

By Senator Brown-Waite

10-428B-01

1 A bill to be entitled
2 An act relating to long-term care; amending s.
3 400.0069, F.S.; requiring local long-term care
4 ombudsman councils to review shared-risk
5 agreements of long-term-care facilities and
6 residents; amending s. 400.0073, F.S.;
7 clarifying duties of the councils with respect
8 to inspections of nursing homes and
9 long-term-care facilities; amending s. 400.021,
10 F.S.; defining the terms "controlling
11 interest," "shared-risk agreement," and
12 "voluntary board member" for purposes of part
13 II of ch. 400, F.S., relating to the regulation
14 of nursing homes; amending s. 400.023, F.S.;
15 providing for civil actions against a facility
16 or facility staff licensed under part II of ch.
17 400, F.S., for personal injury, for death, or
18 to enforce a resident's rights; specifying the
19 required burden of proof; specifying the
20 required standard of care; authorizing actions
21 for medical negligence; specifying a statute of
22 limitations for bringing an action; providing
23 for expediting a trial; providing definitions;
24 providing for admission of a shared-risk
25 agreement into evidence; providing for recovery
26 on behalf of a claimant's estate; prohibiting
27 the concealment of information relating to the
28 settlement or resolution of a claim or action;
29 creating s. 400.0235, F.S.; providing
30 requirements for a claimant prior to filing
31 suit; creating s. 400.0236, F.S.; requiring a

1 claimant to obtain a verified written medical
2 opinion from a medical expert; creating s.
3 400.0237, F.S.; requiring a defendant to
4 conduct certain investigations; creating s.
5 400.0238, F.S.; providing for voluntary binding
6 arbitration of damages; providing for an
7 arbitration panel; providing that arbitration
8 precludes certain other remedies; creating s.
9 400.0239, F.S.; providing for arbitration to
10 apportion financial responsibility among
11 defendants; creating s. 400.024, F.S.;
12 providing for dissolution of the arbitration
13 panel and appointment of new arbitrators;
14 creating s. 400.0241, F.S.; providing for
15 payment of an arbitration award; creating s.
16 400.0242, F.S.; providing for appealing an
17 arbitration award; providing for enforcement of
18 an award in the circuit court; creating s.
19 400.0243, F.S.; specifying circumstances under
20 which a claimant may file suit; providing
21 certain limitations on economic and punitive
22 damages; providing legislative findings with
23 respect to the limitation on noneconomic
24 damages; creating s. 400.0244, F.S.; specifying
25 the basis under which a defendant may be held
26 liable for punitive damages; providing
27 definitions; creating s. 400.0245, F.S.;
28 providing the burden of proof with respect to
29 punitive damages; creating s. 400.0246, F.S.;
30 providing certain limitations on an award of
31 punitive damages; providing for payment of

1 attorney's fees; creating s. 400.0247, F.S.;
2 requiring that copies of certain documents be
3 forwarded to the state attorney if punitive
4 damages are awarded; amending s. 400.062, F.S.;
5 increasing the bed license fee for nursing home
6 facilities; amending s. 400.071, F.S.; revising
7 license application requirements; requiring
8 certain disclosures; authorizing the Agency for
9 Health Care Administration to issue an inactive
10 license; amending s. 400.111, F.S.; prohibiting
11 renewal of a license if an applicant has failed
12 to pay certain fines; amending s. 400.118,
13 F.S.; revising duties of quality-of-care
14 monitors in nursing facilities; amending s.
15 400.121, F.S.; specifying additional
16 circumstances under which the agency may deny,
17 revoke, or suspend a facility's license or
18 impose a fine; amending s. 400.141, F.S.;
19 providing additional administrative and
20 management requirements for licensed nursing
21 home facilities; requiring a facility to submit
22 information on staff-to-resident ratios, staff
23 turnover, and staff stability; requiring that
24 certain residents be examined by a licensed
25 physician; providing requirements for dining
26 and hospitality attendants; requiring
27 additional reports to the agency; creating s.
28 400.147, F.S.; requiring each licensed nursing
29 home facility to establish an internal risk
30 management and quality assurance program;
31 providing requirements of the program;

1 requiring the use of incident reports; defining
2 the term "adverse incident"; requiring that the
3 agency be notified of adverse incidents;
4 specifying duties of the internal risk manager;
5 requiring the reporting of sexual abuse;
6 requiring that the Agency for Health Care
7 Administration review a facility's internal
8 risk management and quality assurance program;
9 limiting the liability of a risk manager;
10 requiring that the agency report certain
11 conduct to the appropriate regulatory board;
12 requiring that the agency annually report to
13 the Legislature on the internal risk management
14 of nursing homes; amending s. 400.191, F.S.;
15 requiring that nursing homes post certain
16 additional information; amending s. 400.211,
17 F.S.; revising employment requirements for
18 nursing assistants; requiring in-service
19 training; amending s. 400.23, F.S.; revising
20 minimum staffing requirements for nursing
21 homes; requiring the documentation and posting
22 of compliance with such standards; increasing
23 the fines imposed for certain deficiencies;
24 creating s. 400.275, F.S.; requiring the Agency
25 for Health Care Administration to designate
26 receivers to oversee the operation of certain
27 facilities; providing for nursing home survey
28 teams; amending s. 400.402, F.S.; revising
29 definitions applicable to part III of ch. 400,
30 F.S., relating to the regulation of assisted
31 living facilities; amending s. 400.407, F.S.;

1 revising certain licensing requirements;
2 providing a bed fee for licensed facilities in
3 lieu of the biennial license fee; amending s.
4 400.414, F.S.; specifying additional
5 circumstances under which the Agency for Health
6 Care Administration may deny, revoke, or
7 suspend a license; providing for issuance of a
8 temporary license; amending s. 400.417, F.S.;
9 revising requirements for license renewal;
10 amending s. 400.419, F.S.; increasing the fines
11 imposed for certain violations; creating s.
12 400.423, F.S.; requiring certain assisted
13 living facilities to establish an internal risk
14 management and quality assurance program;
15 providing requirements of the program;
16 requiring the use of incident reports; defining
17 the term "adverse incident"; requiring that the
18 agency be notified of adverse incidents;
19 specifying duties of the internal risk manager;
20 requiring the reporting of sexual abuse;
21 requiring that the Agency for Health Care
22 Administration review a facility's internal
23 risk management and quality assurance program;
24 limiting the liability of a risk manager;
25 requiring that the agency report certain
26 conduct to the appropriate regulatory board;
27 requiring that the agency annually report to
28 the Legislature on the internal risk management
29 of assisted living facilities; amending s.
30 400.426, F.S.; requiring that certain residents
31 be examined by a licensed physician; amending

1 s. 400.428, F.S.; revising requirements for the
2 survey conducted of licensed facilities by the
3 agency; amending s. 400.429, F.S.; providing
4 for civil actions against a facility or
5 facility staff licensed under part III of ch.
6 400, F.S., for personal injury, for death, or
7 to enforce a resident's rights; specifying the
8 required burden of proof; specifying the
9 required standard of care; authorizing actions
10 for medical negligence; specifying a statute of
11 limitations for bringing an action; providing
12 for expediting a trial; providing definitions;
13 providing for admission of a shared-risk
14 agreement into evidence; providing for recovery
15 on behalf of a claimant's estate; prohibiting
16 the concealment of information relating to the
17 settlement or resolution of a claim or action;
18 creating s. 400.4291, F.S.; providing
19 requirements for a claimant prior to filing
20 suit; creating s. 400.4292, F.S.; requiring a
21 claimant to obtain a verified written medical
22 opinion from a medical expert; creating s.
23 400.4293, F.S.; requiring a defendant to
24 conduct certain investigations; creating s.
25 400.4294, F.S.; providing for voluntary binding
26 arbitration of damages; providing for an
27 arbitration panel; providing that arbitration
28 precludes certain other remedies; creating s.
29 400.4295, F.S.; providing for arbitration to
30 apportion financial responsibility among
31 defendants; creating s. 400.4296, F.S.;

1 providing for dissolution of the arbitration
2 panel and appointment of new arbitrators;
3 creating s. 400.4297, F.S.; providing for
4 payment of an arbitration award; creating s.
5 400.4298, F.S.; providing for appealing an
6 arbitration award; providing for enforcement of
7 an award in the circuit court; creating s.
8 400.4299, F.S.; specifying circumstances under
9 which a claimant may file suit; providing
10 certain limitations on economic and punitive
11 damages; providing legislative findings with
12 respect to the limitation on noneconomic
13 damages; creating s. 400.430, F.S.; specifying
14 the basis under which a defendant may be held
15 liable for punitive damages; providing
16 definitions; creating s. 400.4301, F.S.;
17 providing the burden of proof with respect to
18 punitive damages; creating s. 400.4302, F.S.;
19 providing certain limitations on an award of
20 punitive damages; providing for payment of
21 attorney's fees; creating s. 400.4303, F.S.;
22 requiring that copies of certain documents be
23 forwarded to the state attorney if punitive
24 damages are awarded; amending s. 400.435, F.S.,
25 relating to maintenance of records; conforming
26 provisions to changes made by the act; amending
27 s. 400.441, F.S.; requiring the use of
28 shared-risk agreements; clarifying facility
29 inspection requirements; amending s. 400.442,
30 F.S., relating to pharmacy and dietary
31 services; conforming provisions to changes made

1 by the act; creating s. 400.449, F.S.;

2 prohibiting the alteration or falsification of

3 medical or other records of an assisted living

4 facility; providing penalties; amending s.

5 95.11, F.S., relating to statutes of

6 limitations; conforming provisions to changes

7 made by the act; amending s. 415.1111, F.S.;

8 limiting the application of provisions

9 authorizing civil actions on behalf of

10 vulnerable adults; amending s. 464.201, F.S.;

11 authorizing an additional training program for

12 certified nursing assistants; amending s.

13 464.203, F.S.; revising certification

14 requirements for nursing assistants;

15 authorizing employment of certain nursing

16 assistants pending certification; requiring

17 continuing education; amending s. 768.735,

18 F.S.; providing for application of provisions

19 governing punitive damages; amending s.

20 397.405, F.S., relating to service providers;

21 conforming provisions to changes made by the

22 act; requiring the Agency for Health Care

23 Administration to contract for an actuarial

24 analysis of the expected reduction in liability

25 judgments, settlements, and related costs

26 resulting from the provisions of the act;

27 requiring a report to the Legislature;

28 providing appropriations; providing for

29 severability; providing effective dates.

30

31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Subsection (2) of section 400.0069, Florida
2 Statutes, is amended to read:

3 400.0069 Local long-term care ombudsman councils;
4 duties; membership.--

5 (2) The duties of the local ombudsman council are:

6 (a) To serve as a third-party mechanism for protecting
7 the health, safety, welfare, and civil and human rights of
8 residents of a long-term care facility.

9 (b) To discover, investigate, and determine the
10 existence of abuse or neglect in any long-term care facility
11 and to use the procedures provided for in ss. 415.101-415.113
12 when applicable. Investigations may consist, in part, of one
13 or more onsite administrative inspections.

14 (c) To elicit, receive, investigate, respond to, and
15 resolve complaints made by, or on behalf of, long-term care
16 facility residents.

17 (d) To review and, if necessary, to comment on, for
18 their effect on the rights of long-term care facility
19 residents, all existing or proposed rules, regulations, and
20 other governmental policies relating to long-term care
21 facilities.

22 (e) To review personal property and money accounts of
23 Medicaid residents pursuant to an investigation to obtain
24 information regarding a specific complaint or problem.

25 (f) To represent the interests of residents before
26 government agencies and to seek administrative, legal, and
27 other remedies to protect the health, safety, welfare, and
28 rights of the residents.

29 (g) To carry out other activities that the ombudsman
30 determines to be appropriate.

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1 (h) To assist residents, upon request, in developing
2 and modifying shared-risk agreements.

3 Section 2. Subsection (4) of section 400.0073, Florida
4 Statutes, is amended to read:

5 400.0073 State and local ombudsman council
6 investigations.--

7 (4) In addition to any specific investigation made
8 pursuant to a complaint, the local ombudsman council shall
9 conduct, at least annually, an investigation, which shall
10 consist, in part, of an onsite administrative inspection, of
11 each nursing home or long-term care facility within its
12 jurisdiction. This inspection shall focus on resident advocacy
13 and may not duplicate any inspection done by any other
14 regulatory agency or department.

15 Section 3. Section 400.021, Florida Statutes, is
16 amended to read:

17 400.021 Definitions.--When used in this part, unless
18 the context otherwise requires, the term:

19 (1) "Administrator" means the licensed individual who
20 has the general administrative charge of a facility.

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

23 (3) "Bed reservation policy" means the number of
24 consecutive days and the number of days per year that a
25 resident may leave the nursing home facility for overnight
26 therapeutic visits with family or friends or for
27 hospitalization for an acute condition before the licensee may
28 discharge the resident due to his or her absence from the
29 facility.

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

1 (5) "Controlling interest" means:
2 (a) The applicant for licensure or a licensee;
3 (b) A person or entity that serves as an officer of,
4 is on the board of directors of, or has a 5 percent or greater
5 ownership interest in the management company or other entity,
6 related or unrelated, which the applicant or licensee may
7 contract with to operate the facility; or
8 (c) A person or entity that serves as an officer of,
9 is on the board of directors of, or has a 5 percent or greater
10 ownership interest in the applicant or licensee.

11
12 The term does not include a voluntary board member.

13 (6)(5) "Custodial service" means care for a person
14 which entails observation of diet and sleeping habits and
15 maintenance of a watchfulness over the general health, safety,
16 and well-being of the aged or infirm.

17 (7)(6) "Department" means the Department of Children
18 and Family Services.

19 (8)(7) "Facility" means any institution, building,
20 residence, private home, or other place, whether operated for
21 profit or not, including a place operated by a county or
22 municipality, which undertakes through its ownership or
23 management to provide for a period exceeding 24-hour nursing
24 care, personal care, or custodial care for three or more
25 persons not related to the owner or manager by blood or
26 marriage, who by reason of illness, physical infirmity, or
27 advanced age require such services, but does not include any
28 place providing care and treatment primarily for the acutely
29 ill. A facility offering services for fewer than three persons
30 is within the meaning of this definition if it holds itself
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1 out to the public to be an establishment which regularly
2 provides such services.

3 (9)~~(8)~~ "Geriatric outpatient clinic" means a site for
4 providing outpatient health care to persons 60 years of age or
5 older, which is staffed by a registered nurse or a physician
6 assistant.

7 (10)~~(9)~~ "Geriatric patient" means any patient who is
8 60 years of age or older.

9 (11)~~(10)~~ "Local ombudsman council" means a local
10 long-term care ombudsman council established pursuant to s.
11 400.0069, located within the Older Americans Act planning and
12 service areas.

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

21 (13)~~(12)~~ "Nursing home facility" means any facility
22 which provides nursing services as defined in part I of
23 chapter 464 and which is licensed according to this part.

24 (14)~~(13)~~ "Nursing service" means such services or acts
25 as may be rendered, directly or indirectly, to and in behalf
26 of a person by individuals as defined in s. 464.003.

27 (15)~~(14)~~ "Planning and service area" means the
28 geographic area in which the Older Americans Act programs are
29 administered and services are delivered by the Department of
30 Elderly Affairs.

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1 ~~(16)~~~~(15)~~ "Respite care" means admission to a nursing
2 home for the purpose of providing a short period of rest or
3 relief or emergency alternative care for the primary caregiver
4 of an individual receiving care at home who, without
5 home-based care, would otherwise require institutional care.

6 ~~(17)~~~~(16)~~ "Resident care plan" means a written plan
7 developed, maintained, and reviewed not less than quarterly by
8 a registered nurse, with participation from other facility
9 staff and the resident or his or her designee or legal
10 representative, which includes a comprehensive assessment of
11 the needs of an individual resident, a listing of services
12 provided within or outside the facility to meet those needs,
13 ~~and~~ an explanation of service goals, and any shared-risk
14 agreement.

15 ~~(18)~~~~(17)~~ "Resident designee" means a person, other
16 than the owner, administrator, or employee of the facility,
17 designated in writing by a resident or a resident's guardian,
18 if the resident is adjudicated incompetent, to be the
19 resident's representative for a specific, limited purpose.

20 ~~(19)~~ "Shared-risk agreement" means a written agreement
21 between the facility and the resident, or the resident's
22 guardian or surrogate, to modify the resident care plan in
23 order to increase the quality of the resident's life or care.

24 ~~(20)~~~~(18)~~ "State ombudsman council" means the State
25 Long-Term Care Ombudsman Council established pursuant to s.
26 400.0067.

27 ~~(21)~~ "Voluntary board member" means a director of a
28 not-for-profit corporation or organization who serves solely
29 in a voluntary capacity for the corporation or organization,
30 does not receive any remuneration for his or her services on
31 the board of directors, and has no financial interest in the

1 corporation or organization. The agency shall recognize a
2 person as a voluntary board member following submission of a
3 statement to the agency by the director and the not-for-profit
4 corporation or organization which affirms that the director
5 conforms to this definition. The statement affirming the
6 status of the director must be submitted to the agency on a
7 form provided by the agency.

