By the Committee on Health, Aging and Long-Term Care; and Senator Brown-Waite

## 317-1534A-01

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A bill to be entitled An act relating to long-term care; amending s. 400.0073, F.S.; clarifying duties of the local ombudsman councils with respect to inspections of nursing homes and long-term-care facilities; amending s. 400.021, F.S.; defining the terms "controlling interest" and "voluntary board member" and revising the definition of "resident care plan" for purposes of part II of ch. 400, F.S., relating to the regulation of nursing homes; creating s. 400.0223, F.S.; requiring a nursing home facility to permit electronic monitoring devices in a resident's room; specifying conditions under which monitoring may occur; providing that electronic monitoring tapes are admissible in civil or criminal actions; providing penalties; creating s. 400.0247, F.S.; requiring that copies of certain documents be forwarded to the state attorney if punitive damages are awarded; amending s. 400.0255, F.S.; providing for applicability of provisions relating to transfer or discharge of nursing home residents; amending s. 400.062, F.S.; increasing the bed license fee for nursing home facilities; amending s. 400.071, F.S.; revising license application requirements; requiring certain disclosures; authorizing the Agency for Health Care Administration to issue an inactive license; requiring quality assurance and risk-management plans; amending s. 400.111,

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F.S.; prohibiting renewal of a license if an applicant has failed to pay certain fines; amending s. 400.118, F.S.; revising duties of quality-of-care monitors in nursing facilities; amending s. 400.121, F.S.; specifying additional circumstances under which the agency may deny, revoke, or suspend a facility's license or impose a fine; specifying facts and conditions upon which administrative actions that are challenged must be reviewed; amending s. 400.141, F.S.; providing additional administrative and management requirements for licensed nursing home facilities; requiring a facility to submit information on staff-to-resident ratios, staff turnover, and staff stability; requiring that certain residents be examined by a licensed physician; providing requirements for dining and hospitality attendants; requiring additional reports to the agency; creating s. 400.147, F.S.; requiring each licensed nursing home facility to establish an internal risk management and quality assurance program; providing requirements of the program; requiring the use of incident reports; defining the term "adverse incident"; requiring that the agency be notified of adverse incidents; requiring reporting of liability claims; specifying duties of the internal risk manager; requiring the reporting of sexual abuse; requiring that the Agency for Health Care

1 Administration review a facility's internal 2 risk management and quality assurance program; 3 limiting the liability of a risk manager; 4 requiring that the agency report certain 5 conduct to the appropriate regulatory board; 6 requiring that the agency annually report to 7 the Legislature on the internal risk management 8 of nursing homes; creating s. 400.1755, F.S.; 9 prescribing training standards for employees of 10 nursing homes that provide care for persons 11 with Alzheimer's disease or related disorders; prescribing duties of the Department of Elderly 12 Affairs; amending s. 400.191, F.S.; requiring 13 the agency to publish a Nursing Home Guide 14 Watch List; specifying contents of the watch 15 list; specifying distribution of the watch 16 17 list; requiring that nursing homes post certain additional information; amending s. 400.211, 18 19 F.S.; revising employment requirements for 20 nursing assistants; requiring in-service training; amending s. 400.23, F.S.; revising 21 minimum staffing requirements for nursing 22 homes; requiring the documentation and posting 23 24 of compliance with such standards; increasing the fines imposed for certain deficiencies; 25 amending s. 400.235, F.S.; revising 26 27 requirements for the Gold Seal Program; creating s. 400.237, F.S.; providing 28 29 legislative intent regarding improvements in quality in nursing home facilities; requiring 30 31 the Agency for Health Care Administration to

