SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1202

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Brown-Waite

SUBJECT: Long-Term Care

DATE: March 16, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Liem/Thomas	Wilson	HC	Favorable/CS
2.			JU	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

The Committee Substitute for Senate Bill 1202 modifies regulatory provisions and standards for long-term care facilities (nursing homes and assisted living facilities) regulated under parts II and III of chapter 400, Florida Statutes; revises qualifications for certified nursing assistants; and provides appropriations.

The bill amends ss. 397.405; 400.0073; 400.021; 400.0255; 400.062; 400.071; 400.111; 400.118; 400.121; 400.141; 400.191; 400.211; 400.23; 400.235; 400.402; 400.407; 400.414; 400.417; 400.419; 400.426; 400.428; 400.435; 400.441; 400.442; 464.201; and 464.203, Florida Statutes.

The bill creates ss. 400.0223; 400.0247; 400.147; 400.1755; 400.237; 400.275; 400.423; 400.4303; and 400.449, Florida Statutes.

The bill creates four undesignated sections of law.

II. Present Situation:

Nursing homes have long been seen as care settings of last resort for the elderly, both because they were seen as institutions where the elderly went to die, and because of perceptions of indifferent, callous and uncaring treatment by nursing home staff. Patient advocates, family members of people in nursing homes and attorneys representing nursing home residents often have taken the position that the state system for assuring quality and humane care in nursing homes has failed and that recourse to the courts is the method of last resort to force nursing homes to provide quality care and to punish those who do not.

For more than 20 years, the State of Florida has grappled with issues relating to the quality of care that nursing homes provide to their residents. A staff analysis for Committee Substitute for Senate Bill 1218 (1980), describes the findings of a Dade County grand jury convened to investigate nursing homes operating in that county. At the time, there were 331 state-licensed nursing homes operating in Florida. The analysis states:

> The report described health hazards and deficiencies in patient care that allegedly have been allowed to continue for years. Of the 38 Dade County nursing homes surveyed by the Grand Jury, 60 percent provided either generally unacceptable or consistently very poor care. The Jury found that sanctions against homes are invoked 'rarely, timidly, and ineffectively,' and that once a deficiency is identified, on-site follow-up visits are too infrequent to ensure correction. [p. 1, *Senate Staff Analysis and Economic Impact Statement*, June 10, 1980]

The quality of nursing home care continues to be a concern because residents are generally showing increasing levels of acuity and disability and require increasingly more complex treatments. These concerns about problems in the quality of long-term care persist despite some improvements in recent years, and are reflected in, and spurred by, recent government reports, congressional hearings, newspaper stories, and criminal and civil court cases. Debate also continues over the effectiveness and appropriate scope of state and national policies to regulate long-term care, reduce poor performance of providers, and improve the health and well being of those receiving care. These questions and debates extend beyond nursing homes to home and community-based services and residential care facilities.

Regulation of Nursing Homes and Assisted Living Facilities by State Government

Nursing Homes and Related Facilities is the subject of ch. 400, F.S. Part I of ch. 400, F.S., establishes the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local long-term care ombudsman councils. Part II of ch. 400, F.S., provides for the regulation of nursing homes and part III of ch. 400, F.S., provides for the regulation of assisted living facilities. The Agency for Health Care Administration is charged with the responsibility of developing rules related to the operation of nursing homes. The Department of Elderly Affairs develops rules relating to assisted living facilities. The Agency for Health Care Administration licenses and inspects both nursing homes and assisted living facilities. The Department of Health performs inspections of facilities for sanitation and physical safety purposes and local authorities have jurisdiction over fire safety inspections.

Hospital Adverse Incident Reporting

Ambulatory surgical centers and hospitals must be licensed under chapter 395, F.S. Chapter 395, F.S., imposes requirements on ambulatory surgical centers and hospitals, which include inspection and accreditation. Under s. 395.0197, F.S., these facilities must have an internal risk management program. The risk management program must include the reporting of adverse incidents that result in serious patient injury. Ambulatory surgical centers and hospitals, under s. 395.0197(8), F.S., must report the following incidents, within 15 calendar days after they occur, to the Agency for Health Care Administration: death of a patient; brain or spinal damage to a patient; performance of a surgical procedure on the wrong patient; performance of a wrong-site

surgical procedure; performance of a wrong surgical procedure; performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition; surgical repair of damage resulting to the patient from a planned surgical procedure where damage is not a recognized specific risk, as disclosed to the patient and documented through the informed consent process; or performance of procedures to remove unplanned foreign objects remaining in a patient following surgery.