8 Section 4. Effective October 1, 2001, subsections (1)
9 through (10) of section 400.023, Florida Statutes, are amended
10 or added to that section, and shall apply to causes of action
11 accruing on or after that date, and subsections (11) and (12)
12 are added to that section, and shall apply to causes of action
13 in existence on that date, to read:

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

16 400.023 Civil actions to enforce rights.--

17 (1)(a) This part provides the exclusive remedy for any
18 civil action against a licensee, facility owner, facility
19 administrator, or facility staff for recovery of damages for a
20 resident's personal injury, death, or deprivation of the
21 rights specified in s. 400.022, whether based on the common
22 law or on statutory law, including, but not limited to, an
23 action founded on negligence, contract, intentional tort,
24 abuse, neglect, exploitation, or a deprivation of rights
25 specified in s. 400.022. This exclusivity applies to and
26 includes any claim against an employee, agent, or other person
27 for whose actions the licensee is alleged to be vicariously
28 liable and to any management company, parent corporation,
29 subsidiary, lessor, or other person alleged to be directly
30 liable to the resident or vicariously liable for the actions
31 of the licensee or its agent.

1 (b) However, this part does not prohibit a resident or
2 a resident's legal guardian from pursuing any administrative
3 remedy or injunctive relief available to a resident as a
4 result of a deprivation of the rights specified in s. 400.022,
5 whether or not the deprivation of rights resulted in personal
6 injury to, or the death of, the resident.

7 (c) In addition to the remedies provided in this part,
8 a resident, a resident's legal guardian, or the personal
9 representative of the estate of a deceased resident may pursue
10 an action under s. 415.1111 against a perpetrator who commits
11 a criminal act described in s. 825.102, s. 825.1025, or s.
12 825.103.

13 (2) A claim pursuant to this part may be brought by
14 the resident or his or her legal guardian or, if the resident
15 has died, the personal representative of the estate of the
16 deceased resident.

17 (3) In any claim brought pursuant to this part, the
18 claimant has the burden of proving by a preponderance of the
19 evidence that:

20 (a) Each defendant had an established duty to the
21 resident;

22 (b) Each defendant breached that duty;

23 (c) The breach of that duty is the proximate cause of
24 the personal injury to, or the death of, the resident, or the
25 proximate cause of the deprivation of the resident's rights
26 specified in s. 400.022; and

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

30 (4) For purposes of this part, a licensee breaches its
31 established duty to the resident when it fails to provide a

1 standard of care that a reasonably prudent licensee licensed
2 under this part would have provided to the resident under
3 similar circumstances. A violation of the rights specified in
4 s. 400.022 are evidence of a breach of duty by the licensee.

5 (5) A licensee is not liable for the medical
6 negligence of any physician rendering care or treatment to the
7 resident except for failing to ensure the provision of the
8 required administrative services of a medical director as
9 required in this part. This part does not limit a claimant's
10 right to bring a separate action against a physician for
11 medical negligence under chapter 766.

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

27 (7) In any civil action brought pursuant to this part,
28 a claimant over the age of 65 may move the court to advance
29 the trial on the docket. The presiding judge, after
30 consideration of the health and age of the claimant, may
31

1 advance the trial on the docket. The motion may be filed and
2 served with the initial complaint or at any time thereafter.

3 (8) As used in ss. 400.023-400.0247, the term:

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

6 (b) "Licensee" means the legal entity identified in
7 the application for licensure under this part which entity is
8 the licensed operator of the facility. The term also includes
9 the facility owner, facility administrator, and facility
10 staff.

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

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

20 (9)(a) If a shared-risk agreement has been implemented
21 in a facility, the shared-risk agreement is admissible as
22 evidence that an action taken by the facility was taken in
23 accordance with the shared-risk agreement.

24 (b) A licensee is not liable under this part for any
25 injury to, or death of, a resident which arises from a
26 decision made by a resident or a resident's legal
27 representative to refuse or modify medication or treatment if
28 the decision is made and documented in accordance with s.
29 400.022(1)(k).

30 (10) Sections 768.16-768.26 apply to a claim in which
31 the resident has died as a result of the facility's breach of

1 an established duty to the resident. In addition to any other
2 damages, the personal representative may recover on behalf of
3 the estate pursuant to ss. 768.16-768.26. The personal
4 representative may also recover on behalf of the estate
5 noneconomic damages for the resident's pain and suffering from
6 the time of injury until the time of death.

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

23 (12) The defendant must provide to the agency a copy
24 of any resolution of a claim or civil action brought pursuant
25 to this part within 90 days after such resolution, including,
26 but not limited to, any final judgment, arbitration decision,
27 order, mediation agreement, or settlement. Failure to provide
28 the copy to the agency shall result in a fine of \$500 for each
29 day it is overdue. The agency shall develop forms and adopt
30 rules necessary to administer this subsection.

31

1 Section 5. Effective October 1, 2001, and applicable
2 to causes of action accruing on or after that date, section
3 400.0235, Florida Statutes, is created to read:

4 400.0235 Requirements of the presuit process.--Before
5 filing an action in circuit court under this part, the
6 claimant must engage in the presuit screening process
7 prescribed in s. 400.0236. If the claim meets the requirements
8 of s. 400.0236, the claimant must notify each potential
9 defendant of the claimant's intent to initiate litigation
10 under this part, at which time the claimant and each potential
11 defendant must engage in the presuit investigation process
12 prescribed in s. 400.0237. Upon completion of the presuit
13 investigation process, either party may offer to engage in
14 binding arbitration as described in s. 400.0238. If the
15 parties do not engage in binding arbitration, the claimant may
16 file an action in circuit court and the provisions of s.
17 400.0243 shall apply at trial.

18 Section 6. Effective October 1, 2001, and applicable
19 to causes of action accruing on or after that date, section
20 400.0236, Florida Statutes, is created to read:

21 400.0236 Presuit screening.--Before issuing a
22 notification of intent to initiate litigation under s.
23 400.0237, the claimant must engage in presuit screening to
24 ascertain that there are reasonable grounds for believing that
25 a defendant breached an established duty to the resident which
26 proximately caused injury and actual damages to the resident.
27 If the claim involves personal injury to, or death of, the
28 resident, the claimant must obtain a verified written medical
29 opinion from a medical expert which provides corroboration of
30 reasonable grounds to initiate litigation under this part.

31

1 Section 7. Effective October 1, 2001, and applicable
2 to causes of action accruing on or after that date, section
3 400.0237, Florida Statutes, is created to read:

4 400.0237 Presuit investigation.--

5 (1) Upon completing the presuit requirements in s.
6 400.0236, the claimant shall notify each prospective defendant
7 by certified mail, return receipt requested, of the claimant's
8 intent to initiate litigation. If the claim involves personal
9 injury to, or death of, the resident, the notice of intent to
10 initiate litigation must contain the verified written medical
11 opinion described in s. 400.0236. Upon receipt of the
12 claimant's notice of intent to initiate litigation, the
13 defendant, the defendant's insurer, or the defendant's
14 self-insurer must conduct a review to determine the liability
15 of the defendant. The review must be completed within 90 days
16 after receipt of the notice to initiate litigation and the
17 suit may not be filed until at least 90 days after the date
18 the defendant receives notice.

19 (2) The notice of intent to initiate litigation must
20 be served during the time limits set forth in s. 400.023(6);
21 however, during the 90-day period the statute of limitations
22 is tolled as to all potential defendants and, upon written
23 stipulation by the parties, the 90-day period may be extended,
24 and the statute of limitations is tolled during any such
25 extension. Upon completion of the 90-day period, or upon
26 receiving notice of termination of negotiations during an
27 extended period, the claimant has 60 days or the remainder of
28 the period of the statute of limitations, whichever is
29 greater, within which to file suit.

30 (3) Each defendant, and each insurer or self-insurer
31 of each defendant, must have a procedure for promptly

1 investigating, reviewing, and evaluating a claim during the
2 90-day period. If the defendant rejects the claim,
3 corroboration of lack of reasonable grounds for litigation
4 under this part must be provided by submitting a verified
5 written medical opinion from a medical expert at the time the
6 response rejecting the claim is mailed.

7 (4) During the 90-day investigation period, each party
8 shall provide to the other party reasonable access to
9 information within its possession or control in order to
10 facilitate evaluation of the claim. Such access shall be
11 provided without formal discovery, pursuant to s.
12 766.106(5)-(9), and failure to provide such information is
13 grounds for dismissal of any applicable claim or defense
14 ultimately asserted.

15 Section 8. Effective October 1, 2001, and applicable
16 to causes of action accruing on or after that date, section
17 400.0238, Florida Statutes, is created to read:

18 400.0238 Presuit election of arbitration.--Within 7
19 days after the completion of the 90-day investigation period,
20 the parties may elect to have damages determined by an
21 arbitration panel. Such election may be initiated by either
22 party by serving a written request for voluntary binding
23 arbitration of damages, and the opposing party may accept the
24 offer, in writing, within 7 days. Such acceptance within the
25 time period provided in this section is a binding commitment
26 to comply with the decision of the arbitration panel. The
27 liability of an insurer is subject to any applicable insurance
28 limits. Voluntary binding arbitration must be completed within
29 20 days after the acceptance of an offer to arbitrate and
30 proceed under the following conditions:

31

1 (1) The arbitration panel shall be composed of three
2 arbitrators, one who is selected by the claimant, one who is
3 selected by the defendant, and a third who is selected by
4 agreement of the two arbitrators chosen by the claimant and
5 the defendant and who shall serve as chief arbitrator.

6 Multiple plaintiffs or multiple defendants shall select a
7 single arbitrator. If the multiple parties cannot agree on an
8 arbitrator, selection of the arbitrator shall be in accordance
9 with chapter 682.

10 (2) The rate of compensation for arbitrators shall be
11 agreed upon by the parties.

12 (3) Arbitration under this section precludes recourse
13 to any other remedy by the claimant against any participating
14 defendant, and shall be undertaken with the understanding
15 that:

16 (a) Net economic damages are awardable, and include,
17 but are not limited to, past and future medical expenses, wage
18 loss, and loss of earning capacity, offset by any collateral
19 source payments as defined in s. 768.76(2).

20 (b) Noneconomic damages that arise out of the same
21 incident or occurrence are limited to a maximum aggregate
22 amount against all arbitrating defendants of \$300,000 per
23 claimant. If the claimant proves to the arbitration panel, and
24 the panel finds, that the defendant's conduct amounted to
25 intentional misconduct or gross negligence, as defined in s.
26 400.0244, a maximum aggregate amount against all arbitrating
27 defendants of \$900,000 in noneconomic damages, arising out of
28 the same incident or occurrence, may be awarded to each
29 claimant. A defendant, for the purposes of this subsection,
30 may present evidence contesting any allegation of intentional
31 misconduct or gross negligence.

- 1 (c) Punitive damages shall not be awarded.
- 2 (d) The defendant is responsible for payment of
3 interest on all accrued damages with respect to which interest
4 would be awarded at trial.
- 5 (e) The defendant must pay the claimant's reasonable
6 attorney's fees, as determined by the arbitration panel, which
7 shall not exceed 15 percent of the award, reduced to present
8 value. The defendant must also pay the claimant's reasonable
9 costs, as determined by the arbitration panel.
- 10 (f) The defendant must pay all the costs of the
11 arbitration proceeding and the fees of all the arbitrators.
- 12 (g) Each defendant who submits to arbitration under
13 this section shall admit liability and is jointly and
14 severally liable for all damages assessed pursuant to this
15 section.
- 16 (h) The defendant's obligation to pay the claimant's
17 damages is for the purpose of arbitration under this section
18 only. A defendant's or claimant's offer to arbitrate shall not
19 be used in evidence or in argument during any subsequent
20 litigation of the claim following rejection of arbitration.
- 21 (i) The fact of making or accepting an offer to
22 arbitrate is not admissible as evidence of liability in any
23 collateral or subsequent proceeding on the claim.
- 24 (j) Any offer by a claimant to arbitrate must be made
25 to each defendant against whom the claimant has made a claim.
26 Any offer by a defendant to arbitrate must be made to each
27 claimant who has joined in the notice of intent to initiate
28 litigation. A claimant or defendant who rejects an offer to
29 arbitrate is subject to s. 400.0243.
- 30 (k) The hearing shall be conducted by all of the
31 arbitrators, but a majority may determine any question of fact

1 and render a final decision. The chief arbitrator shall decide
2 all evidentiary matters and shall provide the agency with a
3 copy of the arbitration panel's final decision.

4 (1) This section does not preclude settlement at any
5 time by mutual agreement of the parties.

6 (4) Any issue between the defendant and the
7 defendant's insurer or self-insurer as to who shall control
8 the defense of the claim, and any responsibility for payment
9 of an arbitration award, shall be determined under existing
10 principles of law. However, the insurer or self-insurer shall
11 not offer to arbitrate or accept a claimant's offer to
12 arbitrate without the written consent of the defendant.

13 Section 9. Effective October 1, 2001, and applicable
14 to causes of action accruing on or after that date, section
15 400.0239, Florida Statutes, is created to read:

16 400.0239 Arbitration to allocate responsibility.--

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

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

1 the first arbitration proceeding, selection of the arbitrators
2 shall be in accordance with chapter 682.

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

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

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

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

31

1 Section 10. Effective October 1, 2001, and applicable
2 to causes of action accruing on or after that date, section
3 400.024, Florida Statutes, is created to read:

4 400.024 Misarbitration.--

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

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

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

21 Section 11. Effective October 1, 2001, and applicable
22 to causes of action accruing on or after that date, section
23 400.0241, Florida Statutes, is created to read:

24 400.0241 Payment of arbitration award.--

25 (1) Within 20 days after the determination of damages
26 by the arbitration panel pursuant to s. 400.0238, the
27 defendant shall:

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

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

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

4 Section 12. Effective October 1, 2001, and applicable
5 to causes of action accruing on or after that date, section
6 400.0242, Florida Statutes, is created to read:

7 400.0242 Appeal of arbitration award.--

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

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

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

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

12 Section 13. Effective October 1, 2001, and applicable
13 to causes of action accruing on or after that date, section
14 400.0243, Florida Statutes, is created to read:

15 400.0243 Trial.--

16 (1) A proceeding for voluntary binding arbitration is
17 an alternative to jury trial and does not supersede the right
18 of any party to a jury trial.

19 (2) If neither party requests or agrees to voluntary
20 binding arbitration, the claimant may file suit. The claim
21 shall then proceed to trial or to any available legal
22 alternative such as mediation or an offer of and demand for
23 judgment under s. 768.79.

24 (3) If the defendant rejects the claimant's offer of
25 voluntary binding arbitration, the claim shall proceed to
26 trial without any limitation on damages. If the claimant
27 prevails at trial, the claimant is entitled to recover
28 prejudgment interest and the award shall be reduced by any
29 damages recovered by the claimant from arbitrating
30 codefendants following arbitration. Additionally, upon
31 prevailing at trial, the claimant shall recover reasonable

1 attorney's fees from the defendant in an amount up to 25
2 percent of the award, reduced to present value.

3 (4)(a) Except as provided in paragraph (b), if the
4 claimant rejects a defendant's offer of voluntary binding
5 arbitration, the damages awardable at trial are limited to
6 economic damages, reduced to present value, and noneconomic
7 damages, arising out of the same incident or occurrence, and
8 shall not exceed a maximum aggregate amount against all
9 defendants of \$400,000 per claimant. The damages awarded at
10 trial must be offset by any amounts received by settling or
11 arbitrating codefendants.

12 (b) The claimant may seek punitive damages only by
13 rejecting a defendant's offer of voluntary arbitration in
14 writing and contending that the defendant's conduct was
15 intentional misconduct or gross negligence, as those terms are
16 defined in s. 400.0244(2), and that such conduct was motivated
17 solely by unreasonable financial gain such that the
18 unreasonably dangerous nature of the conduct, together with
19 the high likelihood of injury resulting from the conduct, was
20 actually known by the managing agent, director, officer, or
21 other person responsible for making policy decisions on behalf
22 of the defendant. Within 90 days after the date of filing
23 suit, the claimant shall move the court to amend the complaint
24 to include a claim for punitive damages, describing the level
25 of conduct set forth in this paragraph. If the court denies
26 the motion, the claimant may request arbitration within 30
27 days after the court's ruling pursuant to s. 400.0238 and, if
28 the defendant rejects the offer to arbitrate, the case shall
29 proceed to trial as provided in subsection (3). If the court
30 grants the motion, the case shall proceed to trial, subject to

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1 the provisions of paragraph (a), and punitive damages may be
2 awarded as provided in ss. 400.0244-400.0247.

3
4 The Legislature expressly finds that such conditional limit on
5 noneconomic damages is warranted by the claimant's rejection
6 of an offer to arbitrate, and represents an appropriate
7 balance between the interests of all residents who ultimately
8 pay for such losses and the interests of those residents who
9 are injured or die as a result of such action by licensees.

10 Section 14. Effective October 1, 2001, and applicable
11 to causes of action accruing on or after that date, section
12 400.0244, Florida Statutes, is created to read:

13 400.0244 Pleading in civil actions; claim for punitive
14 damages.--

15 (1) In any civil action brought pursuant to this part,
16 no claim for punitive damages shall be permitted unless there
17 is a reasonable showing by evidence in the record or proffered
18 by the claimant which would provide a reasonable basis for
19 recovery of such damages. The claimant may move to amend her
20 or his complaint to assert a claim for punitive damages, as
21 allowed by the rules of civil procedure. The rules of civil
22 procedure shall be liberally construed so as to allow the
23 claimant discovery of evidence that appears reasonably
24 calculated to lead to admissible evidence on the issue of
25 punitive damages. Discovery of financial worth shall not
26 proceed until after the pleading concerning punitive damages
27 is permitted.

