adverse incidents to residents,
8 including, but not limited to, education and training in risk
9 management and risk prevention for all nonphysician personnel,
10 as follows:

11 1. Such education and training of all nonphysician
12 personnel must be part of their initial orientation; and

13 2. At least 1 hour of such education and training must
14 be provided annually for all nonphysician personnel of the
15 licensed facility working in clinical areas and providing
16 resident care.

17 (f) The analysis of resident grievances that relate to
18 resident care and the quality of clinical services.

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

21 (3) In addition to the programs mandated by this
22 section, other innovative approaches intended to reduce the
23 frequency and severity of adverse incidents to residents and
24 violations of residents' rights shall be encouraged and their
25 implementation and operation facilitated.

26 (4) Each internal risk management and quality
27 assurance program shall include the use of incident reports to
28 be filed with the risk manager and the facility administrator.
29 The risk manager shall have free access to all resident
30 records of the licensed facility. The incident reports are
31 part of the work papers of the attorney defending the licensed

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1 facility in litigation relating to the licensed facility and
2 are subject to discovery, but are not admissible as evidence
3 in court. A person filing an incident report is not subject to
4 civil suit by virtue of such incident report. As a part of
5 each internal risk management and quality assurance program,
6 the incident reports shall be used to develop categories of
7 incidents which identify problem areas. Once identified,
8 procedures shall be adjusted to correct the problem areas.

9 (5) For purposes of reporting to the agency under this
10 section, the term "adverse incident" means:

11 (a) An event over which facility personnel could
12 exercise control and which is associated in whole or in part
13 with the facility's intervention, rather than the condition
14 for which such intervention occurred, and which results in one
15 of the following:

16 1. Death;

17 2. Brain or spinal damage;

18 3. Permanent disfigurement;

19 4. Fracture or dislocation of bones or joints;

20 5. A limitation of neurological, physical, or sensory
21 function;

22 6. Any condition that required medical attention to
23 which the resident has not given his or her informed consent,
24 including failure to honor advanced directives; or

25 7. Any condition that required the transfer of the
26 resident, within or outside the facility, to a unit providing
27 a more acute level of care due to the adverse incident, rather
28 than the resident's condition prior to the adverse incident;

29 (b) Abuse, neglect, or exploitation as defined in s.
30 415.102;

31 (c) Abuse, neglect and harm as defined in s. 39.01;

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- 1 (d) Resident elopement; or
2 (e) An event that is reported to law enforcement.
3 (6) The internal risk manager of each licensed
4 facility shall:
5 (a) Investigate every allegation of sexual misconduct
6 which is made against a member of the facility's personnel who
7 has direct patient contact when the allegation is that the
8 sexual misconduct occurred at the facility or at the grounds
9 of the facility;
10 (b) Report every allegation of sexual misconduct to
11 the administrator of the licensed facility; and
12 (c) Notify the resident representative or guardian of
13 the victim that an allegation of sexual misconduct has been
14 made and that an investigation is being conducted.
15 (7) The facility shall initiate an investigation and
16 shall notify the agency within 1 business day after the risk
17 manager or his or her designee has received a report pursuant
18 to paragraph (1)(d). The notification must be made in writing
19 and be provided electronically, by facsimile device or
20 overnight mail delivery. The notification must include
21 information regarding the identity of the affected resident,
22 the type of adverse incident, the initiation of an
23 investigation by the facility, and whether the events causing
24 or resulting in the adverse incident represent a potential
25 risk to any other resident. The notification is confidential
26 as provided by law and is not discoverable or admissible in
27 any civil or administrative action, except in disciplinary
28 proceedings by the agency or the appropriate regulatory board.
29 The agency may investigate, as it deems appropriate, any such
30 incident and prescribe measures that must or may be taken in
31 response to the incident. The agency shall review each

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1 incident and determine whether it potentially involved conduct
2 by the health care professional who is subject to disciplinary
3 action, in which case the provisions of s. 456.073 shall
4 apply.

5 (8)(a) Each facility shall complete the investigation
6 and submit an adverse incident report to the agency for each
7 adverse incident within 15 calendar days after its occurrence.
8 If after a complete investigation, the risk manager determines
9 that the incident was not an adverse incident as defined in
10 subsection (5), the facility shall include this information in
11 the report. The agency shall develop a form for reporting this
12 information.

13 (b) The information reported to the agency pursuant to
14 paragraph (a) which relates to persons licensed under chapter
15 458, chapter 459, chapter 461, or chapter 466 shall be
16 reviewed by the agency. The agency shall determine whether any
17 of the incidents potentially involved conduct by a health care
18 professional who is subject to disciplinary action, in which
19 case the provisions of s. 456.073 shall apply.

20 (c) The report submitted to the agency must also
21 contain the name of the risk manager of the facility.

22 (d) The adverse incident report is confidential as
23 provided by law and is not discoverable or admissible in any
24 civil or administrative action, except in disciplinary
25 proceedings by the agency or the appropriate regulatory board.

26 (9) Each facility subject to this section shall report
27 monthly any liability claim filed against it. The report must
28 include the name of the resident, the date or dates of the
29 incident leading to the claim, if applicable, and the type of
30 injury or violation of rights alleged to have occurred. This
31 report is confidential as provided by law and is not

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1 discoverable or admissible in any civil or administrative
2 action, except in such actions brought by the agency to
3 enforce the provisions of this part.

4 (10) The agency shall review, as part of its licensure
5 inspection process, the internal risk management and quality
6 assurance program at each facility regulated by this section
7 to determine whether the program meets standards established
8 in statutory laws and rules, is being conducted in a manner
9 designed to reduce adverse incidents, and is appropriately
10 reporting incidents as required by this section.

11 (11) There is no monetary liability on the part of,
12 and a cause of action for damages may not arise against, any
13 risk manager for the implementation and oversight of the
14 internal risk management and quality assurance program in a
15 facility licensed under this part as required by this section,
16 or for any act or proceeding undertaken or performed within
17 the scope of the functions of such internal risk management
18 and quality assurance program if the risk manager acts without
19 intentional fraud.

20 (12) If the agency, through its receipt of the adverse
21 incident reports prescribed in subsection (7), or through any
22 investigation, has a reasonable belief that conduct by a staff
23 member or employee of a facility is grounds for disciplinary
24 action by the appropriate regulatory board, the agency shall
25 report this fact to the regulatory board.

26 (13) The agency may adopt rules to administer this
27 section.

28 (14) The agency shall annually submit to the
29 Legislature a report on nursing home adverse incidents. The
30 report must include the following information arranged by
31 county:

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1 (a) The total number of adverse incidents.

2 (b) A listing, by category, of the types of adverse
3 incidents, the number of incidents occurring within each
4 category, and the type of staff involved.

5 (c) A listing, by category, of the types of injury
6 caused and the number of injuries occurring within each
7 category.

8 (d) Types of liability claims filed based on an
9 adverse incident or reportable injury.

10 (e) Disciplinary action taken against staff,
11 categorized by type of staff involved.

12 (15) Information gathered by a credentialing
13 organization under a quality assurance program is not
14 discoverable from the credentialing organization. This
15 subsection does not limit discovery of, access to, or use of
16 facility records, including those records from which the
17 credentialing organization gathered its information.

18 Section 25. Section 400.148, Florida Statutes, is
19 created to read:

20 400.148 Medicaid "Up-or-Out" Quality of Care Contract
21 Management Program.--

22 (1) The Legislature finds that the federal Medicare
23 program has implemented successful models of managing the
24 medical and supportive-care needs of long-term nursing home
25 residents. These programs have maintained the highest
26 practicable level of good health and have the potential to
27 reduce the incidence of preventable illnesses among long-stay
28 residents of nursing homes, thereby increasing the quality of
29 care for residents and reducing the number of lawsuits against
30 nursing homes. Such models are operated at no cost to the
31 state. It is the intent of the Legislature that the Agency for

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1 Health Care Administration replicate such oversight for
2 Medicaid recipients in poor-performing nursing homes and in
3 assisted living facilities and nursing homes that are
4 experiencing disproportionate numbers of lawsuits, with the
5 goal of improving the quality of care in such homes or
6 facilitating the revocation of licensure.

7 (2) The Agency for Health Care Administration shall
8 develop a pilot project in selected counties to demonstrate
9 the effect of assigning skilled and trained medical personnel
10 to ensure the quality of care, safety, and continuity of care
11 for long-stay Medicaid recipients in the highest-scoring
12 nursing homes in the Florida Nursing Home Guide on the date
13 the project is implemented. The agency is authorized to begin
14 the pilot project, subject to appropriation, in the
15 highest-scoring homes in counties where such services are
16 immediately available. On January 1 of each year of the pilot
17 project, the agency shall submit to the appropriations and
18 substantive committees of the Legislature and the Governor an
19 assessment of the program and a proposal for expansion of the
20 program to additional facilities. The staff of the pilot
21 project shall assist regulatory staff in imposing regulatory
22 sanctions, including revocation of licensure, pursuant to s.
23 400.121 against nursing homes that have quality-of-care
24 violations.

25 (3) The pilot project must ensure:

26 (a) Oversight and coordination of all aspects of a
27 resident's medical care and stay in a nursing home;

28 (b) Facilitation of close communication between the
29 resident, the resident's guardian or legal representative, the
30 resident's attending physician, the resident's family, and
31 staff of the nursing facility;

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- 1 (c) Frequent onsite visits to the resident;
2 (d) Early detection of medical or quality problems
3 that have the potential to lead to adverse outcomes and
4 unnecessary hospitalization;
5 (e) Close communication with regulatory staff;
6 (f) Immediate investigation of resident
7 quality-of-care complaints and communication and cooperation
8 with the appropriate entity to address those complaints,
9 including the ombudsman, state agencies, agencies responsible
10 for Medicaid program integrity, and local law enforcement
11 agencies;
12 (g) Assistance to the resident or the resident's
13 representative to relocate the resident if quality-of-care
14 issues are not otherwise addressed; and
15 (h) Use of Medicare and other third-party funds to
16 support activities of the program, to the extent possible.
17 (4) The agency shall model the pilot project
18 activities after such Medicare-approved demonstration
19 projects.
20 (5) The agency may contract to provide similar
21 oversight services to Medicaid recipients.
22 (6) The agency shall, jointly with the Statewide
23 Public Guardianship Office, develop a system in the pilot
24 project areas to identify Medicaid recipients who are
25 residents of a participating nursing home or assisted living
26 facility who have diminished ability to make their own
27 decisions and who do not have relatives or family available to
28 act as guardians in nursing homes listed on the Nursing Home
29 Guide Watch List. The agency and the Statewide Public
30 Guardianship Office shall give such residents priority for
31 publicly funded guardianship services.

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1 Section 26. Section 400.1755, Florida Statutes, is
2 created to read:

3 400.1755 Care for persons with Alzheimer's disease or
4 related disorders.--

5 (1) As a condition of licensure, facilities licensed
6 under this part must provide to each of their employees, upon
7 beginning employment, basic written information about
8 interacting with persons with Alzheimer's disease or a related
9 disorder.

10 (2) All employees who are expected to, or whose
11 responsibilities require them to, have direct contact with
12 residents with Alzheimer's disease or a related disorder must,
13 in addition to being provided the information required in
14 subsection (1), also have an initial training of at least 1
15 hour completed in the first 3 months after beginning
16 employment. This training must include, but is not limited to,
17 an overview of dementias and must provide basic skills in
18 communicating with persons with dementia.

19 (3) An individual who provides direct care shall be
20 considered a direct caregiver and must complete the required
21 initial training and an additional 3 hours of training within
22 9 months after beginning employment. This training shall
23 include, but is not limited to, managing problem behaviors,
24 promoting the resident's independence in activities of daily
25 living, and skills in working with families and caregivers.

26 (a) The required 4 hours of training for certified
27 nursing assistants are part of the total hours of training
28 required annually.

29 (b) For a health care practitioner as defined in s.
30 456.001, continuing-education hours taken as required by that
31 practitioner's licensing board shall be counted toward this

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1 total of 4 hours.

2 (4) For an employee who is a licensed health care
3 practitioner as defined in s. 456.001, training that is
4 sanctioned by that practitioner's licensing board shall be
5 considered to be approved by the Department of Elderly
6 Affairs.

7 (5) The Department of Elderly Affairs or its designee
8 must approve the initial and continuing training provided in
9 the facilities. The department must approve training offered
10 in a variety of formats, including, but not limited to,
11 internet-based training, videos, teleconferencing, and
12 classroom instruction. The department shall keep a list of
13 current providers who are approved to provide initial and
14 continuing training. The department shall adopt rules to
15 establish standards for the trainers and the training required
16 in this section.

17 (6) Upon completing any training listed in this
18 section, the employee or direct caregiver shall be issued a
19 certificate that includes the name of the training provider,
20 the topic covered, and the date and signature of the training
21 provider. The certificate is evidence of completion of
22 training in the identified topic, and the employee or direct
23 caregiver is not required to repeat training in that topic if
24 the employee or direct caregiver changes employment to a
25 different facility or to an assisted living facility, home
26 health agency, adult day care center, or adult family-care
27 home. The direct caregiver must comply with other applicable
28 continuing education requirements.

29
30 An employee hired on or after July 1, 2001, need not comply
31 with the guidelines created in this section before July 1,

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1 2002.

2 Section 27. Subsections (3) and (4) of section 400.19,
3 Florida Statutes, are amended to read:

4 400.19 Right of entry and inspection.--

5 (3) The agency shall every 15 months conduct at least
6 one unannounced inspection to determine compliance by the
7 licensee with statutes, and with rules promulgated under the
8 provisions of those statutes, governing minimum standards of
9 construction, quality and adequacy of care, and rights of
10 residents. The survey shall be conducted every 6 months for
11 the next 2-year period if the facility has been cited for a
12 class I deficiency, has been cited for two or more class II
13 deficiencies arising from separate surveys or investigations
14 within a 60-day period, or has had three or more substantiated
15 complaints within a 6-month period, each resulting in at least
16 one class I or class II deficiency. In addition to any other
17 fees or fines in this part, the agency shall assess a fine for
18 each facility that is subject to the 6-month survey cycle. The
19 fine for the 2-year period shall be \$6,000, one-half to be
20 paid at the completion of each survey. The agency may adjust
21 this fine by the change in the Consumer Price Index, based on
22 the 12 months immediately preceding the increase, to cover the
23 cost of the additional surveys.The agency shall verify
24 through subsequent inspection that any deficiency identified
25 during the annual inspection is corrected. However, the
26 agency may verify the correction of a class III or class IV
27 deficiency unrelated to resident rights or resident care
28 without reinspecting the facility if adequate written
29 documentation has been received from the facility, which
30 provides assurance that the deficiency has been corrected.
31 The giving or causing to be given of advance notice of such

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1 unannounced inspections by an employee of the agency to any
2 unauthorized person shall constitute cause for suspension of
3 not fewer than 5 working days according to the provisions of
4 chapter 110.