Under s. 395.0197(8), F.S., the incident reports filed with the Agency for Health Care Administration may not be made available to the public under s. 119.07(1), F.S., or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the Department of Health or the appropriate regulatory board. The incident reports may not be made available to the public as part of the records of investigation for and prosecution in disciplinary proceedings that are made available to the public. The Department of Health or the appropriate regulatory board must make available, upon written request by a health care professional against whom probable cause has been found, any such records, which form the basis of the determination of probable cause. The Department of Health must review each incident and determine whether it potentially involved conduct by the health care professional who is subject to disciplinary action under the provisions of s. 456.073, F.S.

Patient Confidentiality under Disciplinary Procedures

Section 456.073, F.S., provides procedures to be used for the discipline of health care practitioners. Disciplinary complaints and all information obtained by the Department of Health are confidential and exempt from the public records and meetings laws until 10 days after probable cause is found or the subject of the complaint waives confidentiality. Section 456.057(8), F.S., provides that all patient records obtained by the Department of Health and any other documents maintained by the department which identify the patient by name are confidential and exempt from the public records and meetings laws, and may be used solely by the department and the appropriate regulatory board in their investigation, prosecution, and appeal of disciplinary proceedings. The patient records may not be made available to the public as part of the record of investigation for and prosecution in disciplinary proceedings.

The Task Force on the Availability and Affordability of Long-Term Care

The Legislature created, in the 2000 Session, the Task Force on the Availability and Affordability of Long-Term Care. The purpose of the task force was to assess the current long-term care system in terms of the availability of alternatives to nursing homes, the quality of care in nursing homes and the impact of lawsuits against nursing homes and other long-term care facilities on the costs of care and the financial stability of the long-term care industry. On February 16, 2001, the task force submitted an extensive report to the Legislature. The full report is available electronically at:
http://www.fpeca.usf.edu/Task%20Force/Publications/Documents/finalreportnew.PDF

Senate Interim Project 2001-25

Staff of the Committee on Health, Aging, and Long-Term Care published an interim report on long-term care issues. The report provides recommendations in three areas: developing a coordinated planning structure for the long-term care system, improving the quality of care in long-term care facilities and developing ways to make liability insurance more affordable for long-term care facilities. The report is available electronically at: http://www.leg.state.fl.us/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf

III. Effect of Proposed Changes:

Section 1. Amends s. 400.0073, F.S., to require local ombudsman annual administrative inspections to focus on the rights, health, safety and welfare of the residents.

Section 2. Amends s. 400.021, F.S., to define "controlling interest" as applied to nursing home licensure applicants or nursing home licensees; modify the definition of "resident care plan" to provide for the highest level of function of the resident and require signatures of the director of nursing and the resident; and define "voluntary board member."

Section 3. Creates s. 400.0223, F.S., providing for electronic monitoring devices in resident rooms, to require: nursing homes to permit residents to use electronic monitoring devices; posting of notice of the use of such devices; residents to pay for the devices; protection of the privacy rights of other residents; and nursing homes to make certain physical accommodations for electronic monitoring. Subject to the Florida Rules of Evidence, electronic monitoring tapes are admissible as evidence in either civil or criminal actions. The section provides penalties for violations of these provisions and for obstructing, tampering with, or destroying devices or tapes.

Section 4. Creates s. 400.0247, F.S., to provide that, in any action where punitive damages are awarded in lawsuits against nursing homes, the clerk of the court shall forward to the state attorney of that circuit a copy of the complaint, any amended complaints, the verdict form, and the final judgment.

Section 5. Amends s. 400.0255, F.S., relating to transfer or discharge from a nursing home, to provide that the provisions of that section only apply to transfers or discharges initiated by the nursing home and not those actions initiated by the resident, resident's representative, or resident's physician.

Section 6. Amends s. 400.062, F.S., to increase the maximum base license fee for nursing homes from $35 to $50 per bed.