28 (2) A defendant may be held liable for punitive
29 damages only if the trier of fact, based on clear and
30 convincing evidence, finds that the defendant was guilty of

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1 intentional misconduct or gross negligence. As used in this
2 section, the term:

3 (a) "Intentional misconduct" means that the defendant
4 had actual knowledge of the wrongfulness of the conduct and
5 the high probability that injury or damage to the claimant
6 would result and, despite that knowledge, intentionally
7 pursued that course of conduct, resulting in injury or damage.

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

12 (3) In the case of an employer, principal,
13 corporation, or other legal entity, punitive damages may be
14 imposed for the conduct of an employee or agent only if the
15 conduct of the employee or agent meets the criteria specified
16 in subsection (2) and:

17 (a) The employer, principal, corporation, or other
18 legal entity actively and knowingly participated in such
19 conduct;

20 (b) The officers, directors, or managers of the
21 employer, principal, corporation, or other legal entity
22 knowingly condoned, ratified, or consented to such conduct; or

23 (c) The employer, principal, corporation, or other
24 legal entity engaged in conduct that constituted gross
25 negligence and that contributed to the loss, damages, or
26 injury suffered by the claimant.

27 Section 15. Effective October 1, 2001, and applicable
28 to causes of action accruing on or after that date, section
29 400.0245, Florida Statutes, is created to read:

30 400.0245 Punitive damages; burden of proof.--In all
31 civil actions brought pursuant to this part, the plaintiff

1 must establish at trial, by clear and convincing evidence, its
2 entitlement to an award of punitive damages. The amount of
3 damages must be determined by the greater weight of the
4 evidence.

5 Section 16. Effective October 1, 2001, and applicable
6 to causes of action accruing on or after that date, section
7 400.0246, Florida Statutes, is created to read:

8 400.0246 Punitive damages; limitation.--

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

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

14 2. The sum of \$500,000.

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

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

27 2. The sum of \$2 million.

28 (c) If the fact finder determines that at the time of
29 injury the defendant had a specific intent to harm the
30 claimant and determines that the defendant's conduct did in
31

1 fact harm the claimant, there shall be no cap on punitive
2 damages.

3 (d) This subsection does not prohibit an appropriate
4 court from exercising its jurisdiction under s. 768.74 in
5 determining the reasonableness of an award of punitive damages
6 which is less than three times the amount of compensatory
7 damages.

8 (2)(a) Except as provided in paragraph (b), punitive
9 damages may not be awarded against a defendant in a civil
10 action if that defendant establishes, before trial, that
11 punitive damages have previously been awarded against that
12 defendant in any state or federal court in any action alleging
13 harm from the same act or single course of conduct for which
14 the claimant seeks compensatory damages. For purposes of a
15 civil action, the term "the same act or single course of
16 conduct" includes acts resulting in the same manufacturing
17 defects, acts resulting in the same defects in design, or
18 failure to warn of the same hazards, with respect to similar
19 units of a product.

20 (b) In subsequent civil actions involving the same act
21 or single course of conduct for which punitive damages have
22 already been awarded, if the court determines by clear and
23 convincing evidence that the amount of prior punitive damages
24 awarded was insufficient to punish that defendant's behavior,
25 the court may permit a jury to consider an award of subsequent
26 punitive damages. In permitting a jury to consider awarding
27 subsequent punitive damages, the court shall make specific
28 findings of fact in the record to support its conclusion. In
29 addition, the court may consider whether the defendant's act
30 or course of conduct has ceased. Any subsequent punitive
31

1 damage awards must be reduced by the amount of any earlier
2 punitive damage awards rendered in state or federal court.

3 (3) The claimant's attorney's fees, if payable from
4 the judgment, are, to the extent that the fees are based on
5 the punitive damages, calculated based on the final judgment
6 for punitive damages. This subsection does not limit the
7 payment of attorney's fees based upon an award of damages
8 other than punitive damages.

9 (4) The jury may not be given instructions concerning
10 and may not be informed of the provisions of this section.

11 Section 17. Effective October 1, 2001, and applicable
12 to causes of action accruing on or after that date, section
13 400.0247, Florida Statutes, is created to read:

14 400.0247 Copies forwarded to state attorney.--In any
15 action in which punitive damages are awarded, notwithstanding
16 any appeals, the Clerk of the Court shall forward to the state
17 attorney of that circuit a copy of the complaint, any amended
18 complaints, the verdict form, and the final judgment.

19 Section 18. Subsection (3) of section 400.062, Florida
20 Statutes, is amended to read:

21 400.062 License required; fee; disposition; display;
22 transfer.--

23 (3) The annual license fee required for each license
24 issued under this part shall be comprised of two parts. Part
25 I of the license fee shall be the basic license fee. The rate
26 per bed for the basic license fee shall be established
27 annually and must be reasonably calculated to cover the cost
28 of regulation under this part, but may not exceed ~~\$50~~^{\$35} per
29 bed. Part II of the license fee shall be the resident
30 protection fee, which shall be at the rate of not less than 25
31 cents per bed. The rate per bed shall be the minimum rate per

1 bed, and such rate shall remain in effect until the effective
2 date of a rate per bed adopted by rule by the agency pursuant
3 to this part. At such time as the amount on deposit in the
4 Resident Protection Trust Fund is less than \$500,000, the
5 agency may adopt rules to establish a rate which may not
6 exceed \$10 per bed. The rate per bed shall revert back to the
7 minimum rate per bed when the amount on deposit in the
8 Resident Protection Trust Fund reaches \$500,000, except that
9 any rate established by rule shall remain in effect until such
10 time as the rate has been equally required for each license
11 issued under this part. Any amount in the fund in excess of
12 \$800,000 shall revert to the Health Care Trust Fund and may
13 not be expended without prior approval of the Legislature.
14 The agency may prorate the annual license fee for those
15 licenses which it issues under this part for less than 1 year.
16 Funds generated by license fees collected in accordance with
17 this section shall be deposited in the following manner:

18 (a) The basic license fee collected shall be deposited
19 in the Health Care Trust Fund, established for the sole
20 purpose of carrying out this part. When the balance of the
21 account established in the Health Care Trust Fund for the
22 deposit of fees collected as authorized under this section
23 exceeds one-third of the annual cost of regulation under this
24 part, the excess shall be used to reduce the licensure fees in
25 the next year.

26 (b) The resident protection fee collected shall be
27 deposited in the Resident Protection Trust Fund for the sole
28 purpose of paying, in accordance with the provisions of s.
29 400.063, for the appropriate alternate placement, care, and
30 treatment of a resident removed from a nursing home facility
31 on a temporary, emergency basis or for the maintenance and

1 care of residents in a nursing home facility pending removal
2 and alternate placement.

3 Section 19. Subsections (2) and (5) of section
4 400.071, Florida Statutes, are amended, and subsection (11) is
5 added to that section, to read:

6 400.071 Application for license.--

7 (2) The application shall be under oath and shall
8 contain the following:

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

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

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

30
31

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

4 (e) A signed affidavit disclosing any financial or
5 ownership interest that a person or entity described in
6 paragraph (a) or paragraph (d) has held in the last 5 years in
7 any entity licensed by this state or any other state to
8 provide health or residential care which has closed
9 voluntarily or involuntarily; has filed for bankruptcy; has
10 had a receiver appointed; has had a license denied, suspended,
11 or revoked; or has had an injunction issued against it which
12 was initiated by a regulatory agency. The affidavit must
13 disclose the reason any such entity was closed, whether
14 voluntarily or involuntarily.

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

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

31

1 ~~(g)~~ (h) Copies of any civil verdict or judgment
2 involving the applicant rendered within the 10 years preceding
3 the application, relating to medical negligence, violation of
4 residents' rights, or wrongful death. As a condition of
5 licensure, the licensee agrees to provide to the agency copies
6 of any new verdict or judgment involving the applicant,
7 relating to such matters, within 30 days after filing with the
8 clerk of the court. The information required in this
9 paragraph shall be maintained in the facility's licensure file
10 and in an agency database which is available as a public
11 record.

12 (5) The applicant shall furnish satisfactory proof of
13 financial ability to operate and conduct the nursing home in
14 accordance with the requirements of this part and all rules
15 adopted under this part, and the agency shall establish
16 standards for this purpose, including information reported
17 under paragraph (2)(e). The agency also shall establish
18 documentation requirements, to be completed by each applicant,
19 that show anticipated facility revenues and expenditures, the
20 basis for financing the anticipated cash-flow requirements of
21 the facility, and an applicant's access to contingency
22 financing.

23 (11) The agency may issue an inactive license to a
24 nursing home that will be temporarily unable to provide
25 services but that is reasonably expected to resume services.
26 Such designation may be made for a period not to exceed 12
27 months but may be renewed by the agency for up to 6 additional
28 months. Any request that a nursing home become inactive must
29 be submitted to the agency and approved by the agency prior to
30 initiating any suspension of service or notifying residents.
31 Upon agency approval, the nursing home shall notify residents

1 of any necessary discharge or transfer as provided in s.
2 400.0255.

3 Section 20. Subsection (3) is added to section
4 400.111, Florida Statutes, to read:

5 400.111 Expiration of license; renewal.--

6 (3) The agency may not renew a license if the
7 applicant has failed to pay any fines assessed by final order
8 of the agency or fines assessed by the Health Care Financing
9 Administration under requirements for federal certification.

10 Section 21. Subsection (2) of section 400.118, Florida
11 Statutes, is amended to read:

12 400.118 Quality assurance; early warning system;
13 monitoring; rapid response teams.--

14 (2)(a) The agency shall establish within each district
15 office one or more quality-of-care monitors, based on the
16 number of nursing facilities in the district, to monitor all
17 nursing facilities in the district on a regular, unannounced,
18 aperiodic basis, including nights, evenings, weekends, and
19 holidays. Quality-of-care monitors shall visit each nursing
20 facility at least quarterly. Priority for additional
21 monitoring visits shall be given to nursing facilities with a
22 history of resident ~~patient~~ care deficiencies. Quality-of-care
23 monitors shall be registered nurses who are trained and
24 experienced in nursing facility regulation, standards of
25 practice in long-term care, and evaluation of patient care.
26 Individuals in these positions shall not be deployed by the
27 agency as a part of the district survey team in the conduct of
28 routine, scheduled surveys, but shall function solely and
29 independently as quality-of-care monitors. Quality-of-care
30 monitors shall assess the overall quality of life in the
31 nursing facility and shall assess specific conditions in the

1 facility directly related to resident ~~patient~~ care, including
2 the operations of internal quality-improvement and
3 risk-management programs and adverse-incident reports. The
4 quality-of-care monitor shall include in an assessment visit
5 observation of the care and services rendered to residents and
6 formal and informal interviews with residents, family members,
7 facility staff, resident guests, volunteers, other regulatory
8 staff, and representatives of a long-term care ombudsman
9 council or Florida advocacy council.

10 (b) Findings of a monitoring visit, both positive and
11 negative, shall be provided orally and in writing to the
12 facility administrator or, in the absence of the facility
13 administrator, to the administrator on duty or the director of
14 nursing. The quality-of-care monitor may recommend to the
15 facility administrator procedural and policy changes and staff
16 training, as needed, to improve the care or quality of life of
17 facility residents. Conditions observed by the quality-of-care
18 monitor which threaten the health or safety of a resident or
19 that represent repeated observations of deficient practice
20 shall be reported immediately to the agency area office
21 supervisor for appropriate regulatory action and, as
22 appropriate or as required by law, to law enforcement, adult
23 protective services, or other responsible agencies.

24 (c) Any record, whether written or oral, or any
25 written or oral communication generated pursuant to paragraph
26 (a) or paragraph (b) shall not be subject to discovery or
27 introduction into evidence in any civil or administrative
28 action against a nursing facility arising out of matters which
29 are the subject of quality-of-care monitoring, and a person
30 who was in attendance at a monitoring visit or evaluation may
31 not be permitted or required to testify in any such civil or

1 administrative action as to any evidence or other matters
2 produced or presented during the monitoring visits or
3 evaluations. However, information, documents, or records
4 otherwise available from original sources are not to be
5 construed as immune from discovery or use in any such civil or
6 administrative action merely because they were presented
7 during monitoring visits or evaluations, and any person who
8 participates in such activities may not be prevented from
9 testifying as to matters within his or her knowledge, but such
10 witness may not be asked about his or her participation in
11 such activities. The exclusion from the discovery or
12 introduction of evidence in any civil or administrative action
13 provided for herein shall not apply when the quality-of-care
14 monitor makes a report to the appropriate authorities
15 regarding a threat to the health or safety of a resident.

16 Section 22. Section 400.121, Florida Statutes, is
17 amended to read:

18 400.121 Denial, suspension, revocation of license;
19 moratorium on admissions; administrative fines; procedure;
20 order to increase staffing.--

21 (1) The agency may deny, revoke, or suspend a license
22 or impose an administrative fine, not to exceed \$500 per
23 violation per day, for:

24 (a) A violation of any provision of s. 400.102(1);
25 (b) A demonstrated pattern of deficient practice;
26 (c) Failure to pay any outstanding fines assessed by
27 final order of the agency or fines assessed by the Health Care
28 Financing Administration pursuant to requirements for federal
29 certification;

30 (d) Exclusion from the Medicare or Medicaid program;

31 or

1 (e) An adverse action against any controlling interest
2 by a regulatory agency, including the appointment of a
3 receiver; denial, suspension, or revocation of a license; or
4 the issuance of an injunction by a regulatory agency. If the
5 adverse action involves solely the management company, the
6 applicant or licensee shall be given 30 days to remedy before
7 final action is taken.

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

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

24 (3) The agency may issue an order immediately
25 suspending or revoking a license when it determines that any
26 condition in the facility presents a danger to the health,
27 safety, or welfare of the residents in the facility.

28 (4)(a) The agency may impose an immediate moratorium
29 on admissions to any facility when the agency determines that
30 any condition in the facility presents a threat to the health,
31 safety, or welfare of the residents in the facility.

1 (b) Where the agency has placed a moratorium on
2 admissions on any facility two times within a 7-year period,
3 the agency may suspend the license of the nursing home and the
4 facility's management company, if any. The licensee shall be
5 afforded an administrative hearing within 90 days after the
6 suspension to determine whether the license should be revoked.
7 During the suspension, the agency shall take the facility into
8 receivership and shall operate the facility.

9 (5) An action taken by the agency to deny, suspend, or
10 revoke a facility's license under this part, in which the
11 agency claims that the facility owner or an employee of the
12 facility has threatened the health, safety, or welfare of a
13 resident of the facility, shall be heard by the Division of
14 Administrative Hearings of the Department of Management
15 Services within 120 days after receipt of the facility's
16 request for a hearing, unless the time limitation is waived by
17 both parties. The administrative law judge must render a
18 decision within 30 days after receipt of a proposed
19 recommended order. This subsection does not modify the
20 requirement that an administrative hearing be held within 90
21 days after a license is suspended under paragraph (4)(b).

22 (6) The agency is authorized to require a facility to
23 increase staffing beyond the minimum required by law, if the
24 agency has taken administrative action against the facility
25 for care-related deficiencies directly attributable to
26 insufficient staff. Under such circumstances, the facility may
27 request an expedited interim rate increase. The agency shall
28 process the request within 10 days after receipt of all
29 required documentation from the facility. A facility that
30 fails to maintain the required increased staffing is subject
31

1 to a fine of \$500 per day for each day the staffing is below
2 the level required by the agency.

3 (7) An administrative proceeding challenging an action
4 by the agency to enforce licensure requirements shall be
5 reviewed on the basis of the facts and conditions that
6 resulted in the initial agency action.

7 Section 23. Subsection (10) of section 400.141,
8 Florida Statutes, is amended, and subsections (14), (15),
9 (16), (17), (18), and (19) are added to that section, to read:

10 400.141 Administration and management of nursing home
11 facilities.--Every licensed facility shall comply with all
12 applicable standards and rules of the agency and shall:

13 (10) Keep full records of resident admissions and
14 discharges; medical and general health status, including
15 medical records, personal and social history, and identity and
16 address of next of kin or other persons who may have
17 responsibility for the affairs of the residents; and
18 individual resident care plans including, but not limited to,
19 prescribed services, services related to assistance with
20 activities of daily living, service frequency and duration,
21 and service goals. The records shall be open to inspection by
22 the agency.

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

26 (15) Submit semiannually to the agency, or more
27 frequently if requested by the agency, information regarding
28 facility staff-to-resident ratios, staff turnover, and staff
29 stability, including information regarding certified nursing
30 assistants, licensed nurses, the director of nursing, and the
31 facility administrator. For purposes of this reporting:

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

5 (b) Staff turnover must be reported for the most
6 recent 12-month period ending on the last workday of the most
7 recent calendar quarter prior to the date the information is
8 submitted. The turnover rate must be computed quarterly, with
9 the annual rate being the cumulative sum of the quarterly
10 rates. The formula for determining the turnover rate is the
11 total number of terminations or separations experienced during
12 the quarter, divided by the total number of staff employed at
13 the end of the period for which the rate is computed, and
14 expressed as a percentage.

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

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

23 (17) Ensure that any resident who exhibits signs of
24 dementia or cognitive impairment is examined by a licensed
25 physician to rule out the presence of an underlying
26 physiological condition that may be contributing to such
27 dementia or impairment. The examination must occur within 7
28 days after the admission of a resident to the facility or
29 within 7 days after the acknowledgement of such signs by
30 facility staff. The facility must notify the resident's
31 designee or legal representative prior to the examination. If

1 an underlying physiological condition is determined to exist,
2 the facility shall provide necessary care and services to
3 treat the condition.