1 develop and implement a system for grading 2 nursing homes; specifying areas that must be 3 evaluated by the grading system; requiring ranking of nursing homes according to their 4 5 grading score; requiring the agency to identify 6 improvement in nursing home performance; 7 requiring the agency to reevaluate standards 8 periodically and raise the standards to reflect 9 improvements in nursing-home grading scores; 10 requiring the agency to convene a workgroup; 11 specifying the membership of the workgroup; requiring nursing homes to post their rankings 12 13 and improvement ratings; requiring the agency to publish the rankings and improvement 14 ratings; authorizing the agency to adopt rules; 15 creating s. 400.275, F.S.; providing for 16 17 training of nursing-home survey teams; amending s. 400.402, F.S.; revising definitions 18 19 applicable to part III of ch. 400, F.S., 20 relating to the regulation of assisted living 21 facilities; amending s. 400.407, F.S.; revising certain licensing requirements; providing a bed 22 fee for licensed facilities in lieu of the 23 24 biennial license fee; amending s. 400.414, F.S.; specifying additional circumstances under 25 which the Agency for Health Care Administration 26 27 may deny, revoke, or suspend a license; 28 providing for issuance of a temporary license; 29 amending s. 400.417, F.S.; revising 30 requirements for license renewal; amending s. 31 400.419, F.S.; increasing the fines imposed for

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certain violations; creating s. 400.423, F.S.; requiring certain assisted living facilities to establish an internal risk management and quality assurance program; providing requirements of the program; requiring the use of incident reports; defining the term "adverse incident"; requiring that the agency be notified of adverse incidents; requiring reporting of liability claims; specifying duties of the internal risk manager; requiring the reporting of sexual abuse; requiring that the Agency for Health Care Administration review a facility's internal risk management and quality assurance program; limiting the liability of a risk manager; requiring that the agency report certain conduct to the appropriate regulatory board; requiring that the agency annually report to the Legislature on the internal risk management of assisted living facilities; amending s. 400.426, F.S.; requiring that certain residents be examined by a licensed physician; amending s. 400.428, F.S.; revising requirements for the survey conducted of licensed facilities by the agency; creating s. 400.4303, F.S.; requiring that copies of certain documents be forwarded to the state attorney if punitive damages are awarded; amending s. 400.435, F.S., relating to maintenance of records; conforming provisions to changes made by the act; amending s. 400.441, F.S.; clarifying facility inspection

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requirements; amending s. 400.442, F.S., relating to pharmacy and dietary services; conforming provisions to changes made by the act; creating s. 400.449, F.S.; prohibiting the alteration or falsification of medical or other records of an assisted living facility; providing penalties; amending s. 464.201, F.S.; authorizing an additional training program for certified nursing assistants; amending s. 464.203, F.S.; revising certification requirements for nursing assistants; authorizing employment of certain nursing assistants pending certification; requiring continuing education; amending s. 397.405, F.S., relating to service providers; conforming provisions to changes made by the act; requiring wage and benefit increases; requiring a report; providing appropriations; providing for severability; providing effective dates. Be It Enacted by the Legislature of the State of Florida: Section 1. Subsection (4) of section 400.0073, Florida Statutes, is amended to read: 400.0073 State and local ombudsman council investigations. --(4) In addition to any specific investigation made pursuant to a complaint, the local ombudsman council shall conduct, at least annually, an investigation, which shall

consist, in part, of an onsite administrative inspection, of

31 each nursing home or long-term care facility within its

jurisdiction. This inspection shall focus on the rights, health, safety, and welfare of the residents. 2 3 Section 2. Section 400.021, Florida Statutes, is amended to read: 4 5 400.021 Definitions.--When used in this part, unless 6 the context otherwise requires, the term: 7 "Administrator" means the licensed individual who (1) 8 has the general administrative charge of a facility. 9 "Agency" means the Agency for Health Care 10 Administration, which is the licensing agency under this part. 11 "Bed reservation policy" means the number of consecutive days and the number of days per year that a 12 13 resident may leave the nursing home facility for overnight therapeutic visits with family or friends or for 14 hospitalization for an acute condition before the licensee may 15 discharge the resident due to his or her absence from the 16 17 facility. (4) "Board" means the Board of Nursing Home 18 19 Administrators. (5) "Controlling interest" means: 20 The applicant for licensure or a licensee; 21 (a) 22 (b) A person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater 23 24 ownership interest in the management company or other entity, 25 related or unrelated, which the applicant or licensee may contract with to operate the facility; or 26

The term does not include a voluntary board member.