Section 7. Amends s. 400.071, F.S., to require an applicant for licensure to provide identifying information for any controlling interest. A subsection is added requiring a signed affidavit disclosing any financial or ownership interest held by specified individuals in the last 5 years in an entity in this or any other state which has closed voluntarily or involuntarily; which has filed for bankruptcy; has had a receiver appointed; has had a license denied, suspended or revoked; or has had an injunction issued against it which was initiated by a regulatory agency. The affidavit

must disclose the reason any such entity was closed, whether voluntarily or involuntarily. The agency is required to establish standards for reporting this information. The agency is authorized to issue an inactive license to a nursing home temporarily unable to provide services, which is reasonably expected to resume services. A nursing home seeking an inactive license must obtain agency approval prior to suspending services or notifying residents of the need to be transferred or discharged. Facilities must establish and submit plans for quality assurance and risk management with applications for licensure.

Section 8. Amends s. 400.111, F.S., to prohibit the renewal of a license if the applicant has failed to pay state or federal fines.

Section 9. Amends s. 400.118, F.S., to require quality-of-care monitors to visit each nursing facility at least quarterly, and to require that priority for additional visits be given to facilities with a history of patient care deficiencies. A requirement that quality-of-care monitors assess operations of internal quality-improvement and risk-management programs and adverse incident reports is added. Quality of care monitors are required to immediately report conditions that represent repeated observations of deficient practice to area office supervisors for appropriate regulatory action.

Section 10. Amends s. 400.121, F.S., to allow the agency to deny, suspend or revoke a license, or levy a fine of no more than $500 per day on a facility which has a demonstrated pattern of deficient practice, failed to pay state or federal fines, been excluded from Medicaid or Medicare or been the subject of an adverse action against any controlling interest including the appointment of a receiver, denial or suspension or revocation of a license or the issuance of an injunction by a regulatory agency. If the adverse action involves solely a management company, the applicant or licensee is to be given 30 days to remedy before final action is taken. The bill replaces permissive language, which allowed the agency to deem the proper level of such fines up to a limit of $500, with a requirement that these fines be $500 per violation. The bill specifies that administrative proceedings challenging agency action must be reviewed based on facts and conditions that resulted in the initial agency action.

Section 11. Amends 400.141, F.S., to require nursing facilities to keep full records on services related to assistance with activities of daily living; submit the information regarding controlling interests in a management company within 30 days of the effective date of the management agreement; submit semiannually or more often if required, information regarding facility staff-to-resident ratios, staff turnover, and staff stability, including information regarding certified nursing assistants, licensed nurses, the director of nursing, and the facility administrator. Reporting of vacant beds in a facility is required monthly. The bill provides formulas for calculating ratios and turnover, and exempts employees terminated in a probationary period from the turnover calculation.

The bill requires nursing facilities to ensure that any resident with signs of mental, psychosocial, or adjustment difficulty receive appropriate treatment. The attending physician of an identified resident must be notified within 7 days of admission or within 7 days of acknowledgement of signs by facility staff. Notification of the resident's designee or legal representative is required prior to physician notification. The facility is required to arrange for necessary care and services of any underlying condition.

If the facility implements a dining and hospitality attendant program, it must be developed and implemented under the supervision of the facility director of nursing; a licensed nurse or dietitian must conduct the training of the attendants; and a person employed in this program must perform tasks under the direct supervision of a licensed nurse.

Each nursing facility is required to report to the agency, within 30 days, any filing for bankruptcy protection by the facility or a parent corporation, spin-off or divestiture of assets, and corporate reorganization.

Section 12. Creates s. 400.147, F.S., to require nursing facilities to implement an internal risk-management and quality-assurance program. The purpose of this program is to assess patient care practices; review facility quality indicators, facility incident reports, deficiencies cited by the agency, shared-risk agreements, and resident grievances, and develop plans of action to correct and respond quickly to identified quality deficiencies. The program must include a licensed risk manager who is responsible for implementation and oversight of the facility's risk-management and quality-assurance program. A nursing home risk manager may not be responsible for more than 4 such programs in nursing homes, assisted living facilities or hospitals.

The bill requires each nursing facility to have a risk-management and quality-assurance committee that is required to meet monthly. Facilities must develop policies and procedures to implement the program, including the investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents. The internal risk-management and quality-assurance program is the responsibility of the facility administrator.

The risk-management and quality-assurance program must include an education and training component for all non-physician personnel as part of an initial orientation and at least 3 hours annually of such training for all non-physician personnel working in clinical areas and providing resident care; analysis of resident grievances which relate to resident care and quality of clinical services; and the development of an incident reporting system. The bill specifies that in addition to the other programs mandated, the program must encourage development, implementation and operation of other innovative approaches intended to reduce the frequency and severity of adverse incidents to residents and violations of resident's rights.