4 (18) If the facility implements a dining and
5 hospitality attendant program, ensure that the program is
6 developed and implemented under the supervision of the
7 facility director of nursing. A licensed nurse or a registered
8 dietitian must conduct training of dining and hospitality
9 attendants. A person employed by a facility as a dining and
10 hospitality attendant must perform tasks under the direct
11 supervision of a licensed nurse.

12 (19) Report to the agency any filing for bankruptcy
13 protection by the facility or its parent corporation,
14 divestiture or spin-off of its assets, or corporate
15 reorganization within 30 days after the completion of such
16 activity.

17
18 Facilities that have been awarded a Gold Seal under the
19 program established in s. 400.235 may develop a plan to
20 provide certified nursing assistant training as prescribed by
21 federal regulations and state rules and may apply to the
22 agency for approval of its program.

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

25 400.147 Internal risk-management and quality-assurance
26 program.--

27 (1) Every facility shall, as part of its
28 administrative functions, establish an internal
29 risk-management and quality-assurance program, the purpose of
30 which is to assess resident-care practices; review facility
31 quality indicators, facility incident reports, deficiencies

1 cited by the agency, individual resident shared-risk
2 agreements as defined in s. 400.021, and resident grievances;
3 and develop plans of action to correct and respond quickly to
4 identified quality deficiencies. The program must include:

5 (a) A risk manager employed by the facility and
6 licensed under chapter 395 who is responsible for
7 implementation and oversight of the facility's internal
8 risk-management and quality-assurance program as required by
9 this section. A risk manager must not be made responsible for
10 more than four internal risk-management and quality-assurance
11 programs in separate facilities licensed pursuant to chapter
12 400 or chapter 395.

13 (b) A risk-management and quality-assurance committee
14 consisting of the facility risk manager, the administrator,
15 the director of nursing, the medical director, and at least
16 three other members of the facility staff. The risk-management
17 and quality-assurance committee shall meet at least monthly.

18 (c) Policies and procedures to implement the internal
19 risk-management and quality-assurance program, which must
20 include the investigation and analysis of the frequency and
21 causes of general categories and specific types of adverse
22 incidents to residents.

23 (d) The development of appropriate measures to
24 minimize the risk of adverse incidents to residents,
25 including, but not limited to, education and training in risk
26 management and risk prevention for all nonphysician personnel,
27 as follows:

28 1. Such education and training of all nonphysician
29 personnel shall be part of their initial orientation; and

30 2. At least 3 hours of such education and training
31 shall be provided annually for all nonphysician personnel of

1 the licensed facility working in clinical areas and providing
2 resident care.

3 (e) The analysis of resident grievances that relate to
4 resident care and the quality of clinical services.

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

9 (2) The internal risk-management and quality-assurance
10 program is the responsibility of the facility administrator.

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

16 (4) Each internal risk-management and
17 quality-assurance program shall include the use of incident
18 reports to be filed with the risk manager and the facility
19 administrator. The risk manager shall have free access to all
20 resident records of the licensed facility. The incident
21 reports are confidential as provided by law, are part of the
22 workpapers of the attorney defending the facility in
23 litigation relating to the facility, and are subject to
24 discovery but are not admissible as evidence in court. As a
25 part of each internal risk-management and quality-assurance
26 program, the incident reports shall be used to develop
27 categories of incidents which identify problem areas. Once
28 identified, procedures shall be adjusted to correct the
29 problem areas.

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

1 (a) An event over which facility personnel could
2 exercise control and which is associated in whole or in part
3 with the facility's intervention, rather than the condition
4 for which such intervention occurred, and which results in one
5 of the following:

6 1. Death;

7 2. Brain or spinal damage;

8 3. Permanent disfigurement;

9 4. Fracture or dislocation of bones or joints;

10 5. A resulting limitation of neurological, physical,
11 or sensory function;

12 6. Any condition that required medical attention to
13 which the resident has not given his or her informed consent
14 including failure to honor advanced directives; or

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

19 (b) Abuse, neglect, or exploitation as defined in s.
20 415.102 or s. 39.01;

21 (c) Resident elopement; or

22 (d) An event that is reported to law enforcement.

23 (6) The facility shall notify the agency within 1
24 business day after the occurrence of an adverse incident. The
25 notification must be made in writing and be provided by
26 facsimile device or overnight mail delivery. The notification
27 must include information regarding the identity of the
28 affected resident, the type of adverse incident, the
29 initiation of an investigation by the facility, and whether
30 the events causing or resulting in the adverse incident
31 represent a potential risk to any other resident. The

1 notification is confidential as provided by law and is not
2 discoverable or admissible in any civil or administrative
3 action, except in disciplinary proceedings by the agency or
4 the appropriate regulatory board. The agency may investigate,
5 as it deems appropriate, any such incident and prescribe
6 measures that must or may be taken in response to the
7 incident. The agency shall review each incident and determine
8 whether it potentially involved conduct by the health care
9 professional who is subject to disciplinary action, in which
10 case the provisions of s. 456.073 shall apply.

11 (7)(a) Each facility subject to this section shall
12 submit an adverse-incident report to the agency for each
13 adverse incident within 15 calendar days after its occurrence
14 on a form developed by the agency.

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

22 (c) The report submitted to the agency must also
23 contain the name and license number of the risk manager of the
24 facility.

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

29 (8) The internal risk manager of each facility shall:

30 (a) Investigate every allegation of sexual misconduct
31 which is made against a member of the facility's personnel who

1 has direct resident contact if it is alleged that the sexual
2 misconduct occurred at the facility or on the grounds of the
3 facility;

4 (b) Report every allegation of sexual misconduct to
5 the administrator of the facility; and

6 (c) Notify the resident representative or guardian of
7 the victim that an allegation of sexual misconduct has been
8 made and that an investigation is being conducted.

9 (9)(a) Any witness who witnessed or who possesses
10 actual knowledge of the act that is the basis of an allegation
11 of sexual abuse shall notify:

12 1. The local law enforcement agency;

13 2. The central abuse hotline of the Department of
14 Children and Family Services; and

15 3. The risk manager and the administrator.

16 (b) As used in this subsection, the term "sexual
17 abuse" means acts of a sexual nature committed for the sexual
18 gratification of anyone upon, or in the presence of, a
19 vulnerable adult, without the vulnerable adult's informed
20 consent, or a minor. The term includes, but is not limited to,
21 the acts defined in s. 794.011(1)(h), fondling, exposure of a
22 vulnerable adult's or minor's sexual organs, or the use of the
23 vulnerable adult or minor to solicit for or engage in
24 prostitution or sexual performance. The term does not include
25 any act intended for a valid medical purpose or any act that
26 may reasonably be construed to be a normal caregiving action.

27 (10) The agency shall review, as part of its licensure
28 inspection process, the internal risk-management and
29 quality-assurance program at each facility regulated by this
30 section to determine whether the program meets standards
31 established in statutory laws and rules, is being conducted in

1 a manner designed to reduce adverse incidents, and is
2 appropriately reporting incidents as required by this section.

3 (11) There is no monetary liability on the part of,
4 and a cause of action for damages may not arise against, any
5 risk manager licensed under chapter 395 for the implementation
6 and oversight of the internal risk-management and
7 quality-assurance program in a facility licensed under this
8 part as required by this section, or for any act or proceeding
9 undertaken or performed within the scope of the functions of
10 such internal risk-management and quality-assurance program if
11 the risk manager acts without intentional fraud.

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

18 (13) The agency may adopt rules to administer this
19 section.

20 (14) The agency shall annually submit to the
21 Legislature a report on nursing home internal risk management.
22 The report must include the following information arrayed by
23 county:

24 (a) The total number of adverse incidents.

25 (b) A listing, by category, of the types of adverse
26 incidents, the number of incidents occurring within each
27 category, and the type of staff involved.

28 (c) A listing, by category, of the types of injury
29 caused and the number of injuries occurring within each
30 category.

31

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

3 (e) Disciplinary action taken against staff,
4 categorized by type of staff involved.

5 Section 25. Paragraph (a) of subsection (5) of section
6 400.191, Florida Statutes, is amended to read:

7 400.191 Availability, distribution, and posting of
8 reports and records.--

9 (5) Every nursing home facility licensee shall:

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

13 1. A concise summary of the last inspection report
14 pertaining to the nursing home and issued by the agency, with
15 references to the page numbers of the full reports, noting any
16 deficiencies found by the agency and the actions taken by the
17 licensee to rectify such deficiencies and indicating in such
18 summaries where the full reports may be inspected in the
19 nursing home.

20 2. A copy of the most recent version of the Florida
21 Nursing Home Guide Watch List.

22 Section 26. Subsection (2) of section 400.211, Florida
23 Statutes, is amended, and subsection (4) is added to that
24 section, to read:

25 400.211 Persons employed as nursing assistants;
26 certification requirement.--

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

31

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

3 (b) Persons who have been positively verified as
4 actively certified and on the registry in another state and
5 who have not been found guilty of abuse, neglect, or
6 exploitation in another state, regardless of adjudication and
7 have not entered a plea of nolo contendere or guilty with no
8 findings of abuse; or

9 (c) Persons who have preliminarily passed the state's
10 certification exam.

11
12 The certification requirement must be met within 4 months
13 after initial employment as a nursing assistant in a licensed
14 nursing facility.

15 (4) When employed by a nursing home facility for a
16 12-month period or longer, a nursing assistant, to maintain
17 certification, shall submit to a performance review every 12
18 months and must receive regular in-service education based on
19 the outcome of such reviews. The in-service training must:

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

23 (b) Include, at a minimum:

24 1. Techniques for assisting with eating and proper
25 feeding;

26 2. Principles of adequate nutrition and hydration;

27 3. Techniques for assisting and responding to the
28 cognitively impaired resident or the resident with difficult
29 behaviors;

30 4. Techniques for caring for the resident at the
31 end-of-life; and

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

3 (c) Address areas of weakness as determined in nursing
4 assistant performance reviews and may address the special
5 needs of residents as determined by the nursing home facility
6 staff.

7 Section 27. Subsections (2), (3), and (8) of section
8 400.23, Florida Statutes, are amended to read:

9 400.23 Rules; evaluation and deficiencies; licensure
10 status.--

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

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

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

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

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

23 (d) The equipment essential to the health and welfare
24 of the residents.

25 (e) A uniform accounting system.

26 (f) The use of shared-risk agreements between
27 facilities and their residents, including the involvement of a
28 physician, as appropriate.

29 (g)~~(f)~~ The care, treatment, and maintenance of
30 residents and measurement of the quality and adequacy thereof,
31 based on rules developed under this chapter and the Omnibus

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

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

27 (i) The implementation of the consumer-satisfaction
28 survey pursuant to s. 400.0225; the availability,
29 distribution, and posting of reports and records pursuant to
30 s. 400.191; and the Gold Seal Program pursuant to s. 400.235.

31

1 (3)(a) The ~~agency shall adopt rules providing for the~~
2 minimum staffing requirements for nursing homes. ~~These~~
3 ~~requirements~~ shall include, for each nursing home facility, a
4 minimum certified nursing assistant staffing of 2.0 hours of
5 direct resident care per resident per day but never below one
6 certified nursing assistant per 20 residents and a minimum
7 licensed nursing staffing of 1.0 hour of direct resident care
8 per resident per day but never below one licensed nurse per 40
9 residents, including evening and night shifts and weekends.
10 Each nursing home must document compliance with staffing
11 standards as required under this paragraph and post daily
12 ~~Agency rules shall specify requirements for documentation of~~
13 ~~compliance with staffing standards, sanctions for violation of~~
14 ~~such standards, and requirements for daily posting of the~~
15 names of staff on duty for the benefit of facility residents
16 and the public. The agency shall recognize the use of licensed
17 nurses for compliance with minimum staffing requirements for
18 certified nursing assistants, provided that the facility
19 otherwise meets the minimum staffing requirements for licensed
20 nurses and that the licensed nurses so recognized are
21 performing the duties of a certified nursing assistant. Unless
22 otherwise approved by the agency, licensed nurses counted
23 towards the minimum staffing requirements for certified
24 nursing assistants must exclusively perform the duties of a
25 certified nursing assistant for the entire shift and shall not
26 also be counted towards the minimum staffing requirements for
27 licensed nurses. If the agency approved a facility's request
28 to use a licensed nurse to perform both licensed nursing and
29 certified nursing assistant duties, the facility must allocate
30 the amount of staff time specifically spent on certified
31 nursing assistant duties for the purpose of documenting

1 compliance with minimum staffing requirements for certified
2 and licensed nursing staff. In no event may the hours of a
3 licensed nurse with dual job responsibilities be counted
4 twice.

5 (b) The agency shall adopt rules to allow properly
6 trained staff of a nursing facility, in addition to certified
7 nursing assistants and licensed nurses, to assist residents
8 with eating. The rules shall specify the minimum training
9 requirements and shall specify the physiological conditions or
10 disorders of residents which would necessitate that the eating
11 assistance be provided by nursing personnel of the facility.
12 Nonnursing staff providing eating assistance to residents
13 under the provisions of this subsection shall not count
14 towards compliance with minimum staffing standards.

15 (c) Licensed practical nurses licensed under chapter
16 464 who are providing nursing services in nursing home
17 facilities under this part may supervise the activities of
18 other licensed practical nurses, certified nursing assistants,
19 and other unlicensed personnel providing services in such
20 facilities in accordance with rules adopted by the Board of
21 Nursing.

22 (8) The agency shall adopt rules to provide that, when
23 the criteria established under subsection (2) are not met,
24 such deficiencies shall be classified according to the nature
25 of the deficiency. The agency shall indicate the
26 classification on the face of the notice of deficiencies as
27 follows:

28 (a) Class I deficiencies are those which the agency
29 determines present an imminent danger to the residents or
30 guests of the nursing home facility or a substantial
31 probability that death or serious physical harm would result

1 therefrom. The condition or practice constituting a class I
2 violation shall be abated or eliminated immediately, unless a
3 fixed period of time, as determined by the agency, is required
4 for correction. ~~Notwithstanding s. 400.121(2),~~ A class I
5 deficiency is subject to a civil penalty in an amount not less
6 than \$10,000~~\$5,000~~ and not exceeding \$25,000 for each and
7 every deficiency. A fine must ~~may~~ be levied notwithstanding
8 the correction of the deficiency.

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

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

31

1 Section 28. Section 400.275, Florida Statutes, is
2 created to read:

3 400.275 Agency duties.--

4 (1) The agency shall establish an in-house pool of
5 qualified individuals to serve as receivers under s. 400.126
6 or as monitors to oversee the operation of facilities licensed
7 under this part which have serious problems related to the
8 care of residents until the problems are corrected to the
9 satisfaction of the agency, the facility is sold, or the
10 facility is closed and residents are relocated. Such
11 individuals may also serve as a quality-of-care monitor, a
12 member of a rapid-response team, or a trainer. The Secretary
13 of Health Care Administration may assign other regulatory
14 functions unrelated to the survey process to such individuals.
15 The licensee shall reimburse, under s. 400.126(10), all
16 expenses and costs incurred by the resident protection trust
17 fund for the services of a receiver or monitor to oversee the
18 operation of a nursing home facility.

19 (2) The agency shall ensure that each newly hired
20 nursing home surveyor, as a part of basic training, is
21 assigned full-time to a licensed nursing home for at least 2
22 days within a 7-day period to observe facility operations
23 outside of the survey process before the surveyor begins
24 survey responsibilities. The agency may not assign an
25 individual to be a member of a survey team for purposes of a
26 survey, evaluation, or consultation visit at a nursing home
27 facility in which the surveyor was an employee within the
28 preceding 5 years.

29 (3) The agency shall semiannually provide for joint
30 training of nursing home surveyors and staff of facilities
31 licensed under this part on at least one of the 10 federal

1 citations that were most frequently issued against nursing
2 facilities in this state during the previous calendar year.

3 (4) Each member of a nursing home survey team who is a
4 health professional licensed under part I of chapter 464, part
5 X of chapter 468, or chapter 491, shall earn not less than 50
6 percent of required continuing education credits in geriatric
7 care. Each member of a nursing home survey team who is a
8 health professional licensed under chapter 465 shall earn not
9 less than 30 percent of required continuing education credits
10 in geriatric care.

11 (5) The agency must ensure that when a deficiency is
12 related to substandard quality of care, a physician with
13 geriatric experience licensed under chapter 458 or chapter 459
14 or a registered nurse with geriatric experience licensed under
15 chapter 464 participates in the agency's informal
16 dispute-resolution process.

17 Section 29. Section 400.402, Florida Statutes, is
18 amended to read:

19 400.402 Definitions.--When used in this part, the
20 term:

21 (1) "Activities of daily living" means functions and
22 tasks for self-care, including ambulation, bathing, dressing,
23 eating, grooming, and toileting, and other similar tasks.

24 (2) "Administrator" means an individual at least 21
25 years of age who is responsible for the operation and
26 maintenance of an assisted living facility.

27 (3) "Agency" means the Agency for Health Care
28 Administration.

29 (4) "Aging in place" or "age in place" means the
30 process of providing increased or adjusted services to a
31 person to compensate for the physical or mental decline that

1 may occur with the aging process, in order to maximize the
2 person's dignity and independence and permit them to remain in
3 a familiar, noninstitutional, residential environment for as
4 long as possible. Such services may be provided by facility
5 staff, volunteers, family, or friends, or through contractual
6 arrangements with a third party.