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28 29 (c) A person or entity that serves as an officer of,

is on the board of directors of, or has a 5 percent or greater

ownership interest in the applicant or licensee.

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

(7)<del>(6)</del> "Department" means the Department of Children and Family Services.

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

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

(10)<del>(9)</del> "Geriatric patient" means any patient who is 60 years of age or older.

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

31 resident

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

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

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

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

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

(17)(16) "Resident care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident, the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable

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services provided within or outside the facility to meet those needs, and an explanation of service goals. The resident care plan must be signed by the director of nursing and the resident, the resident's designee, or the resident's legal representative. (18)<del>(17)</del> "Resident designee" means a person, other than the owner, administrator, or employee of the facility, designated in writing by a resident or a resident's guardian, if the resident is adjudicated incompetent, to be the resident's representative for a specific, limited purpose. (19)<del>(18)</del> "State ombudsman council" means the State Long-Term Care Ombudsman Council established pursuant to s. 400.0067. "Voluntary board member" means a director of a not-for-profit corporation or organization who serves solely in a voluntary capacity for the corporation or organization, does not receive any remuneration for his or her services on the board of directors, and has no financial interest in the corporation or organization. The agency shall recognize a person as a voluntary board member following submission of a statement to the agency by the director and the not-for-profit

physical, mental, and psychosocial well-being, a listing of

Section 3. Section 400.0223, Florida Statutes, is created to read:

corporation or organization which affirms that the director

status of the director must be submitted to the agency on a

conforms to this definition. The statement affirming the

400.0223 Resident's right to have electronic monitoring devices in room; requirements, penalties.--

form provided by the agency.

| 1  | (1) A nursing home facility shall permit a resident or         |
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| 2  | legal representative of the resident to monitor the resident   |
| 3  | through the use of electronic monitoring devices. For the      |
| 4  | purposes of this section the term "electronic monitoring       |
| 5  | device" includes a video surveillance camera, an audio device, |
| 6  | a video telephone, and an internet video surveillance device.  |
| 7  | (2) A nursing home facility shall require a resident           |
| 8  | who engages in electronic monitoring to post a notice on the   |
| 9  | door of the resident's room. The notice must state that the    |
| LO | room is being monitored by an electronic monitoring device.    |
| L1 | (3) Monitoring conducted under this section must:              |
| L2 | (a) Be noncompulsory and at the election of the                |
| L3 | resident or legal representative of the resident;              |
| L4 | (b) Be funded by the resident or legal representative          |
| L5 | of the resident; and   |
| L6 | (c) Protect the privacy rights of other residents and          |
| L7 | visitors to the nursing home facility to the extent reasonably |
| L8 | possible.  |
| L9 | (4) A nursing home facility may not refuse to admit an         |
| 20 | individual to residency in the facility or remove a resident   |
| 21 | from the facility because of a request for electronic          |
| 22 | monitoring.  |
| 23 | (5) A nursing home facility shall make reasonable              |
| 24 | physical accommodation for electronic monitoring, by           |
| 25 | providing:   |
| 26 | (a) A reasonably secure place to mount the electronic          |
| 27 | monitoring device; and   |
| 28 | (b) Access to power sources.                                   |
| 9  | (6) A nursing home facility shall inform a resident or         |

the legal representative of the resident of the resident's

31 right to electronic monitoring.