The internal risk-management and quality-assurance program must include the use of incident reports that are to be filed with the risk manager and the facility administrator. The risk manager is to have free access to all resident records of the facility. Incident reports are to be used to develop categories of incidents, which identify problem areas. Once identified, procedures are to be adjusted to correct the problem area. The incident reports are confidential, and are part of the work papers of an attorney and, though subject to discovery, are not admissible as evidence in court.

Adverse incident is defined as an event over which the facility staff could have exercised control and which is associated in whole or in part with the facility's intervention, rather than the condition for which the intervention occurred. Adverse incidents are those events which result in death; brain or spinal damage; permanent disfigurement; fracture or dislocation of bones or joints; a resulting limitation of neurological, physical, or sensory function; any condition

requiring medical attention to which the resident has not given his or her informed consent including failure to honor advance directives; any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the resident's condition prior to the adverse incident; abuse, neglect, or exploitation; resident elopement; or an event that is reported to law enforcement.

The facility is required to notify the agency within 1 business day after the occurrence of an adverse incident. The agency is allowed to investigate any such incident, as it deems appropriate, and is allowed to prescribe measures that must or may be taken in response to the incident. The agency is to review each incident and determine whether the incident potentially involved conduct by a health care professional who is subject to disciplinary action. If this is the case, the provisions related to disciplinary proceedings of s. 456.073, F.S., apply. The notification is confidential and not discoverable or admissible in any civil or administrative action, except disciplinary proceedings by the agency or regulatory boards.

Each facility must submit an adverse incident report to the agency for each adverse incident within 15 calendar days after its occurrence, on a form developed by the agency. The agency is to review the information, and determine whether the incident potentially involved conduct subject to the disciplinary proceedings of s. 456.073, F.S. The adverse incident report must contain the name and license number of the risk manager. The report is confidential and not discoverable or admissible in any civil or administrative action, except disciplinary proceedings by the agency or a professional board.

Each facility must report monthly any liability claim filed against it to include the name of the resident, the date of the incident, and the type of injury or violation alleged.

Internal risk managers are required to investigate every allegation of sexual misconduct against a member of the facility's personnel who has direct resident contact, if it is alleged that the sexual misconduct occurred at the facility or on its grounds. The risk manager is required to notify the resident representative or guardian of the victim that an allegation of sexual misconduct has been made and that an investigation is being conducted.

Witnesses or those possessing actual knowledge of the act that is the basis of an allegation of sexual misconduct are required to notify local law enforcement, the central abuse hotline, the facility risk manager and administrator. The term "sexual abuse" is defined.

The bill requires the agency, as part of its licensure inspection process, to review the internal risk-management and quality-assurance program at each facility to determine whether the program meets standards in laws and rules, is being conducted in a manner designed to reduce adverse incidents and is appropriately reporting incidents as required by this section.

There is no monetary liability or cause of action against any licensed risk manager for the implementation and oversight of the internal risk-management and quality-assurance program or acts or proceedings within the scope of the program, if the risk manager acts without intentional fraud.

If the agency has a reasonable belief that conduct of a facility employee is grounds for disciplinary action by a regulatory board, the agency is required to report this to the regulatory board.

The agency is authorized to adopt rules to administer this section, and is required to submit an annual report to the Legislature about nursing home internal risk-management. The information in the report is to be arrayed by county and include the total number of adverse incidents, listings by category and types of injuries, types of staff involved, types of claims filed based on an adverse incident or reportable injury and disciplinary action taken against staff, categorized by type of staff involved.

Section 13. Creates s. 400.1755, F.S., to provide that individuals who provide care to persons with Alzheimer's disease must complete dementia-specific training. The duration of the training and the time within which the training must be completed are specified. Upon completion of the training, the trainee must be issued a certificate. The Department of Elderly Affairs, or its designee, must approve training courses and providers. The department is authorized to adopt rules.

Section 14. Amends s. 400.191, F.S., to: require the Agency for Health Care Administration to publish a "Nursing Home Guide Watch List"; specify the content of the watch list; require that the agency transmit the watch list to each facility by mail and make the watch list available on its web site; and require nursing facilities to post the most recent version of the nursing home watch list.