7 (5) "Applicant" means an individual owner,
8 corporation, partnership, firm, association, or governmental
9 entity that applies for a license.

10 (6) "Assisted living facility" means any building or
11 buildings, section or distinct part of a building, private
12 home, boarding home, home for the aged, or other residential
13 facility, whether operated for profit or not, which undertakes
14 through its ownership or management to provide housing, meals,
15 and one or more personal services for a period exceeding 24
16 hours to one or more adults who are not relatives of the owner
17 or administrator.

18 (7) "Chemical restraint" means a pharmacologic drug
19 that physically limits, restricts, or deprives an individual
20 of movement or mobility, and is used for discipline or
21 convenience and not required for the treatment of medical
22 symptoms.

23 (8) "Community living support plan" means a written
24 document prepared by a mental health resident and the
25 resident's mental health case manager in consultation with the
26 administrator of an assisted living facility with a limited
27 mental health license or the administrator's designee. A copy
28 must be provided to the administrator. The plan must include
29 information about the supports, services, and special needs of
30 the resident which enable the resident to live in the assisted
31 living facility and a method by which facility staff can

1 recognize and respond to the signs and symptoms particular to
2 that resident which indicate the need for professional
3 services.

4 (9) "Cooperative agreement" means a written statement
5 of understanding between a mental health care provider and the
6 administrator of the assisted living facility with a limited
7 mental health license in which a mental health resident is
8 living. The agreement must specify directions for accessing
9 emergency and after-hours care for the mental health resident.
10 A single cooperative agreement may service all mental health
11 residents who are clients of the same mental health care
12 provider.

13 (10) "Department" means the Department of Elderly
14 Affairs.

15 (11) "Emergency" means a situation, physical
16 condition, or method of operation which presents imminent
17 danger of death or serious physical or mental harm to facility
18 residents.

19 (12) "Extended congregate care" means acts beyond
20 those authorized in subsection (16) ~~(17)~~ that may be performed
21 pursuant to part I of chapter 464 by persons licensed
22 thereunder while carrying out their professional duties, and
23 other supportive services which may be specified by rule. The
24 purpose of such services is to enable residents to age in
25 place in a residential environment despite mental or physical
26 limitations that might otherwise disqualify them from
27 residency in a facility licensed under this part.

28 (13) "Guardian" means a person to whom the law has
29 entrusted the custody and control of the person or property,
30 or both, of a person who has been legally adjudged
31 incapacitated.

1 (14) "Limited nursing services" means acts that may be
2 performed pursuant to part I of chapter 464 by persons
3 licensed thereunder while carrying out their professional
4 duties but limited to those acts which the department
5 specifies by rule. Acts which may be specified by rule as
6 allowable limited nursing services shall be for persons who
7 meet the admission criteria established by the department for
8 assisted living facilities and shall not be complex enough to
9 require 24-hour nursing supervision and may include such
10 services as the application and care of routine dressings, and
11 care of casts, braces, and splints.

12 ~~(15) "Managed risk" means the process by which the~~
13 ~~facility staff discuss the service plan and the needs of the~~
14 ~~resident with the resident and, if applicable, the resident's~~
15 ~~representative or designee or the resident's surrogate,~~
16 ~~guardian, or attorney in fact, in such a way that the~~
17 ~~consequences of a decision, including any inherent risk, are~~
18 ~~explained to all parties and reviewed periodically in~~
19 ~~conjunction with the service plan, taking into account changes~~
20 ~~in the resident's status and the ability of the facility to~~
21 ~~respond accordingly.~~

22 (15)~~(16)~~ "Mental health resident" means an individual
23 who receives social security disability income due to a mental
24 disorder as determined by the Social Security Administration
25 or receives supplemental security income due to a mental
26 disorder as determined by the Social Security Administration
27 and receives optional state supplementation.

28 (16)~~(17)~~ "Personal services" means direct physical
29 assistance with or supervision of the activities of daily
30 living and the self-administration of medication and other
31 similar services which the department may define by rule.

1 "Personal services" shall not be construed to mean the
2 provision of medical, nursing, dental, or mental health
3 services.

4 (17)~~(18)~~ "Physical restraint" means a device which
5 physically limits, restricts, or deprives an individual of
6 movement or mobility, including, but not limited to, a
7 half-bed rail, a full-bed rail, a geriatric chair, and a posey
8 restraint. The term "physical restraint" shall also include
9 any device which was not specifically manufactured as a
10 restraint but which has been altered, arranged, or otherwise
11 used for this purpose. The term shall not include bandage
12 material used for the purpose of binding a wound or injury.

13 (18)~~(19)~~ "Relative" means an individual who is the
14 father, mother, stepfather, stepmother, son, daughter,
15 brother, sister, grandmother, grandfather, great-grandmother,
16 great-grandfather, grandson, granddaughter, uncle, aunt, first
17 cousin, nephew, niece, husband, wife, father-in-law,
18 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
19 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
20 half brother, or half sister of an owner or administrator.

21 (19)~~(20)~~ "Resident" means a person 18 years of age or
22 older, residing in and receiving care from a facility.

23 (20)~~(21)~~ "Resident's representative or designee" means
24 a person other than the owner, or an agent or employee of the
25 facility, designated in writing by the resident, if legally
26 competent, to receive notice of changes in the contract
27 executed pursuant to s. 400.424; to receive notice of and to
28 participate in meetings between the resident and the facility
29 owner, administrator, or staff concerning the rights of the
30 resident; to assist the resident in contacting the ombudsman
31 council if the resident has a complaint against the facility;

1 or to bring legal action on behalf of the resident pursuant to
2 s. 400.429.

3 (21)~~(22)~~ "Service plan" means a written plan,
4 developed and agreed upon by the resident and, if applicable,
5 the resident's representative or designee or the resident's
6 surrogate, guardian, or attorney in fact, if any, and the
7 administrator or designee representing the facility, which
8 addresses the unique physical and psychosocial needs,
9 abilities, and personal preferences of each resident receiving
10 extended congregate care services. The plan shall include a
11 brief written description, in easily understood language, of
12 what services shall be provided, who shall provide the
13 services, when the services shall be rendered, ~~and~~ the
14 purposes and benefits of the services, and any shared-risk
15 agreement.

16 (22)~~(23)~~ "Shared responsibility" means exploring the
17 options available to a resident within a facility and the
18 risks involved with each option when making decisions
19 pertaining to the resident's abilities, preferences, and
20 service needs, thereby enabling the resident and, if
21 applicable, the resident's representative or designee, or the
22 resident's surrogate, guardian, or attorney in fact, and the
23 facility to develop a service plan which best meets the
24 resident's needs and seeks to improve the resident's quality
25 of life.

26 (23) "Shared-risk agreement" means a written agreement
27 between the assisted living facility and the resident, or the
28 resident's guardian or surrogate, to modify the resident's
29 service plan in order to increase the quality of the
30 resident's life or care.

31

1 (24) "Supervision" means reminding residents to engage
2 in activities of daily living and the self-administration of
3 medication, and, when necessary, observing or providing verbal
4 cuing to residents while they perform these activities.

5 (25) "Supplemental security income," Title XVI of the
6 Social Security Act, means a program through which the Federal
7 Government guarantees a minimum monthly income to every person
8 who is age 65 or older, or disabled, or blind and meets the
9 income and asset requirements.

10 (26) "Supportive services" means services designed to
11 encourage and assist aged persons or adults with disabilities
12 to remain in the least restrictive living environment and to
13 maintain their independence as long as possible.

14 (27) "Twenty-four-hour nursing supervision" means
15 services that are ordered by a physician for a resident whose
16 condition requires the supervision of a physician and
17 continued monitoring of vital signs and physical status. Such
18 services shall be: medically complex enough to require
19 constant supervision, assessment, planning, or intervention by
20 a nurse; required to be performed by or under the direct
21 supervision of licensed nursing personnel or other
22 professional personnel for safe and effective performance;
23 required on a daily basis; and consistent with the nature and
24 severity of the resident's condition or the disease state or
25 stage.

26 Section 30. Subsections (3) and (4) of section
27 400.407, Florida Statutes, are amended to read:

28 400.407 License required; fee, display.--

29 (3) Any license granted by the agency must state the
30 maximum resident capacity of the facility, the type of care
31 for which the license is granted, the date the license is

1 issued, the expiration date of the license, and any other
2 information deemed necessary by the agency. Licenses shall be
3 issued for one or more of the following categories of care:
4 standard, extended congregate care, limited nursing services,
5 or limited mental health.

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

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

19 1. In order for extended congregate care services to
20 be provided in a facility licensed under this part, the agency
21 must first determine that all requirements established in law
22 and rule are met and must specifically designate, on the
23 facility's license, that such services may be provided and
24 whether the designation applies to all or part of a facility.
25 Such designation may be made at the time of initial licensure
26 or ~~biennial~~ relicensure, or upon request in writing by a
27 licensee under this part. Notification of approval or denial
28 of such request shall be made within 90 days after receipt of
29 such request and all necessary documentation. Existing
30 facilities qualifying to provide extended congregate care
31 services must have maintained a standard license and may not

1 have been subject to administrative sanctions during the
2 previous 2 years, or since initial licensure if the facility
3 has been licensed for less than 2 years, for any of the
4 following reasons:

5 a. A class I or class II violation;

6 b. Three or more repeat or recurring class III
7 violations of identical or similar resident care standards as
8 specified in rule from which a pattern of noncompliance is
9 found by the agency;

10 c. Three or more class III violations that were not
11 corrected in accordance with the corrective action plan
12 approved by the agency;

13 d. Violation of resident care standards resulting in a
14 requirement to employ the services of a consultant pharmacist
15 or consultant dietitian;

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

20 f. Imposition of a moratorium on admissions or
21 initiation of injunctive proceedings.

22 2. Facilities that are licensed to provide extended
23 congregate care services shall maintain a written progress
24 report on each person who receives such services, which report
25 describes the type, amount, duration, scope, and outcome of
26 services that are rendered and the general status of the
27 resident's health. A registered nurse, or appropriate
28 designee, representing the agency shall visit such facilities
29 at least quarterly ~~two times a year~~ to monitor residents who
30 are receiving extended congregate care services and to
31 determine if the facility is in compliance with this part and

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

20 3. Facilities that are licensed to provide extended
21 congregate care services shall:

22 a. Demonstrate the capability to meet unanticipated
23 resident service needs.

24 b. Offer a physical environment that promotes a
25 homelike setting, provides for resident privacy, promotes
26 resident independence, and allows sufficient congregate space
27 as defined by rule.

28 c. Have sufficient staff available, taking into
29 account the physical plant and firesafety features of the
30 building, to assist with the evacuation of residents in an
31 emergency, as necessary.

1 d. Adopt and follow policies and procedures that
2 maximize resident independence, dignity, choice, and
3 decisionmaking to permit residents to age in place to the
4 extent possible, so that moves due to changes in functional
5 status are minimized or avoided.

6 e. Allow residents or, if applicable, a resident's
7 representative, designee, surrogate, guardian, or attorney in
8 fact to make a variety of personal choices, participate in
9 developing service plans, and share responsibility in
10 decisionmaking.

11 f. Implement the concept of managed risk.

12 g. Provide, either directly or through contract, the
13 services of a person licensed pursuant to part I of chapter
14 464.

15 h. In addition to the training mandated in s. 400.452,
16 provide specialized training as defined by rule for facility
17 staff.

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

28 5. The primary purpose of extended congregate care
29 services is to allow residents, as they become more impaired,
30 the option of remaining in a familiar setting from which they
31 would otherwise be disqualified for continued residency. A

1 facility licensed to provide extended congregate care services
2 may also admit an individual who exceeds the admission
3 criteria for a facility with a standard license, if the
4 individual is determined appropriate for admission to the
5 extended congregate care facility.

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

11 7. When a facility can no longer provide or arrange
12 for services in accordance with the resident's service plan
13 and needs and the facility's policy, the facility shall make
14 arrangements for relocating the person in accordance with s.
15 400.428(1)(k).

16 8. Failure to provide extended congregate care
17 services may result in denial of extended congregate care
18 license renewal.

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

27 a. A description of the facilities licensed to provide
28 such services, including total number of beds licensed under
29 this part.

30 b. The number and characteristics of residents
31 receiving such services.

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

3 d. An analysis of deficiencies cited during licensure
4 ~~biennial~~ inspections.

5 e. The number of residents who required extended
6 congregate care services at admission and the source of
7 admission.

8 f. Recommendations for statutory or regulatory
9 changes.

10 g. The availability of extended congregate care to
11 state clients residing in facilities licensed under this part
12 and in need of additional services, and recommendations for
13 appropriations to subsidize extended congregate care services
14 for such persons.

15 h. Such other information as the department considers
16 appropriate.

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

20 1. In order for limited nursing services to be
21 provided in a facility licensed under this part, the agency
22 must first determine that all requirements established in law
23 and rule are met and must specifically designate, on the
24 facility's license, that such services may be provided. Such
25 designation may be made at the time of initial licensure or
26 ~~biennial~~ relicensure, or upon request in writing by a licensee
27 under this part. Notification of approval or denial of such
28 request shall be made within 90 days after receipt of such
29 request and all necessary documentation. Existing facilities
30 qualifying to provide limited nursing services shall have
31 maintained a standard license and may not have been subject to

1 administrative sanctions that affect the health, safety, and
2 welfare of residents for the previous 2 years or since initial
3 licensure if the facility has been licensed for less than 2
4 years.

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

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

27 (4)~~(a)~~ Each facility shall be assessed a bed fee of
28 \$100 for each initial, renewal, and change-of-ownership
29 application processed, except that a bed fee may not be
30 assessed for any bed designated for recipients of optional
31 state supplementation payments. The fee for processing an

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

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

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

1 ~~than the average rate of inflation for the 12 months~~
2 ~~immediately preceding the increase.~~

3 Section 31. Paragraph (n) is added to subsection (1)
4 of section 400.414, Florida Statutes, and subsection (8) is
5 added to that section, to read:

6 400.414 Denial, revocation, or suspension of license;
7 imposition of administrative fine; grounds.--

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

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

16
17 Administrative proceedings challenging agency action under
18 this subsection shall be reviewed on the basis of the facts
19 and conditions that resulted in the agency action.

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

23 Section 32. Subsections (1) and (6) of section
24 400.417, Florida Statutes, are amended to read:

25 400.417 Expiration of license; renewal; conditional
26 license.--

27 (1) A standard license ~~Biennial licenses~~, unless
28 sooner suspended or revoked, shall expire 2 years from the
29 date of issuance. Limited nursing, extended congregate care,
30 and limited mental health licenses shall expire 1 year after
31 the date of issuance ~~at the same time as the facility's~~

1 ~~standard license, regardless of when issued.~~ The agency shall
2 notify the facility by certified mail at least 120 days prior
3 to expiration that a renewal license is necessary to continue
4 operation. Ninety days prior to the expiration date, an
5 application for renewal shall be submitted to the agency. Fees
6 must be prorated. The failure to file a timely renewal
7 application shall result in a late fee charged to the facility
8 in an amount equal to 50 percent of the current fee.

9 ~~(6) When an extended care or limited nursing license~~
10 ~~is requested during a facility's biennial license period, the~~
11 ~~fee shall be prorated in order to permit the additional~~
12 ~~license to expire at the end of the biennial license period.~~
13 ~~The fee shall be calculated as of the date the additional~~
14 ~~license application is received by the agency.~~

15 Section 33. Section 400.419, Florida Statutes, is
16 amended to read:

17 400.419 Violations; administrative fines.--

18 (1) Each violation of this part and adopted rules
19 shall be classified according to the nature of the violation
20 and the gravity of its probable effect on facility residents.
21 The agency shall indicate the classification on the written
22 notice of the violation as follows:

23 (a) Class "I" violations are those conditions or
24 occurrences related to the operation and maintenance of a
25 facility or to the personal care of residents which the agency
26 determines present an imminent danger to the residents or
27 guests of the facility or a substantial probability that death
28 or serious physical or emotional harm would result therefrom.
29 The condition or practice constituting a class I violation
30 shall be abated or eliminated within 24 hours, unless a fixed
31 period, as determined by the agency, is required for

1 correction. A class I violation is subject to an
2 administrative fine in an amount not less than \$5,000~~\$1,000~~
3 and not exceeding \$10,000 for each violation. A fine may be
4 levied notwithstanding the correction of the violation.

5 (b) Class "II" violations are those conditions or
6 occurrences related to the operation and maintenance of a
7 facility or to the personal care of residents which the agency
8 determines directly threaten the physical or emotional health,
9 safety, or security of the facility residents, other than
10 class I violations. A class II violation is subject to an
11 administrative fine in an amount not less than \$1,000~~\$500~~ and
12 not exceeding \$5,000 for each violation. A citation for a
13 class II violation must ~~shall~~ specify the time within which
14 the violation is required to be corrected. ~~If a class II~~
15 ~~violation is corrected within the time specified, no fine may~~
16 ~~be imposed, unless it is a repeated offense.~~

17 (c) Class "III" violations are those conditions or
18 occurrences related to the operation and maintenance of a
19 facility or to the personal care of residents which the agency
20 determines indirectly or potentially threaten the physical or
21 emotional health, safety, or security of facility residents,
22 other than class I or class II violations. A class III
23 violation is subject to an administrative fine of not less
24 than \$500~~\$100~~ and not exceeding \$1,000 for each violation. A
25 citation for a class III violation must ~~shall~~ specify the time
26 within which the violation is required to be corrected. ~~If a~~
27 ~~class III violation is corrected within the time specified, no~~
28 ~~fine may be imposed, unless it is a repeated offense.~~

29 (d) Class "IV" violations are those conditions or
30 occurrences related to the operation and maintenance of a
31 building or to required reports, forms, or documents that do

1 not have the potential of negatively affecting residents.
2 These violations are of a type that the agency determines do
3 not threaten the health, safety, or security of residents of
4 the facility. A facility that does not correct a class IV
5 violation within the time specified in the agency-approved
6 corrective action plan is subject to an administrative fine of
7 not less than \$100~~\$50~~ nor more than \$200 for each violation.
8 Any class IV violation that is corrected during the time an
9 agency survey is being conducted will be identified as an
10 agency finding and not as a violation.