5 (4) The agency shall conduct unannounced onsite
6 facility reviews following written verification of licensee
7 noncompliance in instances in which a long-term care ombudsman
8 council, pursuant to ss. 400.0071 and 400.0075, has received a
9 complaint and has documented deficiencies in resident care or
10 in the physical plant of the facility that threaten the
11 health, safety, or security of residents, or when the agency
12 documents through inspection that conditions in a facility
13 present a direct or indirect threat to the health, safety, or
14 security of residents. However, the agency shall conduct ~~four~~
15 ~~or more~~ unannounced onsite reviews every 3 months ~~within a~~
16 ~~12-month period~~ of each facility while the facility ~~which~~ has
17 a conditional license licensure status. Deficiencies related
18 to physical plant do not require followup reviews after the
19 agency has determined that correction of the deficiency has
20 been accomplished and that the correction is of the nature
21 that continued compliance can be reasonably expected.

22 Section 28. Subsection (3) and paragraph (a) of
23 subsection (5) of section 400.191, Florida Statutes, are
24 amended to read:

25 400.191 Availability, distribution, and posting of
26 reports and records.--

27 (3) Each nursing home facility licensee shall maintain
28 as public information, available upon request, records of all
29 cost and inspection reports pertaining to that facility that
30 have been filed with, or issued by, any governmental agency.
31 Copies of such reports shall be retained in such records for

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

3 (a) The agency shall quarterly publish a "Nursing Home
4 Guide Watch List" to assist consumers in evaluating the
5 quality of nursing home care in Florida. The watch list must
6 identify each facility that met the criteria for a conditional
7 licensure status on any day within the quarter covered by the
8 list and each facility that was operating under bankruptcy
9 protection on any day within the quarter. The watch list must
10 include, but is not limited to, the facility's name, address,
11 and ownership; the county in which the facility operates; the
12 license expiration date; the number of licensed beds; a
13 description of the deficiency causing the facility to be
14 placed on the list; any corrective action taken; and the
15 cumulative number of times the facility has been on a watch
16 list. The watch list must include a brief description
17 regarding how to choose a nursing home, the categories of
18 licensure, the agency's inspection process, an explanation of
19 terms used in the watch list, and the addresses and phone
20 numbers of the agency's managed care and health quality area
21 offices.

22 (b) Upon publication of each quarterly watch list, the
23 agency must transmit a copy of the watch list to each nursing
24 home facility by mail and must make the watch list available
25 on the agency's Internet web site.

26 (5) Every nursing home facility licensee shall:

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

30 1. A concise summary of the last inspection report
31 pertaining to the nursing home and issued by the agency, with

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1 references to the page numbers of the full reports, noting any
2 deficiencies found by the agency and the actions taken by the
3 licensee to rectify such deficiencies and indicating in such
4 summaries where the full reports may be inspected in the
5 nursing home.

6 2. A copy of the most recent version of the Florida
7 Nursing Home Guide Watch List.

8 Section 29. Subsection (2) of section 400.211, Florida
9 Statutes, is amended, and subsection (4) is added to that
10 section, to read:

11 400.211 Persons employed as nursing assistants;
12 certification requirement.--

13 (2) The following categories of persons who are not
14 certified as nursing assistants under part II of chapter 464
15 may be employed by a nursing facility for a period of 4
16 months:

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

19 (b) Persons who have been positively verified as
20 actively certified and on the registry in another state with
21 no findings of abuse, neglect, or exploitation in that state;
22 or

23 (c) Persons who have preliminarily passed the state's
24 certification exam.

25
26 The certification requirement must be met within 4 months
27 after initial employment as a nursing assistant in a licensed
28 nursing facility.

29 (4) When employed by a nursing home facility for a
30 12-month period or longer, a nursing assistant, to maintain
31 certification, shall submit to a performance review every 12

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1 months and must receive regular inservice education based on
2 the outcome of such reviews. The inservice training must:

3 (a) Be sufficient to ensure the continuing competence
4 of nursing assistants, must be at least 18 hours per year, and
5 may include hours accrued under s. 464.203(8);

6 (b) Include, at a minimum:

7 1. Techniques for assisting with eating and proper
8 feeding;

9 2. Principles of adequate nutrition and hydration;

10 3. Techniques for assisting and responding to the
11 cognitively impaired resident or the resident with difficult
12 behaviors;

13 4. Techniques for caring for the resident at the
14 end-of-life; and

15 5. Recognizing changes that place a resident at risk
16 for pressure ulcers and falls; and

17 (c) Address areas of weakness as determined in nursing
18 assistant performance reviews and may address the special
19 needs of residents as determined by the nursing home facility
20 staff.

21
22 Costs associated with this training may not be reimbursed from
23 additional Medicaid funding through interim rate adjustments.

24 Section 30. Subsections (2), (3), (7), and (8) of
25 section 400.23, Florida Statutes, are amended to read:

26 400.23 Rules; evaluation and deficiencies; licensure
27 status.--

28 (2) Pursuant to the intention of the Legislature, the
29 agency, in consultation with the Department of Health and the
30 Department of Elderly Affairs, shall adopt and enforce rules
31 to implement this part, which shall include reasonable and

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1 fair criteria in relation to:

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

31 (b) The number and qualifications of all personnel,

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1 including management, medical, nursing, and other professional
2 personnel, and nursing assistants, orderlies, and support
3 personnel, having responsibility for any part of the care
4 given residents.

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

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

11 (e) A uniform accounting system.

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

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

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

9 (h) The implementation of the consumer satisfaction
10 survey pursuant to s. 400.0225; the availability,
11 distribution, and posting of reports and records pursuant to
12 s. 400.191; and the Gold Seal Program pursuant to s. 400.235.

13 (3)(a) The agency shall adopt rules providing for the
14 minimum staffing requirements for nursing homes. These
15 requirements shall include, for each nursing home facility, a
16 minimum certified nursing assistant staffing of 2.3 hours of
17 direct care per resident per day beginning January 1, 2002,
18 increasing to 2.6 hours of direct care per resident per day
19 beginning January 1, 2003, and increasing to 2.9 hours of
20 direct care per resident per day beginning January 1, 2004.
21 Beginning January 1, 2002 no facility shall staff below one
22 certified nursing assistant per 20 residents, and a minimum
23 licensed nursing staffing of 1.0 hour of direct resident care
24 per resident per day but never below one licensed nurse per 40
25 residents., including evening and night shifts and weekends.
26 Nursing assistants employed under s. 400.211(2) may be
27 included in computing the staffing ratio for certified nursing
28 assistants only if they provide nursing assistance services to
29 residents on a full-time basis. Each nursing home must
30 document compliance with staffing standards as required under
31 this paragraph and post daily Agency rules shall specify

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1 ~~requirements for documentation of compliance with staffing~~
2 ~~standards, sanctions for violation of such standards, and~~
3 ~~requirements for daily posting of the names of staff on duty~~
4 for the benefit of facility residents and the public. The
5 agency shall recognize the use of licensed nurses for
6 compliance with minimum staffing requirements for certified
7 nursing assistants, provided that the facility otherwise meets
8 the minimum staffing requirements for licensed nurses and that
9 the licensed nurses so recognized are performing the duties of
10 a certified nursing assistant. Unless otherwise approved by
11 the agency, licensed nurses counted towards the minimum
12 staffing requirements for certified nursing assistants must
13 exclusively perform the duties of a certified nursing
14 assistant for the entire shift and shall not also be counted
15 towards the minimum staffing requirements for licensed nurses.
16 If the agency approved a facility's request to use a licensed
17 nurse to perform both licensed nursing and certified nursing
18 assistant duties, the facility must allocate the amount of
19 staff time specifically spent on certified nursing assistant
20 duties for the purpose of documenting compliance with minimum
21 staffing requirements for certified and licensed nursing
22 staff. In no event may the hours of a licensed nurse with dual
23 job responsibilities be counted twice.

24 (b) The agency shall adopt rules to allow properly
25 trained staff of a nursing facility, in addition to certified
26 nursing assistants and licensed nurses, to assist residents
27 with eating. The rules shall specify the minimum training
28 requirements and shall specify the physiological conditions or
29 disorders of residents which would necessitate that the eating
30 assistance be provided by nursing personnel of the facility.
31 Nonnursing staff providing eating assistance to residents

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1 under the provisions of this subsection shall not count
2 towards compliance with minimum staffing standards.

3 (c) Licensed practical nurses licensed under chapter
4 464 who are providing nursing services in nursing home
5 facilities under this part may supervise the activities of
6 other licensed practical nurses, certified nursing assistants,
7 and other unlicensed personnel providing services in such
8 facilities in accordance with rules adopted by the Board of
9 Nursing.

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

20 (a) A standard licensure status means that a facility
21 has no class I or class II deficiencies, has corrected all
22 class III deficiencies within the time established by the
23 agency, ~~and is in substantial compliance at the time of the~~
24 ~~survey with criteria established under this part, with rules~~
25 ~~adopted by the agency, and, if applicable, with rules adopted~~
26 ~~under the Omnibus Budget Reconciliation Act of 1987 (Pub. L.~~
27 ~~No. 100-203) (December 22, 1987), Title IV (Medicare,~~
28 ~~Medicaid, and Other Health-Related Programs), Subtitle C~~
29 ~~(Nursing Home Reform), as amended.~~

30 (b) A conditional licensure status means that a
31 facility, due to the presence of one or more class I or class

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

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

22 (d) The current licensure status of each facility must
23 be indicated in bold print on the face of the license. A list
24 of the deficiencies of the facility shall be posted in a
25 prominent place that is in clear and unobstructed public view
26 at or near the place where residents are being admitted to
27 that facility. Licensees receiving a conditional licensure
28 status for a facility shall prepare, within 10 working days
29 after receiving notice of deficiencies, a plan for correction
30 of all deficiencies and shall submit the plan to the agency
31 for approval. ~~Correction of all deficiencies, within the~~

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

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

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

12 1. Establish uniform procedures for the evaluation of
13 facilities.

14 2. Provide criteria in the areas referenced in
15 paragraph (c).

16 3. Address other areas necessary for carrying out the
17 intent of this section.

18 (8) The agency shall adopt rules to provide that, when
19 the criteria established under subsection (2) are not met,
20 such deficiencies shall be classified according to the nature
21 and the scope of the deficiency. The scope shall be cited as
22 isolated, patterned, or widespread. An isolated deficiency is
23 a deficiency affecting one or a very limited number of
24 residents, or involving one or a very limited number of staff,
25 or a situation that occurred only occasionally or in a very
26 limited number of locations. A patterned deficiency is a
27 deficiency where more than a very limited number of residents
28 are affected, or more than a very limited number of staff are
29 involved, or the situation has occurred in several locations,
30 or the same resident or residents have been affected by
31 repeated occurrences of the same deficient practice but the

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1 effect of the deficient practice is not found to be pervasive
2 throughout the facility. A widespread deficiency is a
3 deficiency in which the problems causing the deficiency are
4 pervasive in the facility or represent systemic failure that
5 has affected or has the potential to affect a large portion of
6 the facility's residents.The agency shall indicate the
7 classification on the face of the notice of deficiencies as
8 follows:

9 (a) A class I deficiency is a deficiency that
10 ~~deficiencies are those which~~ the agency determines presents a
11 situation in which immediate corrective action is necessary
12 because the facility's noncompliance has caused, or is likely
13 to cause, serious injury, harm, impairment, or death to a
14 resident receiving care in a facility present an imminent
15 ~~danger to the residents or guests of the nursing home facility~~
16 ~~or a substantial probability that death or serious physical~~
17 ~~harm would result therefrom.~~ The condition or practice
18 constituting a class I violation shall be abated or eliminated
19 immediately, unless a fixed period of time, as determined by
20 the agency, is required for correction. ~~Notwithstanding s.~~
21 ~~400.121(2),~~ A class I deficiency is subject to a civil penalty
22 of \$10,000 for an isolated deficiency, \$12,500 for a patterned
23 deficiency, and \$15,000 for a widespread in an amount not less
24 ~~than \$5,000 and not exceeding \$25,000 for each and every~~
25 deficiency. The fine amount shall be doubled for each
26 deficiency if the facility was previously cited for one or
27 more class I or class II deficiencies during the last annual
28 inspection or any inspection or complaint investigation since
29 the last annual inspection. A fine must ~~may~~ be levied
30 notwithstanding the correction of the deficiency.

31 (b) A class II deficiency is a deficiency that

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

22 (c) A class III deficiency is a deficiency that
23 ~~deficiencies are those which the agency determines will result~~
24 ~~in no more than minimal physical, mental, or psychosocial~~
25 ~~discomfort to the resident or has the potential to compromise~~
26 ~~the resident's ability to maintain or reach his or her highest~~
27 ~~practical physical, mental, or psychosocial well-being, as~~
28 ~~defined by an accurate and comprehensive resident assessment,~~
29 ~~plan of care, and provision of services to have an indirect or~~
30 ~~potential relationship to the health, safety, or security of~~
31 ~~the nursing home facility residents, other than class I or~~

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1 ~~class II deficiencies. A class III deficiency is shall be~~
2 subject to a civil penalty of \$1,000 for an isolated
3 deficiency, \$2,000 for a patterned deficiency, and \$3,000 for
4 a widespread not less than \$500 and not exceeding \$2,500 for
5 each and every deficiency. The fine amount shall be doubled
6 for each deficiency if the facility was previously cited for
7 one or more class I or class II deficiencies during the last
8 annual inspection or any inspection or complaint investigation
9 since the last annual inspection. A citation for a class III
10 deficiency must ~~shall~~ specify the time within which the
11 deficiency is required to be corrected. If a class III
12 deficiency is corrected within the time specified, no civil
13 penalty shall be imposed, ~~unless it is a repeated offense.~~

14 (d) A class IV deficiency is a deficiency that the
15 agency determines has the potential for causing no more than a
16 minor negative impact on the resident. If the class IV
17 deficiency is isolated, no plan of correction is required.

18 Section 31. Subsection (5) of section 400.235, Florida
19 Statutes, is amended to read:

20 400.235 Nursing home quality and licensure status;
21 Gold Seal Program.--

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

24 (a) Had no class I or class II deficiencies within the
25 30 months preceding application for the program.

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

29 (c) Participate consistently in the required consumer
30 satisfaction process as prescribed by the agency, and
31 demonstrate that information is elicited from residents,

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1 family members, and guardians about satisfaction with the
2 nursing facility, its environment, the services and care
3 provided, the staff's skills and interactions with residents,
4 attention to resident's needs, and the facility's efforts to
5 act on information gathered from the consumer satisfaction
6 measures.

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

9 (e) Have a stable workforce, as described in s.
10 400.141, as evidenced by a relatively low rate of turnover
11 among certified nursing assistants and licensed nurses within
12 the 30 months preceding application for the Gold Seal Program,
13 and demonstrate a continuing effort to maintain a stable
14 workforce and to reduce turnover of licensed nurses and
15 certified nursing assistants.