Section 15. Amends s. 400.211, F.S., to allow nursing facilities to employ, for up to 4 months, individuals as certified nursing assistants who are not yet certified as nursing assistants but who are enrolled in or have completed state-approved nursing assistant programs, or who are actively certified and on the registry in another state and who have not been found guilty of abuse, neglect, or exploitation regardless of adjudication and who have not entered a plea of nolo contendere or guilty. Nursing assistants employed by nursing facilities for 12 months or longer must, as a condition of maintaining certification, submit to performance reviews and receive regular in-service education based on the outcome of performance reviews. In-service education must be sufficient to ensure continuing competence of nursing assistants, be at least 18 hours per year and may include hours accrued under certified nursing assistant continuing education requirements. Annual training must include techniques for assisting with eating and proper feeding; principles of adequate nutrition and hydration; techniques for assisting and responding to cognitively impaired residents or residents with difficult behaviors; end-of-life care techniques; and recognizing changes that place a resident at risk for pressure ulcers and falls. The training must address areas of weakness as determined in performance reviews and may address the special needs of residents as determined by the facility staff.

Section 16. Amends s. 400.23, F.S., to require adoption of rules regarding the implementation of the consumer-satisfaction survey; the availability, distribution and posting of reports and records; and the Gold Seal Program. The agency is required to adopt rules specifying a minimum staffing standard for certified nursing assistants of 2.3 hours of direct care per resident per day beginning January 1, 2002, increasing to 2.6 hours beginning January 1, 2003, increasing to 2.8 hours beginning January 1, 2004, and increasing to 2.9 hours beginning January 1, 2005. The nursing

assistant staff ratio is never to be below 1 certified nursing assistant per 20 residents. A minimum licensed nursing standard of 1.0 hour direct resident care per resident per day is established. The licensed nursing staff ratio is to never be below one licensed nurse per 40 residents. Each nursing home is required to document compliance with these staffing standards and post daily the names of staff on duty. Nursing assistants employed under s. 400.211(2), F.S., may be included in the staffing ratios only if they provide services on a full-time basis.

The bill raises the minimum amount of civil penalties for all classes of deficiencies. Penalties for class I deficiencies (deficiencies which present an imminent danger to residents or guests or a substantial probability of death or physical harm) are set at no less than $10,000 not to exceed $25,000. The current levels for these deficiencies are from $5,000 to $25,000. The agency must levy such a fine notwithstanding the correction of the deficiency. Penalties for class II deficiencies (those that have a direct or immediate relationship to health, safety or security of residents) are set at an amount no less than $5,000 not to exceed $10,000. The bill deletes a provision, which prevented imposition of the penalty for class II deficiencies if the deficiency is corrected within specified time limits, unless it is a repeat offense. The penalty for a class III deficiency (an indirect or potential relationship to health, safety, or security of residents) is set at no less than $1,000 not to exceed $2,500 for each deficiency.

Section 17. Amends s. 400.235, F.S., to modify the Gold Seal Program stable workforce requirement to use the calculation methodology described in s. 400.141, F.S.

Section 18. Creates s. 400.237, F.S., to provide for a nursing home grading system that measures nursing home facility performance related to quality indicators. Every nursing home is required to post its facility ranking and improvement ratings. The agency is required to publish rankings and improvement ratings on its website and in printed guides by region. The agency is given rulemaking authority for the system.

Section 19. Creates s. 400.275, F.S., to require the agency to assign newly-hired surveyors, as part of basic training, to a nursing home for at least 2 days within a 7 day period to observe facility operations before the surveyor begins survey responsibilities. The agency may not assign a surveyor to perform a survey, evaluation, or consultation at a nursing home in which the surveyor was an employee within the preceding 5 years. The agency is required to provide semiannual joint training for nursing home surveyors and facility staff on at least one of the 10 federal citations most frequently issued against nursing homes in Florida. The bill requires members of nursing home survey teams who are licensed as nurses, dieticians or nutritionists, or clinical counselors and psychotherapists, to earn no less than 50% of the required continuing education credits in geriatric care. Surveyors who are pharmacists are required to earn no less than 30% of the required continuing education hours in geriatric care. The agency is to ensure that a physician or nurse with geriatric experience participates in the agency's informal dispute resolution process.

Section 20. Amends s. 400.402, F.S., to delete the current definition of "managed risk" for assisted living facilities.