11 (2) The agency may set and levy a fine not to exceed
12 \$1,000 for each violation that ~~which~~ cannot be classified
13 according to subsection (1). ~~Such fines in the aggregate may~~
14 ~~not exceed \$10,000 per survey.~~

15 (3) In determining if a penalty is to be imposed and
16 in fixing the amount of the fine, the agency shall consider
17 the following factors:

18 (a) The gravity of the violation, including the
19 probability that death or serious physical or emotional harm
20 to a resident will result or has resulted, the severity of the
21 action or potential harm, and the extent to which the
22 provisions of the applicable laws or rules were violated.

23 (b) Actions taken by the owner or administrator to
24 correct violations.

25 (c) Any previous violations.

26 (d) The financial benefit to the facility of
27 committing or continuing the violation.

28 (e) The licensed capacity of the facility.

29 (4) Each day of continuing violation after the date
30 fixed for termination of the violation, as ordered by the
31

1 agency, constitutes an additional, separate, and distinct
2 violation.

3 (5) Any action taken to correct a violation shall be
4 documented in writing by the owner or administrator of the
5 facility and verified through followup visits by agency
6 personnel. The agency may impose a fine and, in the case of an
7 owner-operated facility, revoke or deny a facility's license
8 when a facility administrator fraudulently misrepresents
9 action taken to correct a violation.

10 (6) For fines that are upheld following administrative
11 or judicial review, the violator shall pay the fine, plus
12 interest at the rate as specified in s. 55.03, for each day
13 beyond the date set by the agency for payment of the fine.

14 (7) Any unlicensed facility that continues to operate
15 after agency notification is subject to a \$1,000 fine per day.
16 ~~Each day beyond 5 working days after agency notification~~
17 ~~constitutes a separate violation, and the facility is subject~~
18 ~~to a fine of \$500 per day.~~

19 (8) Any licensed facility whose owner or administrator
20 concurrently operates an unlicensed facility shall be subject
21 to an administrative fine of \$5,000 per day. ~~Each day that the~~
22 ~~unlicensed facility continues to operate beyond 5 working days~~
23 ~~after agency notification constitutes a separate violation,~~
24 ~~and the licensed facility shall be subject to a fine of \$500~~
25 ~~per day retroactive to the date of agency notification.~~

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

30 (10) In addition to any administrative fines imposed,
31 the agency may assess a survey fee, equal to the lesser of one

1 half of the facility's biennial license and bed fee or \$500,
2 to cover the cost of conducting initial complaint
3 investigations that result in the finding of a violation that
4 was the subject of the complaint or monitoring visits
5 conducted under s. 400.428(3)(c) to verify the correction of
6 the violations.

7 (11) The agency, as an alternative to or in
8 conjunction with an administrative action against a facility
9 for violations of this part and adopted rules, shall make a
10 reasonable attempt to discuss each violation and recommended
11 corrective action with the owner or administrator of the
12 facility, prior to written notification. The agency, instead
13 of fixing a period within which the facility shall enter into
14 compliance with standards, may request a plan of corrective
15 action from the facility which demonstrates a good faith
16 effort to remedy each violation by a specific date, subject to
17 the approval of the agency.

18 (12) Administrative fines paid by any facility under
19 this section shall be deposited into the Health Care Trust
20 Fund and expended as provided in s. 400.418.

21 (13) The agency shall develop and disseminate an
22 annual list of all facilities sanctioned or fined \$5,000 or
23 more for violations of state standards, the number and class
24 of violations involved, the penalties imposed, and the current
25 status of cases. The list shall be disseminated, at no charge,
26 to the Department of Elderly Affairs, the Department of
27 Health, the Department of Children and Family Services, the
28 area agencies on aging, the Florida Statewide Advocacy
29 Council, and the state and local ombudsman councils. The
30 Department of Children and Family Services shall disseminate
31 the list to service providers under contract to the department

1 who are responsible for referring persons to a facility for
2 residency. The agency may charge a fee commensurate with the
3 cost of printing and postage to other interested parties
4 requesting a copy of this list.

5 Section 34. Section 400.423, Florida Statutes, is
6 created to read:

7 400.423 Internal risk-management and quality-assurance
8 program.--

9 (1) Each facility with a minimum of 26 beds shall, as
10 part of its administrative functions, establish an internal
11 risk-management and quality-assurance program, the purpose of
12 which is to assess resident-care practices; review facility
13 quality indicators, facility incident reports, deficiencies
14 cited by the agency, individual resident shared-risk
15 agreements as defined in s. 400.402, and resident grievances;
16 and develop plans of action to correct and respond quickly to
17 identified quality deficiencies. The program must include:

18 (a) A risk manager employed by the facility and
19 licensed under chapter 395 who is responsible for
20 implementation and oversight of the facility's internal
21 risk-management and quality-assurance program as required by
22 this section. A risk manager must not be made responsible for
23 more than four internal risk-management and quality-assurance
24 programs in separate facilities licensed pursuant to chapter
25 400 or chapter 395. However, a risk manager may be made
26 responsible for as many as eight assisted living facilities
27 with a standard license if the risk manager is not responsible
28 for any other facilities licensed under this chapter or
29 chapter 395.

30 (b) A risk-management and quality-assurance committee
31 consisting of the facility risk manager, the administrator,

1 and at least three other members of the facility staff. The
2 risk-management and quality-assurance committee shall meet at
3 least monthly.

4 (c) Policies and procedures to implement the internal
5 risk-management and quality-assurance program, which must
6 include the investigation and analysis of the frequency and
7 causes of general categories and specific types of adverse
8 incidents to residents.

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

14 1. Such education and training of all nonphysician
15 personnel shall be part of their initial orientation; and

16 2. At least 3 hours of such education and training
17 shall be provided annually for all nonphysician personnel of
18 the licensed facility working in clinical areas and providing
19 resident care.

20 (e) The analysis of resident grievances that relate to
21 resident care and the quality of clinical services.

22 (f) The development and implementation of an incident
23 reporting system based upon the affirmative duty of all health
24 care providers and all agents and employees of the facility to
25 report adverse incidents to the risk manager.

26 (2) The internal risk-management and quality-assurance
27 program is the responsibility of the facility administrator.

28 (3) In addition to the programs mandated by this
29 section, other innovative approaches intended to reduce the
30 frequency and severity of adverse incidents to residents and
31

1 violations of residents' rights shall be encouraged and their
2 implementation and operation facilitated.

3 (4) Each internal risk-management and
4 quality-assurance program shall include the use of incident
5 reports to be filed with the risk manager and the facility
6 administrator. The risk manager shall have free access to all
7 resident records of the facility. The incident reports are
8 confidential as provided by law, are part of the workpapers of
9 the attorney defending the facility in litigation relating to
10 the facility, and are subject to discovery but are not
11 admissible as evidence in court. As a part of each internal
12 risk-management and quality-assurance program, the incident
13 reports shall be used to develop categories of incidents which
14 identify problem areas. Once identified, procedures shall be
15 adjusted to correct the problem areas.

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

18 (a) An event over which facility personnel could
19 exercise control and which is associated in whole or in part
20 with the facility's intervention, rather than the condition
21 for which such intervention occurred, and which results in one
22 of the following:

23 1. Death;
24 2. Brain or spinal damage;
25 3. Permanent disfigurement;
26 4. Fracture or dislocation of bones or joints;
27 5. A resulting limitation of neurological, physical,
28 or sensory function;

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

1 7. Any condition that required the transfer of the
2 patient, within or outside the facility, to a unit providing a
3 more acute level of care due to the adverse incident rather
4 than to the resident's condition prior to the adverse
5 incident;

6 (b) Abuse, neglect, or exploitation, as defined in s.
7 415.102 or s. 39.01;

8 (c) Resident elopement; or

9 (d) An event that is reported to law enforcement.

10 (6) Every facility, regardless of the number of beds,
11 shall notify the agency within 1 business day after the
12 occurrence of an adverse incident. The notification must be
13 made in writing and be provided by facsimile device or
14 overnight mail delivery. The notification must include
15 information regarding the identity of the affected resident,
16 the type of adverse incident, the initiation of an
17 investigation by the facility, and whether the events causing
18 or resulting in the adverse incident represent a potential
19 risk to any other resident. The notification is confidential
20 as provided by law and is not discoverable or admissible in
21 any civil or administrative action, except in disciplinary
22 proceedings by the agency or the appropriate regulatory board.
23 The agency may investigate, as it deems appropriate, any such
24 incident and prescribe measures that must or may be taken in
25 response to the incident. The agency shall review each
26 incident and determine whether it potentially involved conduct
27 by the health care professional who is subject to disciplinary
28 action, in which case the provisions of s. 456.073 shall
29 apply.

30 (7)(a) Every facility, regardless of the number of
31 beds, shall submit an adverse-incident report to the agency

1 for each adverse incident within 15 calendar days after its
2 occurrence on a form developed by the agency. The Department
3 of Elderly Affairs shall have access to such reports as it
4 deems appropriate.

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

12 (c) The report submitted to the agency must also
13 contain the name and license number of the risk manager, if
14 applicable, of the licensed facility.

15 (d) The adverse-incident report is confidential as
16 provided by law and is not discoverable or admissible in any
17 civil or administrative action, except in disciplinary
18 proceedings by the agency or the appropriate regulatory board.

19 (8) The internal risk manager or administrator of each
20 facility shall:

21 (a) Investigate every allegation of sexual misconduct
22 which is made against a member of the facility's personnel who
23 has direct resident contact if it is alleged that the sexual
24 misconduct occurred at the facility or on the grounds of the
25 facility;

26 (b) If the allegation is investigated by the internal
27 risk manager, report the allegation of sexual misconduct to
28 the administrator of the facility; and

29 (c) Notify the resident representative or guardian of
30 the victim that an allegation of sexual misconduct has been
31 made and that an investigation is being conducted.

1 (9)(a) Any witness who witnessed or who possesses
2 actual knowledge of the act that is the basis of an allegation
3 of sexual abuse shall notify:

- 4 1. The local law enforcement agency;
5 2. The central abuse hotline of the Department of
6 Children and Family Services; and
7 3. The risk manager, if applicable, and the
8 administrator.

9 (b) As used in this subsection, the term "sexual
10 abuse" means acts of a sexual nature committed for the sexual
11 gratification of anyone upon, or in the presence of, a
12 vulnerable adult, without the vulnerable adult's informed
13 consent, or a minor. The term includes, but is not limited to,
14 the acts defined in s. 794.011(1)(h), fondling, exposure of a
15 vulnerable adult's or minor's sexual organs, or the use of the
16 vulnerable adult or minor to solicit for or engage in
17 prostitution or sexual performance. The term does not include
18 any act intended for a valid medical purpose or any act that
19 may reasonably be construed to be a normal caregiving action.

20 (10) The agency shall review, as part of its licensure
21 inspection process, the internal risk-management and
22 quality-assurance program at each facility regulated by this
23 section to determine whether the program meets standards
24 established in statutory laws and rules, is being conducted in
25 a manner designed to reduce adverse incidents, and is
26 appropriately reporting incidents as required by this section.

27 (11) There is no monetary liability on the part of,
28 and a cause of action for damages may not arise against, any
29 risk manager licensed under chapter 395 for the implementation
30 and oversight of the internal risk-management and
31 quality-assurance program in a facility licensed under this

1 part as required by this section, or for any act or proceeding
2 undertaken or performed within the scope of the functions of
3 such internal risk-management and quality-assurance program if
4 the risk manager acts without intentional fraud.

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

11 (13) The agency shall annually submit to the
12 Legislature a report on assisted living facility internal risk
13 management. The report must include the following information
14 arrayed by county:

15 (a) The total number of adverse incidents.

16 (b) A listing, by category, of the types of adverse
17 incidents, the number of incidents occurring within each
18 category, and the type of staff involved.

19 (c) A listing, by category, of the types of injury
20 caused and the number of injuries occurring within each
21 category.

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

24 (e) Disciplinary action taken against staff,
25 categorized by type of staff involved.

26 Section 35. Present subsections (7), (8), (9), (10),
27 and (11) of section 400.426, Florida Statutes, are
28 redesignated as subsections (8), (9), (10), (11), and (12),
29 respectively, and a new subsection (7) is added to that
30 section, to read:

31

1 400.426 Appropriateness of placements; examinations of
2 residents.--

3 (7) Any resident who exhibits signs of dementia or
4 cognitive impairment must be examined by a licensed physician
5 to rule out the presence of an underlying physiological
6 condition that may be contributing to such dementia or
7 impairment. The examination must occur within 7 days after the
8 admission of a resident to the facility or within 7 days after
9 the acknowledgement of such signs by facility staff. The
10 facility must notify the resident's designee or legal
11 representative prior to the examination. If an underlying
12 condition is determined to exist, the facility shall arrange
13 for necessary care and services to treat the condition.

14 Section 36. Subsection (3) of section 400.428, Florida
15 Statutes, is amended to read:

16 400.428 Resident bill of rights.--

17 (3)(a) The agency shall conduct a survey to determine
18 general compliance with facility standards and compliance with
19 residents' rights as a prerequisite to initial licensure or
20 licensure renewal.

21 (b) In order to determine whether the facility is
22 adequately protecting residents' rights, the licensure
23 ~~biennial~~ survey shall include private informal conversations
24 with a sample of residents and consultation with the ombudsman
25 council in the planning and service area in which the facility
26 is located to discuss residents' experiences within the
27 facility.

28 (c) During any calendar year in which no standard
29 licensure survey is conducted, the agency shall conduct at
30 least one monitoring visit of each facility cited in the
31

1 previous year for a class I or class II violation, or more
2 than three uncorrected class III violations.

3 (d) The agency may conduct periodic followup
4 inspections as necessary to monitor the compliance of
5 facilities with a history of any class I, class II, or class
6 III violations that threaten the health, safety, or security
7 of residents.

8 (e) The agency may conduct complaint investigations as
9 warranted to investigate any allegations of noncompliance with
10 requirements required under this part or rules adopted under
11 this part.

12 Section 37. Effective October 1, 2001, subsections (1)
13 through (10) of section 400.429, Florida Statutes, are amended
14 or added to that section, and shall apply to causes of action
15 accruing on or after that date, and subsections (11) and (12)
16 are added to that section, and shall apply to causes of action
17 in existence on that date, to read:

18 (Substantial rewording of section. See
19 s. 400.429, F.S., for present text.)

20 400.429 Civil actions to enforce rights.--

21 (1)(a) This part provides the exclusive remedy for any
22 civil action against a licensee, facility owner, facility
23 administrator, or facility staff for recovery of damages for a
24 resident's personal injury, death, or deprivation of the
25 rights specified in s. 400.428, whether based on the common
26 law or on statutory law, including, but not limited to, an
27 action founded on negligence, contract, intentional tort,
28 abuse, neglect, exploitation, or a deprivation of rights
29 specified in s. 400.428. This exclusivity applies to and
30 includes any claim against an employee, agent, or other person
31 for whose actions the licensee is alleged to be vicariously

1 liable and to any management company, parent company,
2 subsidiary, lessor, or other person alleged to be directly
3 liable to the resident or vicariously liable for the actions
4 of the licensee or its agent.

5 (b) However, this part does not prohibit a resident or
6 a resident's legal guardian from pursuing any administrative
7 remedy or injunctive relief available to a resident as a
8 result of a deprivation of the rights specified in s. 400.428,
9 whether or not the deprivation of rights resulted in personal
10 injury to, or the death of, the resident.

11 (c) In addition to the remedies provided in this part,
12 a resident, a resident's legal guardian, or the personal
13 representative of the estate of a deceased resident may pursue
14 an action under s. 415.1111 against a perpetrator who commits
15 a criminal act described in s. 825.102, s. 825.1025, or s.
16 825.103.

17 (2) A claim pursuant to this part may be brought by
18 the resident or his or her legal guardian or, if the resident
19 has died, the personal representative of the estate of the
20 deceased resident.

21 (3) In any claim brought under this part, the claimant
22 has the burden of proving by a preponderance of the evidence
23 that:

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

26 (b) Each defendant breached that duty;

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

31

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

4 (4) For purposes of this part, a licensee breaches its
5 established duty to the resident when it fails to provide a
6 standard of care that a reasonably prudent licensee licensed
7 under this part would have provided to the resident under
8 similar circumstances. A violation of the rights specified in
9 s. 400.428 are evidence of a breach of duty by the licensee.

10 (5) A licensee is not liable for the medical
11 negligence of any physician rendering care or treatment to the
12 resident. This part does not limit a claimant's right to bring
13 a separate action against a physician for medical negligence
14 under chapter 766.