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

20 (g) Provide targeted inservice training provided to
21 meet training needs identified by internal or external quality
22 assurance efforts.

23
24 A facility assigned a conditional licensure status may not
25 qualify for consideration for the Gold Seal Program until
26 after it has operated for 30 months with no class I or class
27 II deficiencies and has completed a regularly scheduled
28 relicensure survey.

29 Section 32. Section 400.275, Florida Statutes, is
30 created to read:

31 400.275 Agency duties.--

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1 (1) The agency shall ensure that each newly hired
2 nursing home surveyor, as a part of basic training, is
3 assigned full-time to a licensed nursing home for at least 2
4 days within a 7-day period to observe facility operations
5 outside of the survey process before the surveyor begins
6 survey responsibilities. Such observations may not be the sole
7 basis of a deficiency citation against the facility. The
8 agency may not assign an individual to be a member of a survey
9 team for purposes of a survey, evaluation, or consultation
10 visit at a nursing home facility in which the surveyor was an
11 employee within the preceding 5 years.

12 (2) The agency shall semiannually provide for joint
13 training of nursing home surveyors and staff of facilities
14 licensed under this part on at least one of the 10 federal
15 citations that were most frequently issued against nursing
16 facilities in this state during the previous calendar year.

17 (3) Each member of a nursing home survey team who is a
18 health professional licensed under part I of chapter 464, part
19 X of chapter 468, or chapter 491, shall earn not less than 50
20 percent of required continuing education credits in geriatric
21 care. Each member of a nursing home survey team who is a
22 health professional licensed under chapter 465 shall earn not
23 less than 30 percent of required continuing education credits
24 in geriatric care.

25 (4) The agency must ensure that when a deficiency is
26 related to substandard quality of care, a physician with
27 geriatric experience licensed under chapter 458 or chapter 459
28 or a registered nurse with geriatric experience licensed under
29 chapter 464 participates in the agency's informal
30 dispute-resolution process.

31 Section 33. Subsections (3) and (4) of section

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1 400.407, Florida Statutes, are amended to read:

2 400.407 License required; fee, display.--

3 (3) Any license granted by the agency must state the
4 maximum resident capacity of the facility, the type of care
5 for which the license is granted, the date the license is
6 issued, the expiration date of the license, and any other
7 information deemed necessary by the agency. Licenses shall be
8 issued for one or more of the following categories of care:
9 standard, extended congregate care, limited nursing services,
10 or limited mental health.

11 (a) A standard license shall be issued to facilities
12 providing one or more of the personal services identified in
13 s. 400.402. Such facilities may also employ or contract with a
14 person licensed under part I of chapter 464 to administer
15 medications and perform other tasks as specified in s.
16 400.4255.

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

24 1. In order for extended congregate care services to
25 be provided in a facility licensed under this part, the agency
26 must first determine that all requirements established in law
27 and rule are met and must specifically designate, on the
28 facility's license, that such services may be provided and
29 whether the designation applies to all or part of a facility.
30 Such designation may be made at the time of initial licensure
31 or ~~biennial~~ relicensure, or upon request in writing by a

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

10 a. A class I or class II violation;

11 b. Three or more repeat or recurring class III
12 violations of identical or similar resident care standards as
13 specified in rule from which a pattern of noncompliance is
14 found by the agency;

15 c. Three or more class III violations that were not
16 corrected in accordance with the corrective action plan
17 approved by the agency;

18 d. Violation of resident care standards resulting in a
19 requirement to employ the services of a consultant pharmacist
20 or consultant dietitian;

21 e. Denial, suspension, or revocation of a license for
22 another facility under this part in which the applicant for an
23 extended congregate care license has at least 25 percent
24 ownership interest; or

25 f. Imposition of a moratorium on admissions or
26 initiation of injunctive proceedings.

27 2. Facilities that are licensed to provide extended
28 congregate care services shall maintain a written progress
29 report on each person who receives such services, which report
30 describes the type, amount, duration, scope, and outcome of
31 services that are rendered and the general status of the

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

25 3. Facilities that are licensed to provide extended
26 congregate care services shall:

27 a. Demonstrate the capability to meet unanticipated
28 resident service needs.

29 b. Offer a physical environment that promotes a
30 homelike setting, provides for resident privacy, promotes
31 resident independence, and allows sufficient congregate space

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1 as defined by rule.

2 c. Have sufficient staff available, taking into
3 account the physical plant and firesafety features of the
4 building, to assist with the evacuation of residents in an
5 emergency, as necessary.

6 d. Adopt and follow policies and procedures that
7 maximize resident independence, dignity, choice, and
8 decisionmaking to permit residents to age in place to the
9 extent possible, so that moves due to changes in functional
10 status are minimized or avoided.

11 e. Allow residents or, if applicable, a resident's
12 representative, designee, surrogate, guardian, or attorney in
13 fact to make a variety of personal choices, participate in
14 developing service plans, and share responsibility in
15 decisionmaking.

16 f. Implement the concept of managed risk.

17 g. Provide, either directly or through contract, the
18 services of a person licensed pursuant to part I of chapter
19 464.

20 h. In addition to the training mandated in s. 400.452,
21 provide specialized training as defined by rule for facility
22 staff.

23 4. Facilities licensed to provide extended congregate
24 care services are exempt from the criteria for continued
25 residency as set forth in rules adopted under s. 400.441.
26 Facilities so licensed shall adopt their own requirements
27 within guidelines for continued residency set forth by the
28 department in rule. However, such facilities may not serve
29 residents who require 24-hour nursing supervision. Facilities
30 licensed to provide extended congregate care services shall
31 provide each resident with a written copy of facility policies

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1 governing admission and retention.

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

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

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

21 8. Failure to provide extended congregate care
22 services may result in denial of extended congregate care
23 license renewal.

24 9. No later than January 1 of each year, the
25 department, in consultation with the agency, shall prepare and
26 submit to the Governor, the President of the Senate, the
27 Speaker of the House of Representatives, and the chairs of
28 appropriate legislative committees, a report on the status of,
29 and recommendations related to, extended congregate care
30 services. The status report must include, but need not be
31 limited to, the following information:

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1 a. A description of the facilities licensed to provide
2 such services, including total number of beds licensed under
3 this part.

4 b. The number and characteristics of residents
5 receiving such services.

6 c. The types of services rendered that could not be
7 provided through a standard license.

8 d. An analysis of deficiencies cited during licensure
9 ~~biennial~~ inspections.

10 e. The number of residents who required extended
11 congregate care services at admission and the source of
12 admission.

13 f. Recommendations for statutory or regulatory
14 changes.

15 g. The availability of extended congregate care to
16 state clients residing in facilities licensed under this part
17 and in need of additional services, and recommendations for
18 appropriations to subsidize extended congregate care services
19 for such persons.

20 h. Such other information as the department considers
21 appropriate.

22 (c) A limited nursing services license shall be issued
23 to a facility that provides services beyond those authorized
24 in paragraph (a) and as specified in this paragraph.

25 1. In order for limited nursing services to be
26 provided in a facility licensed under this part, the agency
27 must first determine that all requirements established in law
28 and rule are met and must specifically designate, on the
29 facility's license, that such services may be provided. Such
30 designation may be made at the time of initial licensure or
31 ~~biennial~~ relicensure, or upon request in writing by a licensee

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1 under this part. Notification of approval or denial of such
2 request shall be made within 90 days after receipt of such
3 request and all necessary documentation. Existing facilities
4 qualifying to provide limited nursing services shall have
5 maintained a standard license and may not have been subject to
6 administrative sanctions that affect the health, safety, and
7 welfare of residents for the previous 2 years or since initial
8 licensure if the facility has been licensed for less than 2
9 years.

10 2. Facilities that are licensed to provide limited
11 nursing services shall maintain a written progress report on
12 each person who receives such nursing services, which report
13 describes the type, amount, duration, scope, and outcome of
14 services that are rendered and the general status of the
15 resident's health. A registered nurse representing the agency
16 shall visit such facilities at least twice ~~once~~ a year to
17 monitor residents who are receiving limited nursing services
18 and to determine if the facility is in compliance with
19 applicable provisions of this part and with related rules. The
20 monitoring visits may be provided through contractual
21 arrangements with appropriate community agencies. A
22 registered nurse shall also serve as part of the team that
23 ~~biennially~~ inspects such facility.

24 3. A person who receives limited nursing services
25 under this part must meet the admission criteria established
26 by the agency for assisted living facilities. When a resident
27 no longer meets the admission criteria for a facility licensed
28 under this part, arrangements for relocating the person shall
29 be made in accordance with s. 400.428(1)(k), unless the
30 facility is licensed to provide extended congregate care
31 services.

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1 (4)(a) The biennial license fee required of a facility
2 is ~~\$300~~~~\$240~~ per license, with an additional fee of ~~\$50~~~~\$30~~
3 per resident based on the total licensed resident capacity of
4 the facility, except that no additional fee will be assessed
5 for beds designated for recipients of optional state
6 supplementation payments provided for in s. 409.212. The total
7 fee may not exceed \$10,000, no part of which shall be returned
8 to the facility. The agency shall adjust the per bed license
9 fee and the total licensure fee annually by not more than the
10 change in the consumer price index based on the 12 months
11 immediately preceding the increase.

12 (b) In addition to the total fee assessed under
13 paragraph (a), the agency shall require facilities that are
14 licensed to provide extended congregate care services under
15 this part to pay an additional fee per licensed facility. The
16 amount of the biennial fee shall be \$400 per license, with an
17 additional fee of \$10 per resident based on the total licensed
18 resident capacity of the facility.No part of this fee ~~which~~
19 shall be returned to the facility. The agency may adjust the
20 per-bed license fee and the annual license fee once each year
21 by not more than the average rate of inflation for the 12
22 months immediately preceding the increase.

23 (c) In addition to the total fee assessed under
24 paragraph (a), the agency shall require facilities that are
25 licensed to provide limited nursing services under this part
26 to pay an additional fee per licensed facility. The amount of
27 the biennial fee shall be ~~\$250~~~~\$200~~ per license, with an
28 additional fee of \$10 per resident based on the total licensed
29 resident capacity of the facility. ~~The total biennial fee may~~
30 ~~not exceed \$2,000.~~No part of this fee ~~which~~ shall be returned
31 to the facility. The agency may adjust the per-bed license

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1 ~~fee and the \$200~~ biennial license fee ~~and the maximum total~~
2 ~~license fee~~ once each year by not more than the average rate
3 of inflation for the 12 months immediately preceding the
4 increase.

5 Section 34. Paragraph (n) is added to subsection (1)
6 of section 400.414, Florida Statutes, and subsection (8) is
7 added to that section, to read:

8 400.414 Denial, revocation, or suspension of license;
9 imposition of administrative fine; grounds.--

10 (1) The agency may deny, revoke, or suspend any
11 license issued under this part, or impose an administrative
12 fine in the manner provided in chapter 120, for any of the
13 following actions by an assisted living facility, any person
14 subject to level 2 background screening under s. 400.4174, or
15 any facility employee:

16 (n) Any act constituting a ground upon which
17 application for a license may be denied.

18
19 Administrative proceedings challenging agency action under
20 this subsection shall be reviewed on the basis of the facts
21 and conditions that resulted in the agency action.

22 (8) The agency may issue a temporary license pending
23 final disposition of a proceeding involving the suspension or
24 revocation of an assisted living facility license.

25 Section 35. Section 400.419, Florida Statutes, is
26 amended to read:

27 400.419 Violations; administrative fines.--

28 (1) Each violation of this part and adopted rules
29 shall be classified according to the nature of the violation
30 and the gravity of its probable effect on facility residents.
31 The agency shall indicate the classification on the written

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1 notice of the violation as follows:

2 (a) Class "I" violations are those conditions or
3 occurrences related to the operation and maintenance of a
4 facility or to the personal care of residents which the agency
5 determines present an imminent danger to the residents or
6 guests of the facility or a substantial probability that death
7 or serious physical or emotional harm would result therefrom.
8 The condition or practice constituting a class I violation
9 shall be abated or eliminated within 24 hours, unless a fixed
10 period, as determined by the agency, is required for
11 correction. A class I violation is subject to an
12 administrative fine in an amount not less than ~~\$5,000~~^{\$1,000}
13 and not exceeding \$10,000 for each violation. A fine may be
14 levied notwithstanding the correction of the violation.

15 (b) Class "II" violations are those conditions or
16 occurrences related to the operation and maintenance of a
17 facility or to the personal care of residents which the agency
18 determines directly threaten the physical or emotional health,
19 safety, or security of the facility residents, other than
20 class I violations. A class II violation is subject to an
21 administrative fine in an amount not less than ~~\$1,000~~^{\$500} and
22 not exceeding \$5,000 for each violation. A citation for a
23 class II violation must ~~shall~~ specify the time within which
24 the violation is required to be corrected. ~~If a class II~~
25 ~~violation is corrected within the time specified, no fine may~~
26 ~~be imposed, unless it is a repeated offense.~~

27 (c) Class "III" violations are those conditions or
28 occurrences related to the operation and maintenance of a
29 facility or to the personal care of residents which the agency
30 determines indirectly or potentially threaten the physical or
31 emotional health, safety, or security of facility residents,

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1 other than class I or class II violations. A class III
2 violation is subject to an administrative fine of not less
3 than ~~\$500~~~~\$100~~ and not exceeding \$1,000 for each violation. A
4 citation for a class III violation must ~~shall~~ specify the time
5 within which the violation is required to be corrected. If a
6 class III violation is corrected within the time specified, no
7 fine may be imposed, unless it is a repeated offense.

8 (d) Class "IV" violations are those conditions or
9 occurrences related to the operation and maintenance of a
10 building or to required reports, forms, or documents that do
11 not have the potential of negatively affecting residents.
12 These violations are of a type that the agency determines do
13 not threaten the health, safety, or security of residents of
14 the facility. A facility that does not correct a class IV
15 violation within the time specified in the agency-approved
16 corrective action plan is subject to an administrative fine of
17 not less than ~~\$100~~~~\$50~~ nor more than \$200 for each violation.
18 Any class IV violation that is corrected during the time an
19 agency survey is being conducted will be identified as an
20 agency finding and not as a violation.

21 ~~(2) The agency may set and levy a fine not to exceed~~
22 ~~\$1,000 for each violation which cannot be classified according~~
23 ~~to subsection (1). Such fines in the aggregate may not exceed~~
24 ~~\$10,000 per survey.~~

25 ~~(2)~~~~(3)~~ In determining if a penalty is to be imposed
26 and in fixing the amount of the fine, the agency shall
27 consider the following factors:

28 (a) The gravity of the violation, including the
29 probability that death or serious physical or emotional harm
30 to a resident will result or has resulted, the severity of the
31 action or potential harm, and the extent to which the

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1 provisions of the applicable laws or rules were violated.