Section 21. Amends s. 400.407, F.S., to increase the frequency of agency monitoring visits for assisted living facilities licensed to provide extended congregate care services from 2 times per

year to quarterly and assisted living facilities licensed to provide limited nursing services from once a year to twice a year. Conforming changes relating to the frequency of licensure inspections are made. The fee structure for licensure of assisted living facilities is modified. Under current statutes licenses are biennial, with a base fee for standard facilities of $240 plus an additional $30 per bed to a maximum fee of $10,000. No fee is assessed for beds designated for recipients of optional state supplementation payments. Facilities licensed as extended congregate care facilities are charged an additional base fee of $400. Facilities licensed to provide limited nursing services are charged an additional base fee of $200 per license with an additional fee of $10 per resident. The total biennial fee may not exceed $2,000. The bill replaces these fee schedules with a fee of $100 per bed, to a maximum fee of $10,000. The bill exempts optional state supplementation beds from this fee.

Section 22. Amends s. 400.414, F.S., to include, as grounds for which the agency may deny, revoke, or suspend a license or impose an administrative fine, any act which constitutes a ground upon which application for a license may be denied. The agency may issue a temporary license pending disposition of a proceeding involving the suspension or revocation of an assisted living facility license.

Section 23. Amends s. 400.417, F.S., to require assisted living facilities with limited nursing, extended congregate care, or limited mental health licenses to renew their license every year rather than every two years. Conforming changes are made.

Section 24. Amends s. 400.419, F.S., to increase the minimum administrative fines for all classes of violations in assisted living facilities. Penalties for class I violations (deficiencies which present an imminent danger to residents or guests or a substantial probability of death or physical harm) are set at no less than $5,000 not to exceed $10,000. The current levels for these violations are from $1,000 to $10,000. The agency may levy such a fine notwithstanding the correction of the violation. Penalties for class II violations (those that directly threaten the health, safety or security of residents) are set at an amount no less than $1,000 not to exceed $5,000. The current levels for these violations are from $500 to $5,000 for each violation. The bill specifies that a citation for a class II violation must specify the time within which the violation is to be corrected and deletes a provision, which prevented imposition of the penalty for class II violations if the violation is corrected within specified time limits, unless it is a repeat offense. The penalty for class III violations (an indirect or potential relationship to health, safety, or security of residents) is set at no less than $500 not to exceed $1,000 for each violation. The current levels for these violations are from $100 to $1,000 for each violation. The bill specifies that a citation for a class II violation must specify the time within which the violation is to be corrected and deletes a provision, which prevented imposition of the penalty for class II violations if the violation is corrected within specified time limits, unless it is a repeat offense. The penalty for uncorrected class IV violations (those which do not have the potential of negatively affecting residents) is set from $100 to $200 per violation. The current levels for these violations are $50 to $200 for each violation. The bill deletes a provision allowing the agency to impose fines for violations, which cannot be classified according to the classification system.

The bill increases the penalty for operation of an unlicensed assisted living facility to $1,000 per day from the current level of $500 per day for each day beyond 5 days after agency notification. In the instance of an unlicensed facility operated by an owner or administrator who concurrently

operates a licensed facility, the fine is increased from $500 per day to $5,000 per day. The bill removes the discretion of the agency to set the level of a fine at up to $5,000 for owners who fail to apply for a change-of-ownership license, replacing it with a flat fine of $5,000.

Section 25. Creates s. 400.423, F.S., requiring internal risk-management and quality-assurance programs in assisted living facilities having 26 or more beds. The purpose of this program is to assess patient care practices; review facility quality indicators, facility incident reports, deficiencies cited by the agency, shared-risk agreements, and resident grievances; and develop plans of action to correct and respond quickly to identified quality deficiencies. The program must include a licensed risk manager who is responsible for implementation and oversight of the facility's risk-management and quality-assurance program. An assisted living facility risk manager may not be responsible for more than 4 such programs in nursing homes, assisted living facilities or hospitals, however, a risk manager may be made responsible for as many as 8 assisted living facilities with a standard license if the risk manager is not responsible for any other facilities licensed under part II of chapter 400 or chapter 395.

The bill requires each facility to have a risk-management and quality-assurance committee that is required to meet monthly. Facilities must develop policies and procedures to implement the program, including investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents. The internal risk-management and quality-assurance program is the responsibility of the facility administrator.

The risk-management and quality-assurance program must include an education and training component for all non-physician personnel as part of an initial orientation and at least 3 hours annually of such training for all non-physician personnel working in clinical areas and providing resident care; analysis of resident grievances which relate to resident care and quality of clinical services; and the development of an incident reporting system. The bill specifies that in addition to the other programs mandated, the program must encourage development, implementation and operation of other innovative approaches intended to reduce the frequency and severity of adverse incidents to residents and violations of resident's rights.