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

30 (7) In any civil action brought pursuant to this part,
31 a claimant over the age of 65 may move the court to advance

1 the trial on the docket. The presiding judge, after
2 consideration of the health and age of the claimant, may
3 advance the trial on the docket. The motion may be filed and
4 served with the initial complaint or at any time thereafter.

5 (8) As used in ss. 400.429-400.4303, the term:

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

8 (b) "Facility" means an assisted living facility, as
9 defined in s. 400.402.

10 (c) "Licensee" means the legal entity identified in
11 the application for licensure under this part which entity is
12 the licensed operator of the facility. The term also includes
13 the facility owner, facility administrator, and facility
14 staff.

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

22 (9)(a) If a shared-risk agreement has been implemented
23 in a facility, the shared-risk agreement is admissible as
24 evidence that an action taken by the facility was taken in
25 accordance with the shared-risk agreement.

26 (b) A licensee is not liable under this part for any
27 injury to, or death of, a resident which arises from a
28 decision made by a resident or a resident's legal
29 representative to refuse or modify medication or treatment if
30 the decision is made and documented in accordance with s.
31 400.022(1)(k).

1 (10) Sections 768.16-768.26 apply to a claim in which
2 the resident has died as a result of the facility's breach of
3 an established duty to the resident. In addition to any other
4 damages, the personal representative may recover on behalf of
5 the estate pursuant to ss. 768.16-768.26. The personal
6 representative may also recover on behalf of the estate
7 noneconomic damages for the resident's pain and suffering from
8 the time of injury until the time of death.

9 (11) Any portion of an order, judgment, arbitration
10 decision, mediation agreement, or other type of agreement,
11 contract, or settlement that has the purpose or effect of
12 concealing information relating to the settlement or
13 resolution of any claim or action brought pursuant to this
14 part is void, contrary to public policy, and may not be
15 enforced. The court shall not enter an order or judgment that
16 has the purpose or effect of concealing any information
17 pertaining to the resolution or settlement of any claim or
18 action brought pursuant to this part. Any person or
19 governmental entity has standing to contest an order,
20 judgment, arbitration decision, mediation agreement, or other
21 type of agreement, contract, or settlement that violates this
22 subsection. A contest pursuant to this subsection may be
23 brought by a motion or an action for a declaratory judgment
24 filed in the circuit court of the circuit where the violation
25 of this subsection occurred.

26 (12) The defendant must provide to the agency a copy
27 of any resolution of a claim or civil action brought pursuant
28 to this part within 90 days after such resolution, including,
29 but not limited to, any final judgment, arbitration decision,
30 order, mediation agreement, or settlement. Failure to provide
31 the copy to the agency shall result in a fine of \$500 for each

1 day it is overdue. The agency shall develop forms and adopt
2 rules necessary to administer this subsection.

3 Section 38. Effective October 1, 2001, and applicable
4 to causes of action accruing on or after that date, section
5 400.4291, Florida Statutes, is created to read:

6 400.4291 Requirements of the presuit process.--Before
7 filing an action in circuit court under this part, the
8 claimant must engage in the presuit screening process
9 prescribed in s. 400.4292. If the claim meets the requirements
10 of s. 400.4292, the claimant must notify each potential
11 defendant of the claimant's intent to initiate litigation
12 under this part, at which time the claimant and each potential
13 defendant must engage in the presuit investigation process
14 prescribed in s. 400.4293. Upon completion of the presuit
15 investigation process, either party may offer to engage in
16 binding arbitration as described in s. 400.4294. If the
17 parties do not engage in binding arbitration, the claimant may
18 file an action in circuit court and the provisions of s.
19 400.4299 shall apply at trial.

20 Section 39. Effective October 1, 2001, and applicable
21 to causes of action accruing on or after that date, section
22 400.4292, Florida Statutes, is created to read:

23 400.4292 Presuit screening.--Before issuing a
24 notification of intent to initiate litigation under s.
25 400.4293, the claimant must engage in presuit screening to
26 ascertain that there are reasonable grounds for believing that
27 a defendant breached an established duty to the resident which
28 proximately caused injury and actual damages to the resident.
29 If the claim involves personal injury to, or death of, the
30 resident, the claimant must obtain a verified written medical
31

1 opinion from a medical expert which provides corroboration of
2 reasonable grounds to initiate litigation under this part.

3 Section 40. Effective October 1, 2001, and applicable
4 to causes of action accruing on or after that date, section
5 400.4293, Florida Statutes, is created to read:

6 400.4293 Presuit investigation.--

7 (1) Upon completing the presuit requirements in s.
8 400.4292, the claimant shall notify each prospective defendant
9 by certified mail, return receipt requested, of the claimant's
10 intent to initiate litigation. If the claim involves personal
11 injury to, or death of, the resident, the notice of intent to
12 initiate litigation must contain the verified written medical
13 opinion described in s. 400.4292. Upon receipt of the
14 claimant's notice of intent to initiate litigation, the
15 defendant, the defendant's insurer, or the defendant's
16 self-insurer must conduct a review to determine the liability
17 of the defendant. The review must be completed within 90 days
18 after receipt of the notice to initiate litigation and the
19 suit may not be filed until at least 90 days after the date
20 the defendant receives notice.

21 (2) The notice of intent to initiate litigation must
22 be served during the time limits set forth in s. 400.429(6).
23 However, during the 90-day period the statute of limitations
24 is tolled as to all potential defendants and, upon written
25 stipulation by the parties, the 90-day period may be extended,
26 and the statute of limitations is tolled during any such
27 extension. Upon completion of the 90-day period, or upon
28 receiving notice of termination of negotiations during an
29 extended period, the claimant has 60 days or the remainder of
30 the period of the statute of limitations, whichever is
31 greater, within which to file suit.

1 (3) Each defendant, and each insurer or self-insurer
2 of each defendant, must have a procedure for promptly
3 investigating, reviewing, and evaluating a claim during the
4 90-day period. If the defendant rejects the claim,
5 corroboration of lack of reasonable grounds for litigation
6 under this part must be provided by submitting a verified
7 written medical opinion from a medical expert at the time the
8 response rejecting the claim is mailed.

9 (4) During the 90-day investigation period, each party
10 shall provide to the other party reasonable access to
11 information within its possession or control in order to
12 facilitate evaluation of the claim. Such access shall be
13 provided without formal discovery, pursuant to s.
14 766.106(5)-(9), and failure to provide such information is
15 grounds for dismissal of any applicable claim or defense
16 ultimately asserted.

17 Section 41. Effective October 1, 2001, and applicable
18 to causes of action accruing on or after that date, section
19 400.4294, Florida Statutes, is created to read:

20 400.4294 Presuit election of arbitration.--Within 7
21 days after the completion of the 90-day investigation period,
22 the parties may elect to have damages determined by an
23 arbitration panel. Such election may be initiated by either
24 party by serving a written request for voluntary binding
25 arbitration of damages, and the opposing party may accept the
26 offer, in writing, within 7 days. Such acceptance within the
27 time period provided in this section is a binding commitment
28 to comply with the decision of the arbitration panel. The
29 liability of an insurer is subject to any applicable insurance
30 limits. Voluntary binding arbitration must be completed within
31

1 20 days after the acceptance of an offer to arbitrate and
2 proceed under the following conditions:

3 (1) The arbitration panel shall be composed of three
4 arbitrators, one who is selected by the claimant, one who is
5 selected by the defendant, and a third who is selected by
6 agreement of the two arbitrators chosen by the claimant and
7 the defendant and who shall serve as chief arbitrator.

8 Multiple plaintiffs or multiple defendants shall select a
9 single arbitrator. If the multiple parties cannot agree on an
10 arbitrator, selection of the arbitrator shall be in accordance
11 with chapter 682.

12 (2) The rate of compensation for arbitrators shall be
13 agreed upon by the parties.

14 (3) Arbitration under this section precludes recourse
15 to any other remedy by the claimant against any participating
16 defendant, and shall be undertaken with the understanding
17 that:

18 (a) Net economic damages are awardable, and include,
19 but are not limited to, past and future medical expenses, wage
20 loss, and loss of earning capacity, offset by any collateral
21 source payments as defined in s. 768.76(2).

22 (b) Noneconomic damages that arise out of the same
23 incident or occurrence are limited to a maximum aggregate
24 amount against all arbitrating defendants of \$300,000 per
25 claimant. If the claimant proves to the arbitration panel, and
26 the panel finds, that the defendant's conduct amounted to
27 intentional misconduct or gross negligence, as defined in s.
28 400.430, a maximum aggregate amount against all arbitrating
29 defendants of \$900,000 in noneconomic damages, arising out of
30 the same incident or occurrence, may be awarded to each
31 claimant. A defendant, for the purposes of this subsection,

1 may present evidence contesting any allegation of intentional
2 misconduct or gross negligence.

3 (c) Punitive damages shall not be awarded.

4 (d) The defendant is responsible for payment of
5 interest on all accrued damages with respect to which interest
6 would be awarded at trial.

7 (e) The defendant must pay the claimant's reasonable
8 attorney's fees, as determined by the arbitration panel, which
9 shall not exceed 15 percent of the award, reduced to present
10 value. The defendant must also pay the claimant's reasonable
11 costs, as determined by the arbitration panel.

12 (f) The defendant must pay all the costs of the
13 arbitration proceeding and the fees of all the arbitrators.

14 (g) Each defendant who submits to arbitration under
15 this section shall admit liability and is jointly and
16 severally liable for all damages assessed pursuant to this
17 section.

18 (h) The defendant's obligation to pay the claimant's
19 damages is for the purpose of arbitration under this section
20 only. A defendant's or claimant's offer to arbitrate shall not
21 be used in evidence or in argument during any subsequent
22 litigation of the claim following rejection of arbitration.

23 (i) The fact of making or accepting an offer to
24 arbitrate is not admissible as evidence of liability in any
25 collateral or subsequent proceeding on the claim.

26 (j) Any offer by a claimant to arbitrate must be made
27 to each defendant against whom the claimant has made a claim.
28 Any offer by a defendant to arbitrate must be made to each
29 claimant who has joined in the notice of intent to initiate
30 litigation. A claimant or defendant who rejects an offer to
31 arbitrate is subject to s. 400.4299.

1 (k) The hearing shall be conducted by all of the
2 arbitrators, but a majority may determine any question of fact
3 and render a final decision. The chief arbitrator shall decide
4 all evidentiary matters and shall provide the agency with a
5 copy of the arbitration panel's final decision.

6 (1) This section does not preclude settlement at any
7 time by mutual agreement of the parties.

8 (4) Any issue between the defendant and the
9 defendant's insurer or self-insurer as to who shall control
10 the defense of the claim, and any responsibility for payment
11 of an arbitration award, shall be determined under existing
12 principles of law. However, the insurer or self-insurer may
13 not offer to arbitrate or accept a claimant's offer to
14 arbitrate without the written consent of the defendant.

15 Section 42. Effective October 1, 2001, and applicable
16 to causes of action accruing on or after that date, section
17 400.4295, Florida Statutes, is created to read:

18 400.4295 Arbitration to allocate responsibility.--

19 (1) This section applies when more than one defendant
20 has participated in voluntary binding arbitration pursuant to
21 s. 400.4294.

22 (2) Within 20 days after the determination of damages
23 by the arbitration panel in the first arbitration proceeding,
24 those defendants who have agreed to voluntary binding
25 arbitration shall submit any dispute among them regarding the
26 apportionment of financial responsibility to a separate
27 binding arbitration proceeding. Such proceeding shall be with
28 a panel of three arbitrators, which panel shall consist of the
29 chief arbitrator who presided in the first arbitration
30 proceeding, who shall serve as the chief arbitrator, and two
31 arbitrators appointed by the defendants. If the defendants

1 cannot agree on their selection of arbitrators within 20 days
2 after the determination of damages by the arbitration panel in
3 the first arbitration proceeding, selection of the arbitrators
4 shall be in accordance with chapter 682.

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

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

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

29 (6) Any defendant paying damages assessed under this
30 section or s. 400.4294 shall have an action for contribution
31

1 against any nonarbitrating person whose negligence contributed
2 to the injury.

3 Section 43. Effective October 1, 2001, and applicable
4 to causes of action accruing on or after that date, section
5 400.4296, Florida Statutes, is created to read:

6 400.4296 Misarbitration.--

7 (1) At any time during the course of voluntary binding
8 arbitration of a claim under s. 400.4292, the chief arbitrator
9 on the arbitration panel, if he or she determines that
10 agreement cannot be reached, may dissolve the arbitration
11 panel and appoint two new arbitrators from lists of three to
12 five names provided by each party to the arbitration. Not more
13 than one arbitrator shall be appointed from the list provided
14 by any party.

15 (2) Upon appointment of the new arbitrators,
16 arbitration shall proceed at the direction of the chief
17 arbitrator in accordance with ss. 400.4294-400.4298.

18 (3) At any time after the allocation arbitration
19 hearing under s. 400.4295 has concluded, the chief arbitrator
20 on the arbitration panel may dissolve the arbitration panel
21 and declare the proceedings concluded if he or she determines
22 that agreement cannot be reached.

23 Section 44. Effective October 1, 2001, and applicable
24 to causes of action accruing on or after that date, section
25 400.4297, Florida Statutes, is created to read:

26 400.4297 Payment of arbitration award.--

27 (1) Within 20 days after the determination of damages
28 by the arbitration panel pursuant to s. 400.4294, the
29 defendant shall:

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

1 (b) Submit any dispute among multiple defendants to
2 arbitration as provided in s. 400.4295.

3 (2) Commencing 90 days after the award rendered in the
4 arbitration procedure under s. 400.4294, such award shall
5 accrue interest at the rate of 18 percent per year.

6 Section 45. Effective October 1, 2001, and applicable
7 to causes of action accruing on or after that date, section
8 400.4298, Florida Statutes, is created to read:

9 400.4298 Appeal of arbitration award.--

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

21 (2) An appeal does not operate to stay an arbitration
22 award, and an arbitration panel, member of an arbitration
23 panel, or circuit court shall not stay an arbitration award.
24 The district court of appeal may order a stay to prevent
25 manifest injustice, but the court shall not abrogate the
26 provisions of s. 400.4297(2).

27 (3) Any party to an arbitration proceeding may enforce
28 an arbitration award or an allocation of financial
29 responsibility by filing a petition in the circuit court for
30 the circuit in which the arbitration took place. A petition
31 may not be granted unless the time for appeal has expired. If

1 an appeal has been taken, a petition may not be granted with
2 respect to an arbitration award or an allocation of financial
3 responsibility which has been stayed.

4 (4) If the petitioner establishes the authenticity of
5 the arbitration award or the allocation of financial
6 responsibility, shows that the time for appeal has expired,
7 and demonstrates that no stay is in place, the court shall
8 enter such orders and judgments as are required to carry out
9 the terms of the arbitration award or allocation of financial
10 responsibility. Such orders are enforceable by the contempt
11 powers of the court, and execution will issue, upon the
12 request of a party, for such judgments.

13 Section 46. Effective October 1, 2001, and applicable
14 to causes of action accruing on or after that date, section
15 400.4299, Florida Statutes, is created to read:

16 400.4299 Trial.--

17 (1) A proceeding for voluntary binding arbitration is
18 an alternative to jury trial and does not supersede the right
19 of any party to a jury trial.

20 (2) If neither party requests or agrees to voluntary
21 binding arbitration, the claimant may file suit. The claim
22 shall then proceed to trial or to any available legal
23 alternative such as mediation or an offer of and demand for
24 judgment under s. 768.79.

25 (3) If the defendant rejects the claimant's offer of
26 voluntary binding arbitration, the claim shall proceed to
27 trial without any limitation on damages. If the claimant
28 prevails at trial, the claimant is entitled to recover
29 prejudgment interest and the award shall be reduced by any
30 damages recovered by the claimant from arbitrating
31 codefendants following arbitration. Additionally, upon

1 prevailing at trial, the claimant shall recover reasonable
2 attorney's fees from the defendant in an amount up to 25
3 percent of the award, reduced to present value.

4 (4)(a) Except as provided in paragraph (b), if the
5 claimant rejects a defendant's offer of voluntary binding
6 arbitration, the damages awardable at trial are limited to
7 economic damages, reduced to present value, and noneconomic
8 damages, arising out of the same incident or occurrence, and
9 shall not exceed a maximum aggregate amount against all
10 defendants of \$400,000 per claimant. The damages awarded at
11 trial must be offset by any amounts received by settling or
12 arbitrating codefendants.

13 (b) The claimant may seek punitive damages only by
14 rejecting a defendant's offer of voluntary arbitration in
15 writing and contending that the defendant's conduct was
16 intentional misconduct or gross negligence, as those terms are
17 defined in s. 400.430, and that such conduct was motivated
18 solely by unreasonable financial gain such that the
19 unreasonably dangerous nature of the conduct, together with
20 the high likelihood of injury resulting from the conduct, was
21 actually known by the managing agent, director, officer, or
22 other person responsible for making policy decisions on behalf
23 of the defendant. Within 90 days after the date of filing
24 suit, the claimant shall move the court to amend the complaint
25 to include a claim for punitive damages, describing the level
26 of conduct set forth in this paragraph. If the court denies
27 the motion, the claimant may request arbitration within 30
28 days after the court's ruling pursuant to s. 400.4294 and, if
29 the defendant rejects the offer to arbitrate, the case shall
30 proceed to trial as provided in subsection (3). If the court
31 grants the motion, the case shall proceed to trial, subject to

1 the provisions of paragraph (a), and punitive damages may be
2 awarded as provided in ss. 400.430-400.4303.