2 (b) Actions taken by the owner or administrator to
3 correct violations.

4 (c) Any previous violations.

5 (d) The financial benefit to the facility of
6 committing or continuing the violation.

7 (e) The licensed capacity of the facility.

8 ~~(3)(4)~~ Each day of continuing violation after the date
9 fixed for termination of the violation, as ordered by the
10 agency, constitutes an additional, separate, and distinct
11 violation.

12 ~~(4)(5)~~ Any action taken to correct a violation shall
13 be documented in writing by the owner or administrator of the
14 facility and verified through followup visits by agency
15 personnel. The agency may impose a fine and, in the case of an
16 owner-operated facility, revoke or deny a facility's license
17 when a facility administrator fraudulently misrepresents
18 action taken to correct a violation.

19 ~~(5)(6)~~ For fines that are upheld following
20 administrative or judicial review, the violator shall pay the
21 fine, plus interest at the rate as specified in s. 55.03, for
22 each day beyond the date set by the agency for payment of the
23 fine.

24 ~~(6)(7)~~ Any unlicensed facility that continues to
25 operate after agency notification is subject to a \$1,000 fine
26 per day. ~~Each day beyond 5 working days after agency~~
27 ~~notification constitutes a separate violation, and the~~
28 ~~facility is subject to a fine of \$500 per day.~~

29 ~~(7)(8)~~ Any licensed facility whose owner or
30 administrator concurrently operates an unlicensed facility
31 shall be subject to an administrative fine of \$5,000 per day.

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1 ~~Each day that the unlicensed facility continues to operate~~
2 ~~beyond 5 working days after agency notification constitutes a~~
3 ~~separate violation, and the licensed facility shall be subject~~
4 ~~to a fine of \$500 per day retroactive to the date of agency~~
5 ~~notification.~~

6 (8)~~(9)~~ Any facility whose owner fails to apply for a
7 change-of-ownership license in accordance with s. 400.412 and
8 operates the facility under the new ownership is subject to a
9 fine of not to exceed \$5,000.

10 (9)~~(10)~~ In addition to any administrative fines
11 imposed, the agency may assess a survey fee, equal to the
12 lesser of one half of the facility's biennial license and bed
13 fee or \$500, to cover the cost of conducting initial complaint
14 investigations that result in the finding of a violation that
15 was the subject of the complaint or monitoring visits
16 conducted under s. 400.428(3)(c) to verify the correction of
17 the violations.

18 (10)~~(11)~~ The agency, as an alternative to or in
19 conjunction with an administrative action against a facility
20 for violations of this part and adopted rules, shall make a
21 reasonable attempt to discuss each violation and recommended
22 corrective action with the owner or administrator of the
23 facility, prior to written notification. The agency, instead
24 of fixing a period within which the facility shall enter into
25 compliance with standards, may request a plan of corrective
26 action from the facility which demonstrates a good faith
27 effort to remedy each violation by a specific date, subject to
28 the approval of the agency.

29 (11)~~(12)~~ Administrative fines paid by any facility
30 under this section shall be deposited into the Health Care
31 Trust Fund and expended as provided in s. 400.418.

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1 ~~(13)~~ (12) The agency shall develop and disseminate an
2 annual list of all facilities sanctioned or fined \$5,000 or
3 more for violations of state standards, the number and class
4 of violations involved, the penalties imposed, and the current
5 status of cases. The list shall be disseminated, at no charge,
6 to the Department of Elderly Affairs, the Department of
7 Health, the Department of Children and Family Services, the
8 area agencies on aging, the Florida Statewide Advocacy
9 Council, and the state and local ombudsman councils. The
10 Department of Children and Family Services shall disseminate
11 the list to service providers under contract to the department
12 who are responsible for referring persons to a facility for
13 residency. The agency may charge a fee commensurate with the
14 cost of printing and postage to other interested parties
15 requesting a copy of this list.

16 Section 36. Section 400.423, Florida Statutes, is
17 created to read:

18 400.423 Internal risk management and quality assurance
19 program; adverse incidents and reporting requirements.--

20 (1) Every facility licensed under this part may, as
21 part of its administrative functions, voluntarily establish a
22 risk management and quality assurance program, the purpose of
23 which is to assess resident care practices, facility incident
24 reports, deficiencies cited by the agency, adverse incident
25 reports, and resident grievances and develop plans of action
26 to correct and respond quickly to identify quality
27 differences.

28 (2) Every facility licensed under this part is
29 required to maintain adverse incident reports. For purposes of
30 this section, the term, "adverse incident" means:

31 (a) An event over which facility personnel could

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- 1 exercise control rather than as a result of the resident's
2 condition and results in:
- 3 1. Death;
 - 4 2. Brain or spinal damage;
 - 5 3. Permanent disfigurement;
 - 6 4. Fracture or dislocation of bones or joints;
 - 7 5. Any condition that required medical attention to
8 which the resident has not given his or her consent, including
9 failure to honor advanced directives;
 - 10 6. Any condition that requires the transfer of the
11 resident from the facility to a unit providing more acute care
12 due to the incident rather than the resident's condition
13 before the incident.
- 14 (b) Abuse, neglect, or exploitation as defined in s.
15 415.102;
- 16 (c) Events reported to law enforcement; or
17 (d) Elopement.
- 18 (3) Licensed facilities shall provide within 1
19 business day after the occurrence of an adverse incident, by
20 electronic mail, facsimile, or United States mail, a
21 preliminary report to the agency on all adverse incidents
22 specified under this section. The report must include
23 information regarding the identity of the affected resident,
24 the type of adverse incident, and the status of the facility's
25 investigation of the incident.
- 26 (4) Licensed facilities shall provide within 15 days,
27 by electronic mail, facsimile, or United States mail, a full
28 report to the agency on all adverse incidents specified in
29 this section. The report must include the results of the
30 facility's investigation into the adverse incident.
- 31 (5) Each facility shall report monthly to the agency

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1 any liability claim filed against it. The report must include
2 the name of the resident, the dates of the incident leading to
3 the claim, if applicable, and the type of injury or violation
4 of rights alleged to have occurred. This report is not
5 discoverable in any civil or administrative action, except in
6 such actions brought by the agency to enforce the provisions
7 of this part.

8 (6) The agency shall annually submit to the
9 Legislature a report on assisted living facility adverse
10 incident reports. The report must include the following
11 information arranged by county:

12 (a) A total number of adverse incidents;

13 (b) A listing, by category, of the type of adverse
14 incidents occurring within each category and the type of staff
15 involved;

16 (c) A listing, by category, of the types of injuries,
17 if any, and the number of injuries occurring within each
18 category;

19 (d) Types of liability claims filed based on an
20 adverse incident report or reportable injury; and

21 (e) Disciplinary action taken against staff,
22 categorized by the type of staff involved.

23 (7) The information reported to the agency pursuant to
24 subsection (3) which relates to persons licensed under chapter
25 458, chapter 459, chapter 461, chapter 464, or chapter 465
26 shall be reviewed by the agency. The agency shall determine
27 whether any of the incidents potentially involved conduct by a
28 health care professional who is subject to disciplinary
29 action, in which case the provisions of s. 456.073 apply. The
30 agency may investigate, as it deems appropriate, any such
31 incident and prescribe measures that must or may be taken in

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1 response to the incident. The agency shall review each
2 incident and determine whether it potentially involved conduct
3 by a health care professional who is subject to disciplinary
4 action, in which case the provisions of s. 456.073 apply.

5 (8) If the agency, through its receipt of the adverse
6 incident reports prescribed in this part or through any
7 investigation, has reasonable belief that conduct by a staff
8 member or employee of a licensed facility is grounds for
9 disciplinary action by the appropriate board, the agency shall
10 report this fact to such regulatory board.

11 (9) The adverse incident reports and preliminary
12 adverse incident reports required under this section are
13 confidential as provided by law and are not discoverable or
14 admissible in any civil or administrative action, except in
15 disciplinary proceedings by the agency or appropriate
16 regulatory board.

17 (10) The Department of Elderly Affairs may adopt rules
18 necessary to administer this section.

19 Section 37. Present subsections (7), (8), (9), (10),
20 and (11) of section 400.426, Florida Statutes, are
21 redesignated as subsections (8), (9), (10), (11), and (12),
22 respectively, and a new subsection (7) is added to that
23 section, to read:

24 400.426 Appropriateness of placements; examinations of
25 residents.--

26 (7) The facility must notify a licensed physician when
27 a resident exhibits signs of dementia or cognitive impairment
28 or has a change of condition in order to rule out the presence
29 of an underlying physiological condition that may be
30 contributing to such dementia or impairment. The notification
31 must occur within 30 days after the acknowledgement of such

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1 signs by facility staff. If an underlying condition is
2 determined to exist, the facility shall arrange, with the
3 appropriate health care provider, the necessary care and
4 services to treat the condition.

5 Section 38. Paragraph (k) of subsection (1) of section
6 400.428, Florida Statutes, is amended to read:

7 400.428 Resident bill of rights.--

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

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

26 Section 39. Effective May 15, 2001, and applying to
27 causes of action accruing on or after that date, section
28 400.429, Florida Statutes, is amended to read:

29 400.429 Civil actions to enforce rights.--

30 (1) Any person or resident whose rights as specified
31 in this part are violated shall have a cause of action ~~against~~

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1 ~~any facility owner, administrator, or staff responsible for~~
2 ~~the violation.~~ The action may be brought by the resident or
3 his or her guardian, or by a person or organization acting on
4 behalf of a resident with the consent of the resident or his
5 or her guardian, or by the personal representative of the
6 estate of a deceased resident regardless of the cause of death
7 ~~when the cause of death resulted from a violation of the~~
8 ~~decedent's rights, to enforce such rights.~~ If the action
9 alleges a claim for the resident's rights or for negligence
10 that caused the death of the resident, the claimant shall be
11 required to elect either survival damages pursuant to s.
12 46.021 or wrongful death damages pursuant to s. 768.21. If the
13 action alleges a claim for the resident's rights or for
14 negligence that did not cause the death of the resident, the
15 personal representative of the estate may recover damages for
16 the negligence that caused injury to the resident.The action
17 may be brought in any court of competent jurisdiction to
18 enforce such rights and to recover actual damages, and
19 punitive damages for violation of the rights of a resident or
20 negligence when malicious, wanton, or willful disregard of the
21 rights of others can be shown. Any resident who prevails in
22 seeking injunctive relief or a claim for an administrative
23 remedy is entitled to recover the costs of the action and a
24 reasonable attorney's fee assessed against the defendant not
25 to exceed \$25,000. Fees shall be awarded solely for the
26 injunctive or administrative relief and not for any claim or
27 action for damages whether such claim or action is brought
28 together with a request for an injunction or administrative
29 relief or as a separate action, except as provided under s.
30 768.79 or the Florida Rules of Civil Procedure. Sections
31 400.429-400.4303 provide the exclusive remedy for a cause of

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1 action for recovery of damages for the personal injury or
2 death of a resident arising out of negligence or a violation
3 of rights specified in s. 400.428. This section does not
4 preclude theories of recovery not arising out of negligence or
5 s. 400.428 which are available to a resident or to the agency.
6 The provisions of chapter 766 do not apply to any cause of
7 action brought under ss. 400.429-400.4303.~~Any plaintiff who~~
8 ~~prevails in any such action may be entitled to recover~~
9 ~~reasonable attorney's fees, costs of the action, and damages,~~
10 ~~unless the court finds that the plaintiff has acted in bad~~
11 ~~faith, with malicious purpose, and that there was a complete~~
12 ~~absence of a justiciable issue of either law or fact. A~~
13 ~~prevailing defendant may be entitled to recover reasonable~~
14 ~~attorney's fees pursuant to s. 57.105. The remedies provided~~
15 ~~in this section are in addition to and cumulative with other~~
16 ~~legal and administrative remedies available to a resident or~~
17 ~~to the agency.~~

18 (2) In any claim brought pursuant to this part
19 alleging a violation of resident's rights or negligence
20 causing injury to or the death of a resident, the claimant
21 shall have the burden of proving, by a preponderance of the
22 evidence, that:

23 (a) The defendant owed a duty to the resident;
24 (b) The defendant breached the duty to the resident;
25 (c) The breach of the duty is a legal cause of loss,
26 injury, death, or damage to the resident; and

27 (d) The resident sustained loss, injury, death, or
28 damage as a result of the breach.

29
30 Nothing in this part shall be interpreted to create strict
31 liability. A violation of the rights set forth in s. 400.428

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1 or in any other standard or guidelines specified in this part
2 or in any applicable administrative standard or guidelines of
3 this state or a federal regulatory agency shall be evidence of
4 negligence but shall not be considered negligence per se.

5 (3) In any claim brought pursuant to s. 400.429, a
6 licensee, person, or entity shall have a duty to exercise
7 reasonable care. Reasonable care is that degree of care which
8 a reasonably careful licensee, person, or entity would use
9 under like circumstances.

10 (4) In any claim for resident's rights violation or
11 negligence by a nurse licensed under part I of chapter 464,
12 such nurse shall have the duty to exercise care consistent
13 with the prevailing professional standard of care for a nurse.
14 The prevailing professional standard of care for a nurse shall
15 be that level of care, skill, and treatment which, in light of
16 all relevant surrounding circumstances is recognized as
17 acceptable and appropriate by reasonably prudent similar
18 nurses.~~To recover attorney's fees under this section, the~~
19 ~~following conditions precedent must be met:~~

20 ~~(a) Within 120 days after the filing of a responsive~~
21 ~~pleading or defensive motion to a complaint brought under this~~
22 ~~section and before trial, the parties or their designated~~
23 ~~representatives shall meet in mediation to discuss the issues~~
24 ~~of liability and damages in accordance with this paragraph for~~
25 ~~the purpose of an early resolution of the matter.~~

26 ~~1. Within 60 days after the filing of the responsive~~
27 ~~pleading or defensive motion, the parties shall:~~

28 ~~a. Agree on a mediator. If the parties cannot agree on~~
29 ~~a mediator, the defendant shall immediately notify the court,~~
30 ~~which shall appoint a mediator within 10 days after such~~
31 ~~notice.~~

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- 1 ~~b. Set a date for mediation.~~
- 2 ~~c. Prepare an order for the court that identifies the~~
3 ~~mediator, the scheduled date of the mediation, and other terms~~
4 ~~of the mediation. Absent any disagreement between the parties,~~
5 ~~the court may issue the order for the mediation submitted by~~
6 ~~the parties without a hearing.~~
- 7 ~~2. The mediation must be concluded within 120 days~~
8 ~~after the filing of a responsive pleading or defensive motion.~~
9 ~~The date may be extended only by agreement of all parties~~
10 ~~subject to mediation under this subsection.~~
- 11 ~~3. The mediation shall be conducted in the following~~
12 ~~manner:~~
- 13 ~~a. Each party shall ensure that all persons necessary~~
14 ~~for complete settlement authority are present at the~~
15 ~~mediation.~~
- 16 ~~b. Each party shall mediate in good faith.~~
- 17 ~~4. All aspects of the mediation which are not~~
18 ~~specifically established by this subsection must be conducted~~
19 ~~according to the rules of practice and procedure adopted by~~
20 ~~the Supreme Court of this state.~~
- 21 ~~(b) If the parties do not settle the case pursuant to~~
22 ~~mediation, the last offer of the defendant made at mediation~~
23 ~~shall be recorded by the mediator in a written report that~~
24 ~~states the amount of the offer, the date the offer was made in~~
25 ~~writing, and the date the offer was rejected. If the matter~~
26 ~~subsequently proceeds to trial under this section and the~~
27 ~~plaintiff prevails but is awarded an amount in damages,~~
28 ~~exclusive of attorney's fees, which is equal to or less than~~
29 ~~the last offer made by the defendant at mediation, the~~
30 ~~plaintiff is not entitled to recover any attorney's fees.~~
- 31 ~~(c) This subsection applies only to claims for~~

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1 ~~liability and damages and does not apply to actions for~~
2 ~~injunctive relief.~~

3 ~~(d) This subsection applies to all causes of action~~
4 ~~that accrue on or after October 1, 1999.~~

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

10 ~~(6)(4)~~ In addition to any other standards for punitive
11 damages, any award of punitive damages must be reasonable in
12 light of the actual harm suffered by the resident and the
13 egregiousness of the conduct that caused the actual harm to
14 the resident.