The internal risk-management and quality-assurance program must include the use of incident reports that are to be filed with the risk manager and the facility administrator. The risk manager is to have free access to all resident records of the facility. Incident reports are to be used to develop categories of incidents, which identify problem areas. Once identified, procedures are to be adjusted to correct the problem area. The incident reports are confidential, and are part of the work papers of an attorney defending the facility in litigation and, though subject to discovery, are not admissible as evidence in court.

Adverse incident is defined as an event over which the facility staff could have exercised control and which is associated in whole or in part with the facility's intervention, rather than the condition for which the intervention occurred. Adverse incidents are those events which result in death; brain or spinal damage; permanent disfigurement; fracture or dislocation of bones or joints; a resulting limitation of neurological, physical, or sensory functions; any condition requiring medical attention to which the resident has not given his or her informed consent including failure to honor advance directives; any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the

adverse incident, rather than the resident's condition prior to the adverse incident; abuse, neglect, or exploitation; resident elopement; or an event that is reported to law enforcement.

The facility, regardless of the number of beds, is required to notify the agency within 1 business day after the occurrence of an adverse incident. The agency is allowed to investigate any such incident, as it deems appropriate, and is allowed to prescribe measures that must or may be taken in response to the incident. The agency is to review each incident and determine whether the incident potentially involved conduct by the health care professional who is subject to disciplinary action. If this is the case, the provisions related to disciplinary proceedings of s. 456.073, F.S., apply. The notification is confidential and not discoverable or admissible in any civil or administrative action, except disciplinary proceedings by the agency or regulatory boards.

Each facility, regardless of the number of beds, must submit an adverse incident report to the agency for each adverse incident within 15 calendar days after its occurrence, on a form developed by the agency. The agency is to review the information and determine whether the incident potentially involved conduct subject to the disciplinary proceedings of s. 456.073, F.S. The adverse incident report must contain the name and license number of the risk manager. The report is confidential and not discoverable or admissible in any civil or administrative action, except disciplinary proceedings by the agency or a professional board. Each facility is required to report monthly any liability claim filed against it.

The internal risk manager or administrator is required to investigate every allegation of sexual misconduct against a member of the facility's personnel who has direct resident contact, if it is alleged that the sexual misconduct occurred at the facility or on its grounds. The risk manager is required to notify the resident representative or guardian of the victim that an allegation of sexual misconduct has been made and that an investigation is being conducted.

Witnesses or those possessing actual knowledge of the act that is the basis of an allegation of sexual misconduct are required to notify local law enforcement, the central abuse hotline, the facility risk manager and administrator. The term "sexual abuse" is defined.

The bill requires the agency, as part of its licensure inspection process, to review the internal risk-management and quality-assurance program at each facility to determine whether the program meets standards in laws and rules, is being conducted in a manner designed to reduce adverse incidents and is appropriately reporting incidents as required by this section.

There is no monetary liability or cause of action against any licensed risk manager for the implementation and oversight of the internal risk-management and quality-assurance program or acts or proceedings within the scope of the program, if the risk manager acts without intentional fraud.

If the agency has a reasonable belief that conduct of a facility employee is grounds for disciplinary action by a regulatory board, the agency is required to report this to the regulatory board.

The agency is required to submit an annual report to the Legislature about assisted living facility internal risk-management. The information in the report is to be arrayed by county and include the total number of adverse incidents, listings by category and types of injuries, types of staff involved, types of claims filed based on an adverse incident or reportable injury and disciplinary action taken against staff, categorized by type of staff involved.

Section 26. Amends s. 400.426, F.S., to require any assisted living facility resident with signs of dementia or cognitive impairment to be examined by a physician to rule out an underlying physiological condition within 7 days of admission or acknowledgement of such signs by facility staff. Notification of the resident's designee or legal representative is required prior to the examination. The facility is required to arrange for care and treatment for the condition.

Section 27. Amends s. 400.428, F.S., to make conforming changes relating to the frequency of licensure surveys.

Section 28. Creates s. 400.4303, F.S., to provide that, in any action where punitive damages are awarded in a lawsuit against an assisted living facility, the clerk of the court shall forward to the state attorney of that circuit a copy of the complaint, any amended complaints, the verdict form, and the final judgment.

Section 29. Amends s. 400.435, F.S., to make conforming changes regarding frequency of assisted living facility licensure inspections.