3
4 The Legislature expressly finds that such conditional limit on
5 noneconomic damages is warranted by the claimant's rejection
6 of an offer to arbitrate, and represents an appropriate
7 balance between the interests of all residents who ultimately
8 pay for such losses and the interests of those residents who
9 are injured or die as a result of such action by licensees.

10 Section 47. Effective October 1, 2001, and applicable
11 to causes of action accruing on or after that date, section
12 400.430, Florida Statutes, is created to read:

13 400.430 Pleading in civil actions; claim for punitive
14 damages.--

15 (1) In any civil action brought pursuant to this part,
16 no claim for punitive damages shall be permitted unless there
17 is a reasonable showing by evidence in the record or proffered
18 by the claimant which would provide a reasonable basis for
19 recovery of such damages. The claimant may move to amend her
20 or his complaint to assert a claim for punitive damages, as
21 allowed by the rules of civil procedure. The rules of civil
22 procedure shall be liberally construed so as to allow the
23 claimant discovery of evidence that appears reasonably
24 calculated to lead to admissible evidence on the issue of
25 punitive damages. Discovery of financial worth shall not
26 proceed until after the pleading concerning punitive damages
27 is permitted.

28 (2) A defendant may be held liable for punitive
29 damages only if the trier of fact, based on clear and
30 convincing evidence, finds that the defendant was guilty of

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1 intentional misconduct or gross negligence. As used in this
2 section, the term:

3 (a) "Intentional misconduct" means that the defendant
4 had actual knowledge of the wrongfulness of the conduct and
5 the high probability that injury or damage to the claimant
6 would result and, despite that knowledge, intentionally
7 pursued that course of conduct, resulting in injury or damage.

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

12 (3) In the case of an employer, principal,
13 corporation, or other legal entity, punitive damages may be
14 imposed for the conduct of an employee or agent only if the
15 conduct of the employee or agent meets the criteria specified
16 in subsection (2) and:

17 (a) The employer, principal, corporation, or other
18 legal entity actively and knowingly participated in such
19 conduct;

20 (b) The officers, directors, or managers of the
21 employer, principal, corporation, or other legal entity
22 knowingly condoned, ratified, or consented to such conduct; or

23 (c) The employer, principal, corporation, or other
24 legal entity engaged in conduct that constituted gross
25 negligence and that contributed to the loss, damages, or
26 injury suffered by the claimant.

27 Section 48. Effective October 1, 2001, and applicable
28 to causes of action accruing on or after that date, section
29 400.4301, Florida Statutes, is created to read:

30 400.4301 Punitive damages; burden of proof.--In all
31 civil actions brought pursuant to this part, the plaintiff

1 must establish at trial, by clear and convincing evidence, its
2 entitlement to an award of punitive damages. The amount of
3 damages must be determined by the greater weight of the
4 evidence.

5 Section 49. Effective October 1, 2001, and applicable
6 to causes of action accruing on or after that date, section
7 400.4302, Florida Statutes, is created to read:

8 400.4302 Punitive damages; limitation.--

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

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

14 2. The sum of \$500,000.

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

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

27 2. The sum of \$2 million.

28 (c) If the fact finder determines that at the time of
29 injury the defendant had a specific intent to harm the
30 claimant and determines that the defendant's conduct did in

31

1 fact harm the claimant, there shall be no cap on punitive
2 damages.

3 (d) This subsection does not prohibit an appropriate
4 court from exercising its jurisdiction under s. 768.74 in
5 determining the reasonableness of an award of punitive damages
6 which is less than three times the amount of compensatory
7 damages.

8 (2)(a) Except as provided in paragraph (b), punitive
9 damages may not be awarded against a defendant in a civil
10 action if that defendant establishes, before trial, that
11 punitive damages have previously been awarded against that
12 defendant in any state or federal court in any action alleging
13 harm from the same act or single course of conduct for which
14 the claimant seeks compensatory damages. For purposes of a
15 civil action, the term "the same act or single course of
16 conduct" includes acts resulting in the same manufacturing
17 defects, acts resulting in the same defects in design, or
18 failure to warn of the same hazards, with respect to similar
19 units of a product.

20 (b) In subsequent civil actions involving the same act
21 or single course of conduct for which punitive damages have
22 already been awarded, if the court determines by clear and
23 convincing evidence that the amount of prior punitive damages
24 awarded was insufficient to punish that defendant's behavior,
25 the court may permit a jury to consider an award of subsequent
26 punitive damages. In permitting a jury to consider awarding
27 subsequent punitive damages, the court shall make specific
28 findings of fact in the record to support its conclusion. In
29 addition, the court may consider whether the defendant's act
30 or course of conduct has ceased. Any subsequent punitive

31

1 damage awards must be reduced by the amount of any earlier
2 punitive damage awards rendered in state or federal court.

3 (3) The claimant's attorney's fees, if payable from
4 the judgment, are, to the extent that the fees are based on
5 the punitive damages, calculated based on the final judgment
6 for punitive damages. This subsection does not limit the
7 payment of attorney's fees based upon an award of damages
8 other than punitive damages.

9 (4) The jury may not be given instructions concerning
10 and may not be informed of the provisions of this section.

11 Section 50. Effective October 1, 2001, and applicable
12 to causes of action accruing on or after that date, section
13 400.4303, Florida Statutes, is created to read:

14 400.4303 Copies forwarded to state attorney.--In any
15 action in which punitive damages are awarded, notwithstanding
16 any appeals, the Clerk of the Court shall forward to the state
17 attorney of that circuit a copy of the complaint, any amended
18 complaints, the verdict form, and the final judgment.

19 Section 51. Subsection (2) of section 400.435, Florida
20 Statutes, is amended to read:

21 400.435 Maintenance of records; reports.--

22 (2) Within 60 days after the date of a licensure ~~the~~
23 ~~biennial~~ inspection visit or within 30 days after the date of
24 any interim visit, the agency shall forward the results of the
25 inspection to the local ombudsman council in whose planning
26 and service area, as defined in part II, the facility is
27 located; to at least one public library or, in the absence of
28 a public library, the county seat in the county in which the
29 inspected assisted living facility is located; and, when
30 appropriate, to the district Adult Services and Mental Health
31 Program Offices.

1 Section 52. Paragraph (h) of subsection (1) and
2 subsection (4) of section 400.441, Florida Statutes, are
3 amended to read:

4 400.441 Rules establishing standards.--

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

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

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

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

1 recommendations for modification to this subsection; any plans
2 by the agency to modify its implementation of this subsection;
3 and any other information which the department believes should
4 be reported.

5 Section 53. Section 400.442, Florida Statutes, is
6 amended to read:

7 400.442 Pharmacy and dietary services.--

8 (1) Any assisted living facility in which the agency
9 has documented a class I or class II deficiency or uncorrected
10 class III deficiencies regarding medicinal drugs or
11 over-the-counter preparations, including their storage, use,
12 delivery, or administration, or dietary services, or both,
13 during a licensure ~~biennial~~ survey or a monitoring visit or an
14 investigation in response to a complaint, shall, in addition
15 to or as an alternative to any penalties imposed under s.
16 400.419, be required to employ the consultant services of a
17 licensed pharmacist, a licensed registered nurse, or a
18 registered or licensed dietitian, as applicable. The
19 consultant shall, at a minimum, provide onsite quarterly
20 consultation until the inspection team from the agency
21 determines that such consultation services are no longer
22 required.

23 (2) A corrective action plan for deficiencies related
24 to assistance with the self-administration of medication or
25 the administration of medication must be developed and
26 implemented by the facility within 48 hours after notification
27 of such deficiency, or sooner if the deficiency is determined
28 by the agency to be life-threatening.

29 (3) The agency shall employ at least two pharmacists
30 licensed pursuant to chapter 465 among its personnel who
31 ~~biennially~~ inspect assisted living facilities licensed under

1 this part, to participate in licensure ~~biennial~~ inspections or
2 consult with the agency regarding deficiencies relating to
3 medicinal drugs or over-the-counter preparations.

4 (4) The department may by rule establish procedures
5 and specify documentation as necessary to administer ~~implement~~
6 this section.

7 Section 54. Subsection (4) of section 95.11, Florida
8 Statutes, is amended to read:

9 95.11 Limitations other than for the recovery of real
10 property.--Actions other than for recovery of real property
11 shall be commenced as follows:

12 (4) WITHIN TWO YEARS.--

13 (a) An action for professional malpractice, other than
14 medical malpractice, whether founded on contract or tort;
15 provided that the period of limitations shall run from the
16 time the cause of action is discovered or should have been
17 discovered with the exercise of due diligence. However, the
18 limitation of actions herein for professional malpractice
19 shall be limited to persons in privity with the professional.

20 (b) An action for medical malpractice shall be
21 commenced within 2 years from the time the incident giving
22 rise to the action occurred or within 2 years from the time
23 the incident is discovered, or should have been discovered
24 with the exercise of due diligence; however, in no event shall
25 the action be commenced later than 4 years from the date of
26 the incident or occurrence out of which the cause of action
27 accrued, except that this 4-year period shall not bar an
28 action brought on behalf of a minor on or before the child's
29 eighth birthday. An "action for medical malpractice" is
30 defined as a claim in tort or in contract for damages because
31 of the death, injury, or monetary loss to any person arising

1 out of any medical, dental, or surgical diagnosis, treatment,
2 or care by any provider of health care. The limitation of
3 actions within this subsection shall be limited to the health
4 care provider and persons in privity with the provider of
5 health care. In those actions covered by this paragraph in
6 which it can be shown that fraud, concealment, or intentional
7 misrepresentation of fact prevented the discovery of the
8 injury the period of limitations is extended forward 2 years
9 from the time that the injury is discovered or should have
10 been discovered with the exercise of due diligence, but in no
11 event to exceed 7 years from the date the incident giving rise
12 to the injury occurred, except that this 7-year period shall
13 not bar an action brought on behalf of a minor on or before
14 the child's eighth birthday. This paragraph shall not apply to
15 actions for which ss. 766.301-766.316 provide the exclusive
16 remedy.

17 (c) An action to recover wages or overtime or damages
18 or penalties concerning payment of wages and overtime.

19 (d) An action for wrongful death.

20 (e) An action founded upon a violation of any
21 provision of chapter 517, with the period running from the
22 time the facts giving rise to the cause of action were
23 discovered or should have been discovered with the exercise of
24 due diligence, but not more than 5 years from the date such
25 violation occurred.

26 (f) An action for personal injury caused by contact
27 with or exposure to phenoxy herbicides while serving either as
28 a civilian or as a member of the Armed Forces of the United
29 States during the period January 1, 1962, through May 7, 1975;
30 the period of limitations shall run from the time the cause of
31

1 action is discovered or should have been discovered with the
2 exercise of due diligence.

3 (g) An action for libel or slander.

4 (h) An action against a nursing home must be commenced
5 as provided in s. 400.023, and an action against an assisted
6 living facility must be commenced as provided in s. 400.429.

7 Section 55. Section 400.449, Florida Statutes, is
8 created to read:

9 400.449 Resident records; penalties for alteration.--

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

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

18 Section 56. Section 415.1111, Florida Statutes, is
19 amended to read:

20 415.1111 Civil actions.--

21 (1) A vulnerable adult who has been abused, neglected,
22 or exploited as specified in this chapter has a cause of
23 action against any perpetrator and may recover actual and
24 punitive damages for such abuse, neglect, or exploitation.
25 The action may be brought by the vulnerable adult, or that
26 person's guardian, by a person or organization acting on
27 behalf of the vulnerable adult with the consent of that person
28 or that person's guardian, or by the personal representative
29 of the estate of a deceased victim without regard to whether
30 the cause of death resulted from the abuse, neglect, or
31 exploitation. The action may be brought in any court of

1 competent jurisdiction to enforce such action and to recover
2 actual and punitive damages for any deprivation of or
3 infringement on the rights of a vulnerable adult. A party who
4 prevails in any such action may be entitled to recover
5 reasonable attorney's fees, costs of the action, and damages.
6 The remedies provided in this section are in addition to and
7 cumulative with other legal and administrative remedies
8 available to a vulnerable adult.

9 (2) Notwithstanding subsection (1), a resident of a
10 facility licensed under part II or part III of chapter 400 may
11 not pursue a civil action under this section unless the
12 perpetrator has committed a criminal act described in s.
13 825.102, s. 825.1025, or s. 825.103.

14 Section 57. Subsection (1) of section 464.201, Florida
15 Statutes, is amended to read:

16 464.201 Definitions.--As used in this part, the term:

17 (1) "Approved training program" means:

18 (a) A course of training conducted by a public sector
19 or private sector educational center licensed by the
20 Department of Education to implement the basic curriculum for
21 nursing assistants which is approved by the Department of
22 Education. Beginning October 1, 2000, the board shall assume
23 responsibility for approval of training programs under this
24 paragraph.

25 (b) A training program operated under s. 400.141.

26 (c) A training program developed under the Enterprise
27 Florida Jobs and Education Partnership Grant.

28 Section 58. Section 464.203, Florida Statutes, is
29 amended to read:

30 464.203 Certified nursing assistants; certification
31 requirement.--

1 (1) The board shall issue a certificate to practice as
2 a certified nursing assistant to any person who demonstrates a
3 minimum competency to read and write and successfully passes
4 the required Level I or Level II screening pursuant to s.
5 400.215 and meets one of the following requirements:

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

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

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

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

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

30 (2) If an applicant fails to pass the nursing
31 assistant competency examination in three attempts, the

1 applicant is not eligible for reexamination unless the
2 applicant completes an approved training program.

3 (3) An oral examination shall be administered as a
4 substitute for the written portion of the examination upon
5 request. The oral examination shall be administered at a site
6 and by personnel approved by the department.

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

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

19 ~~(6)(5)~~ A certified nursing assistant shall maintain a
20 current address with the board in accordance with s. 456.035.

21 (7) A person who is positively verified as actively
22 certified and on the registry in another state and who has not
23 been convicted of abuse, neglect, or exploitation in another
24 state, regardless of adjudication, may be employed as a
25 certified nursing assistant in this state for 4 months pending
26 transfer of certification.

27 (8) A certified nursing assistant must complete a
28 minimum of 18 hours of continuing education during each
29 calendar year of certification. Continuing education must
30 include training in assisting and responding to individuals
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1 who are cognitively impaired or who exhibit difficult
2 behaviors.

3 Section 59. Subsection (1) and paragraph (a) of
4 subsection (2) of section 768.735, Florida Statutes, are
5 amended to read:

6 768.735 Punitive damages; exceptions; limitation.--

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

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

23 Section 60. Subsection (2) of section 397.405, Florida
24 Statutes, is amended to read:

25 397.405 Exemptions from licensure.--The following are
26 exempt from the licensing provisions of this chapter:

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

29
30 The exemptions from licensure in this section do not apply to
31 any facility or entity which receives an appropriation, grant,

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

15 Section 61. The Agency for Health Care Administration
16 shall, after issuing a request for proposals, contract with a
17 national independent actuarial company to conduct an actuarial
18 analysis, consistent with generally accepted actuarial
19 practices, of the expected reduction in liability judgments,
20 settlements, and related costs resulting from the provisions
21 of this act. The analysis must be based on credible loss-cost
22 data derived from the settlement or adjudication of liability
23 claims accruing after October 1, 2001. The analysis must
24 include an estimate of the percentage decrease in such
25 judgments, settlements, and costs by type of coverage affected
26 by this act, including the time period when such savings or
27 reductions are expected. The completed report shall be
28 submitted to the Agency for Health Care Administration and the
29 agency shall provide the report to the Legislature by November
30 1, 2011.

31

1 Section 62. The sum of \$_____ is appropriated from
2 the General Revenue Fund to the Agency for Health Care
3 Administration for the purpose of implementing the provisions
4 of this act during the 2001-2002 fiscal year.

5 Section 63. The sum of \$_____ is appropriated from
6 the General Revenue Fund to the Department of Elderly Affairs
7 for the purpose of paying the salaries and other
8 administrative expenses of the Office of State Long-Term Care
9 Ombudsman to carry out the provisions of this act during the
10 2001-2002 fiscal year.

11 Section 64. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 invalidity does not affect other provisions or applications of
14 the act which can be given effect without the invalid
15 provision or application, and to this end the provisions of
16 this act are severable.

17 Section 65. Except as otherwise expressly provided in
18 this act, this act shall take effect upon becoming a law.
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SENATE SUMMARY

Revises provisions of parts II and III of ch. 400, F.S., relating to the regulation of nursing homes and assisted living facilities. Revises provisions that govern civil actions against a facility or facility staff for personal injury, for death, or to enforce a resident's rights. Provides a statute of limitations for bringing actions. Prohibits concealment of information relating to the settlement or resolution of a claim or action. Provides for voluntary binding arbitration. Provides for arbitration to apportion financial responsibility among defendants. Limits the economic and punitive damages that may be awarded. Provides for bed license fees. Revises facility licensure requirements. Requires that residents who exhibit signs of dementia or cognitive impairment be examined by a licensed physician. Requires licensed nursing home facilities and assisted living facilities to establish an internal risk-management and quality-assurance program. Requires that the Agency for Health Care Administration be notified of adverse incidents. Limits the liability of a risk manager. Requires that the agency report certain conduct to the appropriate regulatory board. Revises employment and certification requirements for nursing assistants. Increases the fines imposed for certain deficiencies and violations. Requires the Agency for Health Care Administration to contract for an actuarial analysis of the expected reduction in liability judgments, settlements, and related costs resulting from the provisions of the act. (See bill for details.)