15 (7) The resident or the resident's legal
16 representative shall serve a copy of any complaint alleging in
17 whole or in part a violation of any rights specified in this
18 part to the Agency for Health Care Administration at the time
19 of filing the initial complaint with the clerk of the court
20 for the county in which the action is pursued. The requirement
21 of providing a copy of the complaint to the agency does not
22 impair the resident's legal rights or ability to seek relief
23 for his or her claim.

24 Section 40. Effective May 15, 2001, and applying to
25 causes of action accruing on or after that date, section
26 400.4293, Florida Statutes, is created to read:

27 400.4293 Presuit notice; investigation; notification
28 of violation of residents' rights or alleged negligence;
29 claims evaluation procedure; informal discovery; review.--

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

31 (a) "Claim for residents' rights violation or

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1 negligence" means a negligence claim alleging injury to or the
2 death of a resident arising out of an asserted violation of
3 the rights of a resident under s. 400.428 or an asserted
4 deviation from the applicable standard of care.

5 (b) "Insurer" means any self-insurer authorized under
6 s. 627.357, liability insurance carrier, joint underwriting
7 association, or uninsured prospective defendant.

8 (2) Prior to filing a claim for a violation of a
9 resident's rights or a claim for negligence, a claimant
10 alleging injury to or the death of a resident shall notify
11 each prospective defendant by certified mail, return receipt
12 requested, of an asserted violation of a resident's rights
13 provided in s. 400.428 or deviation from the standard of care.
14 Such notification shall include an identification of the
15 rights the prospective defendant has violated and the
16 negligence alleged to have caused the incident or incidents
17 and a brief description of the injuries sustained by the
18 resident which are reasonably identifiable at the time of
19 notice. The notice shall contain a certificate of counsel that
20 counsel's reasonable investigation gave rise to a good-faith
21 belief that grounds exist for an action against each
22 prospective defendant.

23 (3)(a) No suit may be filed for a period of 75 days
24 after notice is mailed to any prospective defendant. During
25 the 75-day period, the prospective defendants or their
26 insurers shall conduct an evaluation of the claim to determine
27 the liability of each defendant and to evaluate the damages of
28 the claimants. Each defendant or insurer of the defendant
29 shall have a procedure for the prompt evaluation of claims
30 during the 75-day period. The procedure shall include one or
31 more of the following:

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1 1. Internal review by a duly qualified facility risk
2 manager or claims adjuster;

3 2. Internal review by counsel for each prospective
4 defendant;

5 3. A quality assurance committee authorized under any
6 applicable state or federal statutes or regulations; or

7 4. Any other similar procedure that fairly and
8 promptly evaluates the claims.

9
10 Each defendant or insurer of the defendant shall evaluate the
11 claim in good faith.

12 (b) At or before the end of the 75 days, the defendant
13 or insurer of the defendant shall provide the claimant with a
14 written response:

15 1. Rejecting the claim; or

16 2. Making a settlement offer.

17 (c) The response shall be delivered to the claimant if
18 not represented by counsel or to the claimant's attorney, by
19 certified mail, return receipt requested. Failure of the
20 prospective defendant or insurer of the defendant to reply to
21 the notice within 75 days after receipt shall be deemed a
22 rejection of the claim for purposes of this section.

23 (4) The notification of a violation of a resident's
24 rights or alleged negligence shall be served within the
25 applicable statute of limitations period; however, during the
26 75-day period, the statute of limitations is tolled as to all
27 prospective defendants. Upon stipulation by the parties, the
28 75-day period may be extended and the statute of limitations
29 is tolled during any such extension. Upon receiving written
30 notice by certified mail, return receipt requested, of
31 termination of negotiations in an extended period, the

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1 claimant shall have 60 days or the remainder of the period of
2 the statute of limitations, whichever is greater, within which
3 to file suit.

4 (5) No statement, discussion, written document,
5 report, or other work product generated by presuit claims
6 evaluation procedures under this section is discoverable or
7 admissible in any civil action for any purpose by the opposing
8 party. All participants, including, but not limited to,
9 physicians, investigators, witnesses, and employees or
10 associates of the defendant, are immune from civil liability
11 arising from participation in the presuit claims evaluation
12 procedure. Any licensed physician or registered nurse may be
13 retained by either party to provide an opinion regarding the
14 reasonable basis of the claim. The presuit opinions of the
15 expert are not discoverable or admissible in any civil action
16 for any purpose by the opposing party.

17 (6) Upon receipt by a prospective defendant of a
18 notice of claim, the parties shall make discoverable
19 information available without formal discovery as provided in
20 subsection (7).

21 (7) Informal discovery may be used by a party to
22 obtain unsworn statements and the production of documents or
23 things, as follows:

24 (a) Unsworn statements.--Any party may require other
25 parties to appear for the taking of an unsworn statement. Such
26 statements may be used only for the purpose of claims
27 evaluation and are not discoverable or admissible in any civil
28 action for any purpose by any party. A party seeking to take
29 the unsworn statement of any party must give reasonable notice
30 in writing to all parties. The notice must state the time and
31 place for taking the statement and the name and address of the

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1 party to be examined. Unless otherwise impractical, the
2 examination of any party must be done at the same time by all
3 other parties. Any party may be represented by counsel at the
4 taking of an unsworn statement. An unsworn statement may be
5 recorded electronically, stenographically, or on videotape.
6 The taking of unsworn statements is subject to the provisions
7 of the Florida Rules of Civil Procedure and may be terminated
8 for abuses.

9 (b) Documents or things.--Any party may request
10 discovery of relevant documents or things. The documents or
11 things must be produced, at the expense of the requesting
12 party, within 20 days after the date of receipt of the
13 request. A party is required to produce relevant and
14 discoverable documents or things within that party's
15 possession or control, if in good faith it can reasonably be
16 done within the timeframe of the claims evaluation process.

17 (8) Each request for and notice concerning informal
18 discovery pursuant to this section must be in writing, and a
19 copy thereof must be sent to all parties. Such a request or
20 notice must bear a certificate of service identifying the name
21 and address of the person to whom the request or notice is
22 served, the date of the request or notice, and the manner of
23 service thereof.

24 (9) If a prospective defendant makes a written
25 settlement offer, the claimant shall have 15 days from the
26 date of receipt to accept the offer. An offer shall be deemed
27 rejected unless accepted by delivery of a written notice of
28 acceptance.

29 (10) To the extent not inconsistent with this part,
30 the provisions of the Florida Mediation Code, Florida Rules of
31 Civil Procedure, shall be applicable to such proceedings.

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1 (11) Within 30 days after the claimant's receipt of
2 defendant's response to the claim, the parties or their
3 designated representatives shall meet in mediation to discuss
4 the issues of liability and damages in accordance with the
5 mediation rules of practice and procedures adopted by the
6 Supreme Court. Upon stipulation of the parties, this 30-day
7 period may be extended and the statute of limitations is
8 tolled during the mediation and any such extension. At the
9 conclusion of mediation the claimant shall have 60 days or the
10 remainder of the period of the statute of limitations,
11 whichever is greater, within which to file suit.

12 Section 41. Effective May 15, 2001, and applying to
13 causes of action accruing on or after that date, section
14 400.4294, Florida Statutes, is created to read:

15 400.4294 Availability of facility records for
16 investigation of resident's rights violations and defenses;
17 penalty.--

18 (1) Failure to provide complete copies of a resident's
19 records, including, but not limited to, all medical records
20 and the resident's chart, within the control or possession of
21 the facility within 10 days, in accordance with the provisions
22 of s. 400.145, shall constitute evidence of failure of that
23 party to comply with good-faith discovery requirements and
24 shall waive the good-faith certificate and presuit notice
25 requirements under this part by the requesting party.

26 (2) No facility shall be held liable for any civil
27 damages as a result of complying with this section.

28 Section 42. Effective May 15, 2001, and applying to
29 causes of action accruing on or after that date, section
30 400.4295, Florida Statutes, is created to read:

31 400.4295 Certain provisions not applicable to actions

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1 under this part.--An action under this part for a violation of
2 rights or negligence recognized herein is not a claim for
3 medical malpractice, and the provisions of s. 768.21(8) do not
4 apply to a claim alleging death of the resident.

5 Section 43. Effective May 15, 2001, section 400.4296,
6 Florida Statutes, is created to read:

7 400.4296 Statute of limitations.--

8 (1) Any action for damages brought under this part
9 shall be commenced within 2 years from the time the incident
10 giving rise to the action occurred or within 2 years from the
11 time the incident is discovered, or should have been
12 discovered with the exercise of due diligence; however, in no
13 event shall the action be commenced later than 4 years from
14 the date of the incident or occurrence out of which the cause
15 of action accrued.

16 (2) In those actions covered by this subsection in
17 which it can be shown that fraudulent concealment or
18 intentional misrepresentation of fact prevented the discovery
19 of the injury, the period of limitations is extended forward 2
20 years from the time that the injury is discovered with the
21 exercise of due diligence, but in no event not more than 6
22 years from the date the incident giving rise to the injury
23 occurred.

24 (3) This section shall apply to causes of action that
25 have accrued prior to the effective date of this section;
26 however, any such cause of action that would not have been
27 barred under prior law may be brought within the time allowed
28 by prior law or within 2 years after the effective date of
29 this section, whichever is earlier, and will be barred
30 thereafter. In actions where it can be shown that fraudulent
31 concealment or intentional misrepresentation of fact prevented

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1 the discovery of the injury, the period of limitations is
2 extended forward 2 years from the time that the injury is
3 discovered with the exercise of due diligence, but in no event
4 more than 4 years from the effective date of this section.

5 Section 44. Section 400.4297, Florida Statutes, is
6 created to read:

7 400.4297 Punitive damages; pleading; burden of
8 proof.--

9 (1) In any action for damages brought under this part,
10 no claim for punitive damages shall be permitted unless there
11 is a reasonable showing by evidence in the record or proffered
12 by the claimant which would provide a reasonable basis for
13 recovery of such damages. The claimant may move to amend her
14 or his complaint to assert a claim for punitive damages as
15 allowed by the rules of civil procedure. The rules of civil
16 procedure shall be liberally construed so as to allow the
17 claimant discovery of evidence which appears reasonably
18 calculated to lead to admissible evidence on the issue of
19 punitive damages. No discovery of financial worth shall
20 proceed until after the pleading concerning punitive damages
21 is permitted.

22 (2) A defendant may be held liable for punitive
23 damages only if the trier of fact, based on clear and
24 convincing evidence, finds that the defendant was personally
25 guilty of intentional misconduct or gross negligence. As used
26 in this section, the term:

27 (a) "Intentional misconduct" means that the defendant
28 had actual knowledge of the wrongfulness of the conduct and
29 the high probability that injury or damage to the claimant
30 would result and, despite that knowledge, intentionally
31 pursued that course of conduct, resulting in injury or damage.

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1 (b) "Gross negligence" means that the defendant's
2 conduct was so reckless or wanting in care that it constituted
3 a conscious disregard or indifference to the life, safety, or
4 rights of persons exposed to such conduct.

5 (3) In the case of an employer, principal,
6 corporation, or other legal entity, punitive damages may be
7 imposed for the conduct of an employee or agent only if the
8 conduct of the employee or agent meets the criteria specified
9 in subsection (2) and:

10 (a) The employer, principal, corporation, or other
11 legal entity actively and knowingly participated in such
12 conduct;

13 (b) The officers, directors, or managers of the
14 employer, principal, corporation, or other legal entity
15 condoned, ratified, or consented to such conduct; or

16 (c) The employer, principal, corporation, or other
17 legal entity engaged in conduct that constituted gross
18 negligence and that contributed to the loss, damages, or
19 injury suffered by the claimant.

20 (4) The plaintiff must establish at trial, by clear
21 and convincing evidence, its entitlement to an award of
22 punitive damages. The "greater weight of the evidence" burden
23 of proof applies to a determination of the amount of damages.

24 (5) This section is remedial in nature and shall take
25 effect upon becoming a law.

26 Section 45. Section 400.4298, Florida Statutes, is
27 created to read:

28 400.4298 Punitive damages; limitation.--

29 (1)(a) Except as provided in paragraphs (b) and (c),
30 an award of punitive damages may not exceed the greater of:

31 1. Three times the amount of compensatory damages

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1 awarded to each claimant entitled thereto, consistent with the
2 remaining provisions of this section; or
3 2. The sum of \$1 million.
4 (b) Where the fact finder determines that the wrongful
5 conduct proven under this section was motivated primarily by
6 unreasonable financial gain and determines that the
7 unreasonably dangerous nature of the conduct, together with
8 the high likelihood of injury resulting from the conduct, was
9 actually known by the managing agent, director, officer, or
10 other person responsible for making policy decisions on behalf
11 of the defendant, it may award an amount of punitive damages
12 not to exceed the greater of:
13 1. Four times the amount of compensatory damages
14 awarded to each claimant entitled thereto, consistent with the
15 remaining provisions of this section; or
16 2. The sum of \$4 million.
17 (c) Where the fact finder determines that at the time
18 of injury the defendant had a specific intent to harm the
19 claimant and determines that the defendant's conduct did in
20 fact harm the claimant, there shall be no cap on punitive
21 damages.
22 (d) This subsection is not intended to prohibit an
23 appropriate court from exercising its jurisdiction under s.
24 768.74 in determining the reasonableness of an award of
25 punitive damages that is less than three times the amount of
26 compensatory damages.
27 (e) In any case in which the findings of fact support
28 an award of punitive damages pursuant to paragraph (b) or
29 paragraph (c), the clerk of the court shall refer the case to
30 the appropriate law enforcement agencies, to the state
31 attorney in the circuit where the long-term care facility that

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1 is the subject of the underlying civil cause of action is
2 located, and, for multijurisdictional facility owners, to the
3 Office of the Statewide Prosecutor; and such agencies, state
4 attorney, or Office of the Statewide Prosecutor shall initiate
5 a criminal investigation into the conduct giving rise to the
6 award of punitive damages. All findings by the trier of fact
7 which support an award of punitive damages under this
8 paragraph shall be admissible as evidence in any subsequent
9 civil or criminal proceeding relating to the acts giving rise
10 to the award of punitive damages under this paragraph.