Section 30. Amends s. 400.441, F.S., to require the Department of Elderly Affairs, in consultation with the agency, the Department of Children and Family Services, and the Department of Health to adopt rules, policies and procedures regarding the use of internal risk-management and quality-assurance in assisted living facilities, and to make conforming changes regarding the frequency of licensure inspections and delete obsolete provisions.

Section 31. Amends s. 400.442, F.S., to make conforming changes regarding the frequency of assisted living facility licensure surveys.

Section 32. Creates s. 400.449, F.S., to make fraudulent alteration, falsification, or defacement of medical or other records of assisted living facilities, or causing or procuring such offense to be committed, a second-degree misdemeanor, and specify that conviction for such offense is grounds for restriction, suspension or termination of license privileges.

Section 33. Amends s. 464.201, F.S., to add a nurse assistant training program developed under the Enterprise Florida Jobs and Education Partnership Grant as an approved certified nursing assistant training program.

Section 34. Amends s. 464.203, F.S., to require a certified nursing assistant who has not performed nursing-related services for monetary compensation for a period of 24 consecutive months to be re-certified; and require a minimum of 18 hours of continuing education during each calendar year of certification, including training in assisting and responding to individuals with cognitive impairment.

Section 35. Amends s. 397.405, F.S., to correct a cross-reference.

Section 36. Requires the Agency for Health Care Administration to require that a portion of each nursing facility's Medicaid rate be used exclusively for wage and benefit increases for nursing home direct care staff. Eligible staff are defined. The agency is required to develop cost reporting systems to ensure that funds are in fact used for the required purpose. An annual report is required on the effect of wage and benefit increases for employees of nursing homes.

Section 37. Appropriates an unspecified sum from the General Revenue Fund to the Agency for Health Care Administration for the purpose of implementing the provisions of this act during the 2001-2002 fiscal year.

Section 38. Appropriates $948,782 from the General Revenue Fund to the Department of Elderly Affairs for the purpose of paying the salaries and other expenses of the Office of the Long-Term Care Ombudsman to carry out the provisions of this act during the 2001-2002 fiscal year.

Section 39. Provides a severability clause.

Section 40. Provides an effective date of upon becoming a law except as otherwise expressly provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill restricts public access to certain documents and meetings related to internal risk management and quality assurance programs in long-term care facilities. Senate Bill 1200 has been filed to provide for the public records and public meetings exemptions relating to risk management and quality assurance programs in long-term care facilities.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill increases licensure fees for nursing homes and assisted living facilities.

B. Private Sector Impact:

Unknown at this time.

C. Government Sector Impact:

According to preliminary estimates from the Agency for Health Care Administration, the costs of the bill are as follow:

Quarterly Quality-of-Care monitor visits	21 FTE	$1,584,558
Reporting controlling interests	3 FTE	$183,735
Database		$150,000
Surveyor nursing home assignment		$35,000
Surveyor geriatric training		$14,895
Physician participation in IDR process		$12,000
Increased ECC ALF Monitoring	8 FTE	$549,520
Additional staff attorney and paralegal	2 FTE	$113,718

The Agency for Health Care Administration has provided estimates of Medicaid costs for staffing increases:

	Medicaid Cost
Increase CNA hours to 2.3 hours/resident per day plus 1 hr nursing	$64,052,463
Increase CNA hours to 2.6 hours/resident in subsequent year	$52,909,973
Increase CNA hours to 2.8 hours/resident in subsequent year	$37,652,692
Increase CNA hours to 2.9 hours/resident in subsequent year	$19,078,836

Increased monitor visits may result in increased complaint investigations. The cost of these additional investigations is unknown.

According to preliminary analysis by the Department of Elder Affairs, the increased ombudsman responsibilities will require additional volunteer ombudsman, and additional training for volunteer ombudsmen. There may be additional costs to assisted living facility operators.

The State Long-Term Care Ombudsman has proposed creating 4 additional local councils to serve the most populated Florida regions, converting current OPS staff to FTEs, increasing travel expenditures, increasing training, updating its information system, and additional public education programs. The cost of these changes are as follows:

Additional local councils	4 FTE	$308,867
Conversion of current OPS staff	2 FTE	$74,469
Additional training resources	1 FTE	$415,446
Travel reimbursement		$100,000
Public education		$ 50,000

The Department of Elder Affairs will incur costs under section 13 of the bill for approving dementia-specific training courses and providers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.