11 (2) The claimant's attorney's fees, if payable from
12 the judgment, are, to the extent that the fees are based on
13 the punitive damages, calculated based on the final judgment
14 for punitive damages. This subsection does not limit the
15 payment of attorney's fees based upon an award of damages
16 other than punitive damages.

17 (3) The jury may neither be instructed nor informed as
18 to the provisions of this section.

19 (4) Notwithstanding any other law to the contrary, the
20 amount of punitive damages awarded pursuant to this section
21 shall be equally divided between the claimant and the Quality
22 of Long-Term Care Facility Improvement Trust Fund, in
23 accordance with the following provisions:

24 (a) The clerk of the court shall transmit a copy of
25 the jury verdict to the State Treasurer by certified mail. In
26 the final judgment the court shall order the percentages of
27 the award, payable as provided herein.

28 (b) A settlement agreement entered into between the
29 original parties to the action after a verdict has been
30 returned must provide a proportionate share payable to the
31 Quality of Long-Term Care Facility Improvement Trust Fund

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1 specified herein. For purposes of this paragraph, a
2 proportionate share is a 50-percent share of that percentage
3 of the settlement amount which the punitive damages portion of
4 the verdict bore to the total of the compensatory and punitive
5 damages in the verdict.

6 (c) The Department of Banking and Finance shall
7 collect or cause to be collected all payments due the state
8 under this section. Such payments are made to the Comptroller
9 and deposited in the appropriate fund specified in this
10 subsection.

11 (d) If the full amount of punitive damages awarded
12 cannot be collected, the claimant and the other recipient
13 designated pursuant to this subsection are each entitled to a
14 proportionate share of the punitive damages collected.

15 (5) This section is remedial in nature and shall take
16 effect upon becoming a law.

17 Section 46. Section 400.434, Florida Statutes, is
18 amended to read:

19 400.434 Right of entry and inspection.--Any duly
20 designated officer or employee of the department, the
21 Department of Children and Family Services, the agency, the
22 state or local fire marshal, or a member of the state or local
23 long-term care ombudsman council shall have the right to enter
24 unannounced upon and into the premises of any facility
25 licensed pursuant to this part in order to determine the state
26 of compliance with the provisions of this part and of rules or
27 standards in force pursuant thereto. The right of entry and
28 inspection shall also extend to any premises which the agency
29 has reason to believe is being operated or maintained as a
30 facility without a license; but no such entry or inspection of
31 any premises may be made without the permission of the owner

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1 or person in charge thereof, unless a warrant is first
2 obtained from the circuit court authorizing such entry. The
3 warrant requirement shall extend only to a facility which the
4 agency has reason to believe is being operated or maintained
5 as a facility without a license. Any application for a
6 license or renewal thereof made pursuant to this part shall
7 constitute permission for, and complete acquiescence in, any
8 entry or inspection of the premises for which the license is
9 sought, in order to facilitate verification of the information
10 submitted on or in connection with the application; to
11 discover, investigate, and determine the existence of abuse or
12 neglect; or to elicit, receive, respond to, and resolve
13 complaints. Any current valid license shall constitute
14 unconditional permission for, and complete acquiescence in,
15 any entry or inspection of the premises by authorized
16 personnel. The agency shall retain the right of entry and
17 inspection of facilities that have had a license revoked or
18 suspended within the previous 24 months, to ensure that the
19 facility is not operating unlawfully. However, before entering
20 the facility, a statement of probable cause must be filed with
21 the director of the agency, who must approve or disapprove the
22 action within 48 hours. Probable cause shall include, but is
23 not limited to, evidence that the facility holds itself out to
24 the public as a provider of personal care services or the
25 receipt of a complaint by the long-term care ombudsman council
26 about the facility. Data collected by the state or local
27 long-term care ombudsman councils or the state or local
28 advocacy councils may be used by the agency in investigations
29 involving violations of regulatory standards.

30 Section 47. Paragraph (h) of subsection (1) and
31 subsection (4) of section 400.441, Florida Statutes, are

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1 amended to read:

2 400.441 Rules establishing standards.--

3 (1) It is the intent of the Legislature that rules
4 published and enforced pursuant to this section shall include
5 criteria by which a reasonable and consistent quality of
6 resident care and quality of life may be ensured and the
7 results of such resident care may be demonstrated. Such rules
8 shall also ensure a safe and sanitary environment that is
9 residential and noninstitutional in design or nature. It is
10 further intended that reasonable efforts be made to
11 accommodate the needs and preferences of residents to enhance
12 the quality of life in a facility. In order to provide safe
13 and sanitary facilities and the highest quality of resident
14 care accommodating the needs and preferences of residents, the
15 department, in consultation with the agency, the Department of
16 Children and Family Services, and the Department of Health,
17 shall adopt rules, policies, and procedures to administer this
18 part, which must include reasonable and fair minimum standards
19 in relation to:

20 (h) The care and maintenance of residents, which must
21 include, but is not limited to:

- 22 1. The supervision of residents;
- 23 2. The provision of personal services;
- 24 3. The provision of, or arrangement for, social and
25 leisure activities;
- 26 4. The arrangement for appointments and transportation
27 to appropriate medical, dental, nursing, or mental health
28 services, as needed by residents;
- 29 5. The management of medication;
- 30 6. The nutritional needs of residents; ~~and~~
- 31 7. Resident records; ~~and-~~

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1 8. Internal risk management and quality assurance.

2 (4) The agency may use an abbreviated biennial
3 standard licensure inspection that ~~which~~ consists of a review
4 of key quality-of-care standards in lieu of a full inspection
5 in facilities which have a good record of past performance.
6 However, a full inspection shall be conducted in facilities
7 which have had a history of class I or class II violations,
8 uncorrected class III violations, confirmed ombudsman council
9 complaints, or confirmed licensure complaints, within the
10 previous licensure period immediately preceding the inspection
11 or when a potentially serious problem is identified during the
12 abbreviated inspection. The agency, in consultation with the
13 department, shall develop the key quality-of-care standards
14 with input from the State Long-Term Care Ombudsman Council and
15 representatives of provider groups for incorporation into its
16 rules. ~~Beginning on or before March 1, 1991,~~The department,
17 in consultation with the agency, shall report annually to the
18 Legislature concerning its implementation of this subsection.
19 The report shall include, at a minimum, the key
20 quality-of-care standards which have been developed; the
21 number of facilities identified as being eligible for the
22 abbreviated inspection; the number of facilities which have
23 received the abbreviated inspection and, of those, the number
24 that were converted to full inspection; the number and type of
25 subsequent complaints received by the agency or department on
26 facilities which have had abbreviated inspections; any
27 recommendations for modification to this subsection; any plans
28 by the agency to modify its implementation of this subsection;
29 and any other information which the department believes should
30 be reported.

31 Section 48. Section 400.449, Florida Statutes, is

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1 created to read:

2 400.449 Resident records; penalties for alteration.--

3 (1) Any person who fraudulently alters, defaces, or
4 falsifies any medical or other record of an assisted living
5 facility, or causes or procures any such offense to be
6 committed, commits a misdemeanor of the second degree,
7 punishable as provided in s. 775.082 or s. 775.083.

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

11 Section 49. Paragraph (b) of subsection (2) of section
12 409.908, Florida Statutes, is amended and subsection (22) is
13 added to that section, to read:

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

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1 availability of moneys and any limitations or directions
2 provided for in the General Appropriations Act, provided the
3 adjustment is consistent with legislative intent.

4 (2)

5 (b) Subject to any limitations or directions provided
6 for in the General Appropriations Act, the agency shall
7 establish and implement a Florida Title XIX Long-Term Care
8 Reimbursement Plan (Medicaid) for nursing home care in order
9 to provide care and services in conformance with the
10 applicable state and federal laws, rules, regulations, and
11 quality and safety standards and to ensure that individuals
12 eligible for medical assistance have reasonable geographic
13 access to such care.

14 1. Changes of ownership or of licensed operator do not
15 qualify for increases in reimbursement rates associated with
16 the change of ownership or of licensed operator. The agency
17 shall amend the Title XIX Long Term Care Reimbursement Plan to
18 provide that the initial nursing home reimbursement rates, for
19 the operating, patient care, and MAR components, associated
20 with related and unrelated party changes of ownership or
21 licensed operator filed on or after September 1, 2001, are
22 equivalent to the previous owner's reimbursement rate.

23 2. The agency shall amend the long-term care
24 reimbursement plan and cost reporting system to create direct
25 care and indirect care subcomponents of the patient care
26 component of the per diem rate. These two subcomponents
27 together shall equal the patient care component of the per
28 diem rate. Separate cost-based ceilings shall be calculated
29 for each patient care subcomponent. The direct care
30 subcomponent of the per diem rate shall be limited by the
31 cost-based class ceiling and the indirect care subcomponent

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1 shall be limited by the lower of the cost-based class ceiling,
2 by the target rate class ceiling or by the individual provider
3 target. The agency shall adjust the patient care component
4 effective January 1, 2002. The cost to adjust the direct care
5 subcomponent shall be net of the total funds previously
6 allocated for the case mix add-on. The agency shall make the
7 required changes to the nursing home cost reporting forms to
8 implement this requirement effective January 1, 2002.

9 3. The direct care subcomponent shall include salaries
10 and benefits of direct care staff providing nursing services
11 including registered nurses, licensed practical nurses, and
12 certified nursing assistants who deliver care directly to
13 residents in the nursing home facility. This excludes nursing
14 administration, MDS, and care plan coordinators, staff
15 development, and staffing coordinator.

16 4. All other patient care costs shall be included in
17 the indirect care cost subcomponent of the patient care per
18 diem rate. There shall be no costs directly or indirectly
19 allocated to the direct care subcomponent from a home office
20 or management company.

21 5. On July 1 of each year, the agency shall report to
22 the Legislature direct and indirect care costs, including
23 average direct and indirect care costs per resident per
24 facility and direct care and indirect care salaries and
25 benefits per category of staff member per facility.

26 6. Under the plan, interim rate adjustments shall not
27 be granted to reflect increases in the cost of general or
28 professional liability insurance for nursing homes unless the
29 following criteria are met: have at least a 65 percent
30 Medicaid utilization in the most recent cost report submitted
31 to the agency, and the increase in general or professional

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

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1 ~~more adequately cover the cost of services provided in the~~
2 ~~patient's care component. The agency shall work with the~~
3 ~~Department of Elderly Affairs, the Florida Health Care~~
4 ~~Association, and the Florida Association of Homes for the~~
5 ~~Aging in developing the methodology.~~

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

19 (22) The agency shall request and implement Medicaid
20 waivers from the federal Health Care Financing Administration
21 to advance and treat a portion of the Medicaid nursing home
22 per diem as capital for creating and operating a
23 risk-retention group for self-insurance purposes, consistent
24 with federal and state laws and rules.

25 Section 50. Section 464.203, Florida Statutes, is
26 amended to read:

27 464.203 Certified nursing assistants; certification
28 requirement.--

29 (1) The board shall issue a certificate to practice as
30 a certified nursing assistant to any person who demonstrates a
31 minimum competency to read and write and successfully passes

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1 the required Level I or Level II screening pursuant to s.
2 400.215 and meets one of the following requirements:

3 (a) Has successfully completed an approved training
4 program and achieved a minimum score, established by rule of
5 the board, on the nursing assistant competency examination,
6 which consists of a written portion and skills-demonstration
7 portion approved by the board and administered at a site and
8 by personnel approved by the department.

9 (b) Has achieved a minimum score, established by rule
10 of the board, on the nursing assistant competency examination,
11 which consists of a written portion and skills-demonstration
12 portion, approved by the board and administered at a site and
13 by personnel approved by the department and:

- 14 1. Has a high school diploma, or its equivalent; or
15 2. Is at least 18 years of age.

16 (c) Is currently certified in another state; is listed
17 on that state's certified nursing assistant registry; and has
18 not been found to have committed abuse, neglect, or
19 exploitation in that state.

20 (d) Has completed the curriculum developed under the
21 Enterprise Florida Jobs and Education Partnership Grant and
22 achieved a minimum score, established by rule of the board, on
23 the nursing assistant competency examination, which consists
24 of a written portion and skills-demonstration portion,
25 approved by the board and administered at a site and by
26 personnel approved by the department.

27 (2) If an applicant fails to pass the nursing
28 assistant competency examination in three attempts, the
29 applicant is not eligible for reexamination unless the
30 applicant completes an approved training program.

31 (3) An oral examination shall be administered as a

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1 substitute for the written portion of the examination upon
2 request. The oral examination shall be administered at a site
3 and by personnel approved by the department.

4 (4) The board shall adopt rules to provide for the
5 initial certification of certified nursing assistants.

6 (5) Certification as a nursing assistant, in
7 accordance with this part, continues in effect until such time
8 as the nursing assistant allows a period of 24 consecutive
9 months to pass during which period the nursing assistant fails
10 to perform any nursing-related services for monetary
11 compensation. When a nursing assistant fails to perform any
12 nursing-related services for monetary compensation for a
13 period of 24 consecutive months, the nursing assistant must
14 complete a new training and competency evaluation program or a
15 new competency evaluation program.

16 (6)(5) A certified nursing assistant shall maintain a
17 current address with the board in accordance with s. 456.035.

18 (7) A certified nursing assistant shall complete 18
19 hours of inservice training during each calendar year. The
20 certified nursing assistant shall be responsible for
21 maintaining documentation demonstrating compliance with these
22 provisions. The Council on Certified Nursing Assistants, in
23 accordance with s. 464.0285(2)(b), shall propose rules to
24 implement this subsection.

25 Section 51. Subsection (2) of section 397.405, Florida
26 Statutes, is amended to read:

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

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

31

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

17 Section 52. 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 sheltered nursing

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1 home beds in a continuing care retirement community certified
2 by the Department of Insurance pursuant to chapter 651,
3 Florida Statutes.

4 Section 53. Subsections (3) and (8) of section
5 400.0255, Florida Statutes, as amended by section 138 of
6 chapter 2000-349, section 3 of chapter 2000-350, and section
7 58 of chapter 2000-367, Laws of Florida, are reenacted to
8 read:

9 400.0255 Resident transfer or discharge; requirements
10 and procedures; hearings.--

11 (3) When a discharge or transfer is initiated by the
12 nursing home, the nursing home administrator employed by the
13 nursing home that is discharging or transferring the resident,
14 or an individual employed by the nursing home who is
15 designated by the nursing home administrator to act on behalf
16 of the administration, must sign the notice of discharge or
17 transfer. Any notice indicating a medical reason for transfer
18 or discharge must either be signed by the resident's attending
19 physician or the medical director of the facility, or include
20 an attached written order for the discharge or transfer. The
21 notice or the order must be signed by the resident's
22 physician, medical director, treating physician, nurse
23 practitioner, or physician assistant.

24 (8) The notice required by subsection (7) must be in
25 writing and must contain all information required by state and
26 federal law, rules, or regulations applicable to Medicaid or
27 Medicare cases. The agency shall develop a standard document
28 to be used by all facilities licensed under this part for
29 purposes of notifying residents of a discharge or transfer.
30 Such document must include a means for a resident to request
31 the local long-term care ombudsman council to review the

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1 notice and request information about or assistance with
2 initiating a fair hearing with the department's Office of
3 Appeals Hearings. In addition to any other pertinent
4 information included, the form shall specify the reason
5 allowed under federal or state law that the resident is being
6 discharged or transferred, with an explanation to support this
7 action. Further, the form shall state the effective date of
8 the discharge or transfer and the location to which the
9 resident is being discharged or transferred. The form shall
10 clearly describe the resident's appeal rights and the
11 procedures for filing an appeal, including the right to
12 request the local ombudsman council to review the notice of
13 discharge or transfer. A copy of the notice must be placed in
14 the resident's clinical record, and a copy must be transmitted
15 to the resident's legal guardian or representative and to the
16 local ombudsman council within 5 business days after signature
17 by the resident or resident designee.

18 Section 54. Subsection (5) of section 400.23, Florida
19 Statutes, as amended by section 6 of chapter 2000-350, Laws of
20 Florida, is reenacted to read:

21 400.23 Rules; evaluation and deficiencies; licensure
22 status.--

23 (5) The agency, in collaboration with the Division of
24 Children's Medical Services of the Department of Health, must,
25 no later than December 31, 1993, adopt rules for minimum
26 standards of care for persons under 21 years of age who reside
27 in nursing home facilities. The rules must include a
28 methodology for reviewing a nursing home facility under ss.
29 408.031-408.045 which serves only persons under 21 years of
30 age. A facility may be exempt from these standards for
31 specific persons between 18 and 21 years of age, if the

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1 person's physician agrees that minimum standards of care based
2 on age are not necessary.

3 Section 55. Subsection (2) of section 400.191, Florida
4 Statutes, as amended by section 5 of chapter 2000-350, Laws of
5 Florida, and subsection (6) of that section, as created by
6 section 5 of chapter 2000-350, Laws of Florida, are reenacted
7 to read:

8 400.191 Availability, distribution, and posting of
9 reports and records.--

10 (2) The agency shall provide additional information in
11 consumer-friendly printed and electronic formats to assist
12 consumers and their families in comparing and evaluating
13 nursing home facilities.

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

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

20 2. Whether such nursing home facilities are
21 proprietary or nonproprietary.

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

24 4. The name of the owner or owners of each facility
25 and whether the facility is affiliated with a company or other
26 organization owning or managing more than one nursing facility
27 in this state.

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

29 6. The number of private and semiprivate rooms in each
30 facility.

31 7. The religious affiliation, if any, of each

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1 facility.

2 8. The languages spoken by the administrator and staff
3 of each facility.

4 9. Whether or not each facility accepts Medicare or
5 Medicaid recipients or insurance, health maintenance
6 organization, Veterans Administration, CHAMPUS program, or
7 workers' compensation coverage.

8 10. Recreational and other programs available at each
9 facility.

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

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

15 13. The results of consumer and family satisfaction
16 surveys for each facility, as described in s. 400.0225. The
17 results may be converted to a score or scores, which may be
18 presented in either numeric or symbolic form for the intended
19 consumer audience.

20 14. Survey and deficiency information contained on the
21 Online Survey Certification and Reporting (OSCAR) system of
22 the federal Health Care Financing Administration, including
23 annual survey, revisit, and complaint survey information, for
24 each facility for the past 45 months. For noncertified
25 nursing homes, state survey and deficiency information,
26 including annual survey, revisit, and complaint survey
27 information for the past 45 months shall be provided.

28 15. A summary of the Online Survey Certification and
29 Reporting (OSCAR) data for each facility over the past 45
30 months. Such summary may include a score, rating, or
31 comparison ranking with respect to other facilities based on

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1 the number of citations received by the facility of annual,
2 revisit, and complaint surveys; the severity and scope of the
3 citations; and the number of annual recertification surveys
4 the facility has had during the past 45 months. The score,
5 rating, or comparison ranking may be presented in either
6 numeric or symbolic form for the intended consumer audience.

7 (b) The agency shall provide the following information
8 in printed form:

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

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

13 3. The current owner or owners of the facility's
14 license and the year that entity became the owner of the
15 license.

16 4. The total number of beds, and of private and
17 semiprivate rooms, in each facility.

18 5. The religious affiliation, if any, of each
19 facility.

20 6. The name of the owner of each facility and whether
21 the facility is affiliated with a company or other
22 organization owning or managing more than one nursing facility
23 in this state.

24 7. The languages spoken by the administrator and staff
25 of each facility.

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

30 9. Recreational programs, special care units, and
31 other programs available at each facility.

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1 10. The results of consumer and family satisfaction
2 surveys for each facility, as described in s. 400.0225. The
3 results may be converted to a score or scores, which may be
4 presented in either numeric or symbolic form for the intended
5 consumer audience.

6 11. The Internet address for the site where more
7 detailed information can be seen.

8 12. A statement advising consumers that each facility
9 will have its own policies and procedures related to
10 protecting resident property.

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

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

26 (d) The agency may provide the following additional
27 information on an Internet site or in printed form as the
28 information becomes available:

- 29 1. The licensure status history of each facility.
30 2. The rating history of each facility.
31 3. The regulatory history of each facility, which may

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1 include federal sanctions, state sanctions, federal fines,
2 state fines, and other actions.

3 4. Whether the facility currently possesses the Gold
4 Seal designation awarded pursuant to s. 400.235.

5 5. Internet links to the Internet sites of the
6 facilities or their affiliates.

7 (6) The agency may adopt rules as necessary to
8 administer this section.

9 Section 56. Section 400.0225, Florida Statutes, as
10 amended by section 2 of chapter 2000-350, Laws of Florida, is
11 reenacted to read:

12 400.0225 Consumer satisfaction surveys.--The agency,
13 or its contractor, in consultation with the nursing home
14 industry and consumer representatives, shall develop an
15 easy-to-use consumer satisfaction survey, shall ensure that
16 every nursing facility licensed pursuant to this part
17 participates in assessing consumer satisfaction, and shall
18 establish procedures to ensure that, at least annually, a
19 representative sample of residents of each facility is
20 selected to participate in the survey. The sample shall be of
21 sufficient size to allow comparisons between and among
22 facilities. Family members, guardians, or other resident
23 designees may assist the resident in completing the survey.
24 Employees and volunteers of the nursing facility or of a
25 corporation or business entity with an ownership interest in
26 the facility are prohibited from assisting a resident with or
27 attempting to influence a resident's responses to the consumer
28 satisfaction survey. The agency, or its contractor, shall
29 survey family members, guardians, or other resident designees.
30 The agency, or its contractor, shall specify the protocol for
31 conducting and reporting the consumer satisfaction surveys.

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1 Reports of consumer satisfaction surveys shall protect the
2 identity of individual respondents. The agency shall contract
3 for consumer satisfaction surveys and report the results of
4 those surveys in the consumer information materials prepared
5 and distributed by the agency. The agency may adopt rules as
6 necessary to administer this section.

7 Section 57. Subsections (4) and (5) of section
8 400.141, Florida Statutes, as renumbered and amended by
9 section 4 of chapter 2000-350, Laws of Florida, are reenacted
10 to read:

11 400.141 Administration and management of nursing home
12 facilities.--Every licensed facility shall comply with all
13 applicable standards and rules of the agency and shall:

14 (4) Provide for resident use of a community pharmacy
15 as specified in s. 400.022(1)(q). Any other law to the
16 contrary notwithstanding, a registered pharmacist licensed in
17 Florida, that is under contract with a facility licensed under
18 this chapter, shall repackage a nursing facility resident's
19 bulk prescription medication which has been packaged by
20 another pharmacist licensed in any state in the United States
21 into a unit dose system compatible with the system used by the
22 nursing facility, if the pharmacist is requested to offer such
23 service. To be eligible for repackaging, a resident or the
24 resident's spouse must receive prescription medication
25 benefits provided through a former employer as part of his or
26 her retirement benefits a qualified pension plan as specified
27 in s. 4972 of the Internal Revenue Code, a federal retirement
28 program as specified under 5 C.F.R. s. 831, or a long-term
29 care policy as defined in s. 627.9404(1). A pharmacist who
30 correctly repackages and relabels the medication and the
31 nursing facility which correctly administers such repackaged

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1 medication under the provisions of this subsection shall not
2 be held liable in any civil or administrative action arising
3 from the repackaging. In order to be eligible for the
4 repackaging, a nursing facility resident for whom the
5 medication is to be repackaged shall sign an informed consent
6 form provided by the facility which includes an explanation of
7 the repackaging process and which notifies the resident of the
8 immunities from liability provided herein. A pharmacist who
9 repackages and relabels prescription medications, as
10 authorized under this subsection, may charge a reasonable fee
11 for costs resulting from the implementation of this provision.

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

24
25 Facilities that have been awarded a Gold Seal under the
26 program established in s. 400.235 may develop a plan to
27 provide certified nursing assistant training as prescribed by
28 federal regulations and state rules and may apply to the
29 agency for approval of its program.

30 Section 58. Paragraph (a) of subsection (3) and
31 subsection (4) of section 400.235, Florida Statutes, as

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1 amended by section 12 of chapter 2000-305 and section 7 of
2 chapter 2000-350, Laws of Florida, and subsection (9) of
3 section 400.235, Florida Statutes, as created by section 7 of
4 chapter 2000-350, Laws of Florida, are reenacted to read:

5 400.235 Nursing home quality and licensure status;
6 Gold Seal Program.--

7 (3)(a) The Gold Seal Program shall be developed and
8 implemented by the Governor's Panel on Excellence in Long-Term
9 Care which shall operate under the authority of the Executive
10 Office of the Governor. The panel shall be composed of three
11 persons appointed by the Governor, to include a consumer
12 advocate for senior citizens and two persons with expertise in
13 the fields of quality management, service delivery excellence,
14 or public sector accountability; three persons appointed by
15 the Secretary of Elderly Affairs, to include an active member
16 of a nursing facility family and resident care council and a
17 member of the University Consortium on Aging; the State
18 Long-Term Care Ombudsman; one person appointed by the Florida
19 Life Care Residents Association; one person appointed by the
20 Secretary of Health; two persons appointed by the Secretary of
21 Health Care Administration; one person appointed by the
22 Florida Association of Homes for the Aging; and one person
23 appointed by the Florida Health Care Association. Vacancies on
24 the panel shall be filled in the same manner as the original
25 appointments.

26 (4) The panel shall consider the quality of care
27 provided to residents when evaluating a facility for the Gold
28 Seal Program. The panel shall determine the procedure or
29 procedures for measuring the quality of care.

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

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1 Section 59. Subsection (1) of section 400.962, Florida
2 Statutes, as amended by section 8 of chapter 2000-350, Laws of
3 Florida, is reenacted to read:

4 400.962 License required; license application.--
5 (1) It is unlawful to operate an intermediate care
6 facility for the developmentally disabled without a license.

7 Section 60. Section 10 of chapter 2000-350, Laws of
8 Florida, is reenacted to read:

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

25 Section 61. Paragraph (g) is added to subsection (1)
26 of section 400.562, Florida Statutes, to read:

27 400.562 Rules establishing standards.--
28 (1) The Department of Elderly Affairs, in conjunction
29 with the agency, shall adopt rules to implement the provisions
30 of this part. The rules must include reasonable and fair
31 standards. Any conflict between these standards and those that

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1 may be set forth in local, county, or municipal ordinances
2 shall be resolved in favor of those having statewide effect.
3 Such standards must relate to:

4 (g) Components of a comprehensive emergency management
5 plan, developed in consultation with the Department of Health,
6 the Agency for Health Care Administration, and the Department
7 of Community Affairs.

8 Section 62. Notwithstanding any other provision of
9 this act to the contrary, sections 400.0237, 400.0238,
10 400.4297, 400.4298, Florida Statutes, as created by this act,
11 and section 768.735, Florida Statutes, as amended by this act,
12 shall become effective May 15, 2001; shall apply to causes of
13 action accruing on or after May 15, 2001; and shall be applied
14 retroactively to causes of action accruing before May 15,
15 2001, for which no case has been filed prior to October 5,
16 2001.

17 Section 63. The Agency for Health Care Administration
18 shall develop by October 31, 2001, a standard chart of
19 accounts to govern the content and manner of presentation of
20 financial information to be submitted by Medicaid long-term
21 care providers in their cost reports. The Auditor General
22 shall approve the standard chart of accounts developed by the
23 Agency for Health Care Administration not later than December
24 31, 2001. The agency shall amend the Florida Title XIX
25 Long-Term Care Reimbursement Plan to incorporate this standard
26 chart of accounts and shall implement use of this standard
27 chart of accounts effective for cost reports filed for the
28 periods ending on or after December 31, 2002. The standard
29 chart of accounts shall include specific accounts for each
30 component of direct care staff by type of personnel and may
31 not be revised without the written consent of the Auditor

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1 General.

2 Section 64. The Agency for Health Care Administration
3 shall amend the Medicaid Title XIX Long-Term Care
4 Reimbursement Plan effective December 31, 2001, to include the
5 following provisions:

6 (1) Effective with nursing facility cost reports filed
7 for periods ending on or after December 31, 2002, the cost
8 report shall contain detailed information on the salary,
9 benefits, agency, and overtime costs and corresponding hours
10 for direct care staffing for registered nurses, licensed
11 practical nurses, and certified nursing assistants.

12 (2) Effective for cost reports filed for periods
13 ending on or after December 31, 2003, the cost reports shall
14 be submitted electronically in a format and manner prescribed
15 by the agency.

16 Section 65. The Office of State Long-Term Care
17 Ombudsman shall be responsible for the cost of leasing its own
18 office space, but shall not be colocated with the headquarters
19 office of the Department of Elderly Affairs.

20 Section 66. The Agency for Health Care Administration
21 shall not take any administrative action to enforce the
22 requirement that nursing home facilities and assisted living
23 facilities maintain liability insurance until after January 1,
24 2002.

25 Section 67. The sum of \$5,602,460 is appropriated from
26 the Health Care Trust Fund to the Agency for Health Care
27 Administration and 79 positions are authorized for the purpose
28 of implementing the provisions of this act during the
29 2001-2002 fiscal year.

30 Section 68. The sum of \$948,782 is appropriated from
31 the General Revenue Fund to the Department of Elderly Affairs

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1 for the purpose of paying the salaries and other
2 administrative expenses of the Office of State Long-Term Care
3 Ombudsman to carry out the provisions of this act during the
4 2001-2002 fiscal year.

5 Section 69. If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 invalidity does not affect other provisions or applications of
8 the act which can be given effect without the invalid
9 provision or application, and to this end the provisions of
10 this act are severable.

11 Section 70. Except as otherwise expressly provided in
12 this act, this act shall take effect upon becoming a law.

13
14

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

16 And the title is amended as follows:

17 On page 129, line 15, through page 139, line 28, delete
18 those lines

19

20 and insert:

21

A bill to be entitled

22

An act relating to long-term care; amending s.

23

400.0073, F.S.; clarifying duties of the local

24

ombudsman councils with respect to inspections

25

of nursing homes and long-term care facilities;

26

amending s. 400.021, F.S.; defining the terms

27

"controlling interest" and "voluntary board

28

member" and revising the definition of

29

"resident care plan" for purposes of part II of

30

ch. 400, F.S., relating to the regulation of

31

nursing homes; requiring the Agency for Health

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1 Care Administration and the Office of the
2 Attorney General to study the use of electronic
3 monitoring devices in nursing homes; requiring
4 a report; amending s. 400.023, F.S.; providing
5 for election of survival damages, wrongful
6 death damages, or recovery for negligence;
7 providing for attorney's fees for injunctive
8 relief or administrative remedy; providing that
9 ch. 766, F.S., does not apply to actions under
10 this section; providing burden of proof;
11 providing that a violation of a right is not
12 negligence per se; prescribing the duty of
13 care; prescribing a nurse's duty of care;
14 eliminating presuit provisions; eliminating the
15 requirement for presuit mediation; creating s.
16 400.0233, F.S.; providing for presuit notice;
17 prohibiting the filing of suit for a specified
18 time; requiring a response to the notice;
19 tolling the statute of limitations; limiting
20 discovery of presuit investigation documents;
21 limiting liability of presuit investigation
22 participants; authorizing the obtaining of
23 opinions from a nurse or doctor; authorizing
24 the obtaining of unsworn statements;
25 authorizing discovery of relevant documents;
26 prescribing the time for acceptance of
27 settlement offers; requiring mediation;
28 prescribing the time to file suit; creating s.
29 400.0234, F.S.; requiring the availability of
30 facility records for presuit investigation;
31 specifying the records to be made available;

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1 specifying what constitutes evidence of failure
2 to make records available in good faith;
3 specifying the consequences of such failure;
4 creating s. 400.0235, F.S.; providing that the
5 provisions of s. 768.21(8), F.S., do not apply
6 to actions under part II of ch. 400, F.S.;
7 creating s. 400.0236, F.S.; providing a statute
8 of limitations; providing a statute of
9 limitations when there is fraudulent
10 concealment or intentional misrepresentation of
11 fact; providing for application of the statute
12 of limitation to accrued actions; creating s.
13 400.0237, F.S.; requiring evidence of the basis
14 for punitive damages; prohibiting discovery
15 relating to financial worth; providing for
16 proof of punitive damages; defining the terms
17 "intentional misconduct" and "gross
18 negligence"; prescribing criteria governing
19 employers' liability for punitive damages;
20 providing for the remedial nature of
21 provisions; creating s. 400.0238, F.S.;
22 prescribing limits on the amount of punitive
23 damages; providing for a criminal investigation
24 with a finding of liability for punitive
25 damages under certain circumstances; providing
26 for the admissibility of findings in subsequent
27 civil and criminal actions; providing for the
28 calculation of attorney's fees; providing for a
29 division of punitive damages; amending s.
30 768.735, F.S.; providing that the section is
31 inapplicable to actions brought under ch. 400,

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1 F.S.; amending s. 415.1111, F.S.; limiting
2 actions against nursing homes and assisted
3 living facilities; amending s. 400.0255, F.S.;
4 providing for applicability of provisions
5 relating to transfer or discharge of nursing
6 home residents; amending s. 400.062, F.S.;
7 increasing the bed license fee for nursing home
8 facilities; amending s. 400.071, F.S.; revising
9 license application requirements; requiring
10 certain disclosures; authorizing the Agency for
11 Health Care Administration to issue an inactive
12 license; requiring quality assurance and
13 risk-management plans; amending s. 400.102,
14 F.S.; providing additional grounds for action
15 by the agency against a licensee; amending s.
16 400.111, F.S.; prohibiting renewal of a license
17 if an applicant has failed to pay certain
18 fines; requiring licensees to disclose
19 financial or ownership interests in certain
20 entities; authorizing placing fines in escrow;
21 amending s. 400.118, F.S.; revising duties of
22 quality-of-care monitors in nursing facilities;
23 creating s. 400.1183, F.S.; providing for
24 resident grievance procedures; amending s.
25 400.121, F.S.; specifying additional
26 circumstances under which the agency may deny,
27 revoke, or suspend a facility's license or
28 impose a fine; authorizing placing fines in
29 escrow; requiring that the agency revoke or
30 deny a nursing home license under specified
31 circumstances; providing standards for

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1 administrative proceedings; providing for the
2 agency to assess the costs of an investigation
3 and prosecution; specifying facts and
4 conditions upon which administrative actions
5 that are challenged must be reviewed; amending
6 s. 400.126, F.S.; requiring an assessment of
7 residents in nursing homes under receivership;
8 providing for alternative care for qualified
9 residents; amending s. 400.141, F.S.; providing
10 additional administrative and management
11 requirements for licensed nursing home
12 facilities; requiring a facility to submit
13 information on staff-to-resident ratios, staff
14 turnover, and staff stability; requiring that
15 certain residents be examined by a licensed
16 physician; providing requirements for dining
17 and hospitality attendants; requiring
18 additional reports to the agency; requiring
19 liability insurance coverage; requiring daily
20 charting of specified certified nursing
21 assistant services; creating s. 400.1413, F.S.;
22 authorizing nursing homes to impose certain
23 requirements on volunteers; creating s.
24 400.147, F.S.; requiring each licensed nursing
25 home facility to establish an internal risk
26 management and quality assurance program;
27 providing requirements of the program;
28 requiring the use of incident reports; defining
29 the term "adverse incident"; requiring that the
30 agency be notified of adverse incidents;
31 requiring reporting of liability claims;

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1 specifying duties of the internal risk manager;
2 requiring the reporting of sexual abuse;
3 limiting the liability of a risk manager;
4 requiring that the agency report certain
5 conduct to the appropriate regulatory board;
6 requiring that the agency annually report to
7 the Legislature on the internal risk management
8 of nursing homes; creating s. 400.148, F.S.;
9 providing for a pilot project to coordinate
10 resident quality of care through the use of
11 medical personnel to monitor patients;
12 providing purpose; providing for appointment of
13 guardians; creating s. 400.1755, F.S.;
14 prescribing training standards for employees of
15 nursing homes that provide care for persons
16 with Alzheimer's disease or related disorders;
17 amending s. 400.19, F.S.; requiring the agency
18 to conduct surveys of certain facilities cited
19 for deficiencies; providing for a survey fine;
20 providing for inspections; amending s. 400.191,
21 F.S.; requiring the agency to publish a Nursing
22 Home Guide Watch List; specifying contents of
23 the watch list; specifying distribution of the
24 watch list; requiring that nursing homes post
25 certain additional information; amending s.
26 400.211, F.S.; revising employment requirements
27 for nursing assistants; requiring inservice
28 training; amending s. 400.23, F.S.; revising
29 minimum staffing requirements for nursing
30 homes; requiring the documentation and posting
31 of compliance with such standards; requiring

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1 correction of deficiencies prior to change in
2 conditional status; providing definitions of
3 deficiencies; adjusting the fines imposed for
4 certain deficiencies; amending s. 400.235,
5 F.S.; revising requirements for the Gold Seal
6 Program; creating s. 400.275, F.S.; providing
7 for training of nursing home survey teams;
8 amending s. 400.407, F.S.; revising certain
9 licensing requirements; providing for the
10 biennial license fee to be based on number of
11 beds; amending s. 400.414, F.S.; specifying
12 additional circumstances under which the Agency
13 for Health Care Administration may deny,
14 revoke, or suspend a license; providing for
15 issuance of a temporary license; amending s.
16 400.419, F.S.; increasing the fines imposed for
17 certain violations; creating s. 400.423, F.S.;
18 requiring certain assisted living facilities to
19 establish an internal risk management and
20 quality assurance program; providing
21 requirements of the program; requiring the use
22 of incident reports; defining the term "adverse
23 incident"; requiring that the agency be
24 notified of adverse incidents and of liability
25 claims; requiring reporting of liability
26 claims; requiring that the agency report
27 certain conduct to the appropriate regulatory
28 board; requiring that the agency annually
29 report to the Legislature on the internal risk
30 management of assisted living facilities;
31 amending s. 400.426, F.S.; requiring that

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1 certain residents be examined by a licensed
2 physician; amending s. 400.428, F.S.; revising
3 requirement for notice of a resident's
4 relocation or termination from a facility;
5 providing a penalty; amending s. 400.429, F.S.;
6 providing for election of survival damages,
7 wrongful death damages, or recovery for
8 negligence; providing for attorney's fees for
9 injunctive relief or administrative remedy;
10 providing that ch. 766, F.S., does not apply to
11 actions under this section; prescribing the
12 burden of proof; providing that a violation of
13 a right is not negligence per se; prescribing
14 the duty of care; prescribing a nurse's duty of
15 care; eliminating presuit provisions;
16 eliminating the requirement for presuit
17 mediation; requiring copies of complaints filed
18 in court to be provided to the agency; creating
19 s. 400.4293, F.S.; providing for presuit notice;
20 prohibiting the filing of suit for a specified
21 time; requiring a response to the notice;
22 tolling the statute of limitations; limiting
23 the discovery of presuit investigation
24 documents; limiting liability of presuit
25 investigation participants; authorizing the
26 obtaining of opinions from a nurse or doctor;
27 authorizing the obtaining of unsworn
28 statements; authorizing discovery of relevant
29 documents; prescribing a time for acceptance of
30 settlement offers; requiring mediation;
31 prescribing the time to file suit; creating s.

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1 400.4294, F.S.; requiring the availability of
2 facility records for presuit investigation;
3 specifying the records to be made available;
4 specifying what constitutes evidence of failure
5 to make records available in good faith;
6 specifying the consequences of such failure;
7 creating s. 400.4295, F.S.; providing that the
8 provisions of s. 768.21(8), F.S., do not apply
9 to actions under part III of ch. 400, F.S.;
10 creating s. 400.4296, F.S.; providing a statute
11 of limitations; providing a statute of
12 limitations when there is fraudulent
13 concealment or intentional misrepresentation of
14 fact; providing for application of the statute
15 of limitation to accrued actions; creating s.
16 400.4297, F.S.; requiring evidence of the basis
17 for punitive damages; prohibiting discovery
18 relating to financial worth; providing for
19 proof of punitive damages; defining the terms
20 "intentional misconduct" and "gross
21 negligence"; prescribing criteria governing
22 employers' liability for punitive damages;
23 providing for the remedial nature of
24 provisions; creating s. 400.4298, F.S.;
25 providing limits on the amount of punitive
26 damages; providing for a criminal investigation
27 with a finding of liability for punitive
28 damages under certain circumstances; providing
29 for the admissibility of findings in subsequent
30 civil and criminal actions; providing for the
31 calculation of attorney's fees; providing for a

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1 division of punitive damages; amending s.
2 400.434, F.S.; authorizing the Agency for
3 Health Care Administration to use information
4 obtained by certain councils; amending s.
5 400.441, F.S.; clarifying facility inspection
6 requirements; creating s. 400.449, F.S.;
7 prohibiting the alteration or falsification of
8 medical or other records of an assisted living
9 facility; providing penalties; amending s.
10 409.908, F.S.; prohibiting nursing home
11 reimbursement rate increases associated with
12 changes in ownership; modifying requirements
13 for nursing home cost reporting; requiring a
14 report; authorizing waivers to treat a portion
15 of the Medicaid nursing home per diem as
16 capital for a risk-retention group; amending s.
17 464.203, F.S.; revising certification
18 requirements for nursing assistants;
19 authorizing employment of certain nursing
20 assistants pending certification; requiring
21 continuing education; amending s. 397.405,
22 F.S., relating to service providers; conforming
23 provisions to changes made by the act;
24 prohibiting the issuance of a certificate of
25 need for additional community nursing home
26 beds; providing intent for such prohibition;
27 providing an exemption; reenacting s.
28 400.0255(3) and (8), F.S., relating to
29 discharge or transfer of residents; reenacting
30 s. 400.23(5), F.S., relating to rules for
31 standards of care for persons under a specified

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1 age residing in nursing home facilities;
2 reenacting s. 400.191(2) and (6), F.S.,
3 relating to requirements for providing
4 information to consumers; reenacting s.
5 400.0225, F.S., relating to consumer
6 satisfaction surveys for nursing homes;
7 reenacting s. 400.141(4) and (5), F.S.,
8 relating to the repackaging of residents'
9 medication and access to other health-related
10 services; reenacting s. 400.235(3)(a), (4), and
11 (9), F.S., relating to designation under the
12 nursing home Gold Seal Program; reenacting s.
13 400.962(1), F.S., relating to the requirement
14 for licensure under pt. XI of ch. 400, F.S.;
15 reenacting s. 10 of ch. 2000-350, Laws of
16 Florida, relating to requirements for a study
17 of the use of automated medication-dispensing
18 machines in nursing facilities and for
19 demonstration projects and a report; amending
20 s. 400.562, F.S.; revising requirements for
21 standards to be included in rules implementing
22 part V of ch. 400, F.S.; providing for
23 applicability of specified provisions of the
24 act; requiring the Auditor General to develop a
25 standard chart of accounts for Medicaid
26 long-term care provider cost reporting;
27 requiring implementation by the agency by a
28 specified date; requiring the agency to amend
29 the Medicaid Title XIX Long-Term Care
30 Reimbursement Plan to include specified
31 provisions; providing for office space for the

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1 Office of State Long-Term Care Ombudsman;
2 prohibiting enforcement of provisions relating
3 to a requirements for liability insurance until
4 a specified date; providing appropriations;
5 providing for severability; providing effective
6 dates.
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