31 and procedures; hearings.--

1 (7) A nursing home facility may request a resident or 2 a resident's personal representative to conduct electronic 3 monitoring within plain view. (8) A resident who wishes to install an electronic 4 5 monitoring device may be required by the administrator of the 6 nursing home facility to make the request in writing. (9) Subject to the Florida Rules of Evidence, a tape 7 8 created through the use of electronic monitoring is admissible in either a civil or criminal action brought in a Florida 9 10 court. 11 (10)(a) A licensee who operates a nursing home facility in violation of this section is subject to a fine not 12 13 exceeding \$500 per violation per day under ss. 400.102 and 14 400.121. (b) A person who willfully and without the consent of 15 the resident hampers, obstructs, tampers with, or destroys an 16 17 electronic monitoring device or tape shall be guilty of a misdemeanor of the first degree punishable as provided in s. 18 19 775.082 or s. 775.083. Section 4. Effective October 1, 2001, and applicable 20 to causes of action accruing on or after that date, section 21 400.0247, Florida Statutes, is created to read: 22 400.0247 Copies forwarded to state attorney.--In any 23 24 action in which punitive damages are awarded, notwithstanding any appeals, the Clerk of the Court shall forward to the state 25 attorney of that circuit a copy of the complaint, any amended 26 27 complaints, the verdict form, and the final judgment. 28 Section 5. Subsection (17) is added to section 29 400.0255, Florida Statutes, to read:

400.0255 Resident transfer or discharge; requirements

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(17) The provisions of this section apply to transfers or discharges that are initiated by the nursing home facility, and not by the resident or by the resident's physician or legal guardian or representative.

Section 6. Subsection (3) of section 400.062, Florida Statutes, is amended to read:

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

(3) The annual license fee required for each license issued under this part shall be comprised of two parts. I of the license fee shall be the basic license fee. The rate per bed for the basic license fee shall be established annually and must be reasonably calculated to cover the cost of regulation under this part, but may not exceed\$50<del>\$35</del> per bed. Part II of the license fee shall be the resident protection fee, which shall be at the rate of not less than 25 cents per bed. The rate per bed shall be the minimum rate per bed, and such rate shall remain in effect until the effective date of a rate per bed adopted by rule by the agency pursuant to this part. At such time as the amount on deposit in the Resident Protection Trust Fund is less than \$500,000, the agency may adopt rules to establish a rate which may not exceed \$10 per bed. The rate per bed shall revert back to the minimum rate per bed when the amount on deposit in the Resident Protection Trust Fund reaches \$500,000, except that any rate established by rule shall remain in effect until such time as the rate has been equally required for each license issued under this part. Any amount in the fund in excess of \$800,000 shall revert to the Health Care Trust Fund and may not be expended without prior approval of the Legislature. 31 | The agency may prorate the annual license fee for those

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licenses which it issues under this part for less than 1 year. Funds generated by license fees collected in accordance with this section shall be deposited in the following manner:

- (a) The basic license fee collected shall be deposited in the Health Care Trust Fund, established for the sole purpose of carrying out this part. When the balance of the account established in the Health Care Trust Fund for the deposit of fees collected as authorized under this section exceeds one-third of the annual cost of regulation under this part, the excess shall be used to reduce the licensure fees in the next year.
- (b) The resident protection fee collected shall be deposited in the Resident Protection Trust Fund for the sole purpose of paying, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a resident removed from a nursing home facility on a temporary, emergency basis or for the maintenance and care of residents in a nursing home facility pending removal and alternate placement.

Section 7. Subsections (2) and (5) of section 400.071, Florida Statutes, are amended, and subsections (11) and (12) are added to that section, to read:

400.071 Application for license.--

- (2) The application shall be under oath and shall contain the following:
- (a) The name, address, and social security number of the applicant if an individual; if the applicant is a firm, partnership, or association, its name, address, and employer identification number (EIN), and the name and address of any controlling interest every member; if the applicant is a corporation, its name, address, and employer identification

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number (EIN), and the name and address of its director and officers and of each person having at least a 5 percent interest in the corporation; and the name by which the facility is to be known.

- (b) The name of any person whose name is required on the application under the provisions of paragraph (a) and who owns at least a 10 percent interest in any professional service, firm, association, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, and the name and address of the professional service, firm, association, partnership, or corporation in which such interest is held.
- (c) The location of the facility for which a license is sought and an indication, as in the original application, that such location conforms to the local zoning ordinances.
- (d) The name of the person or persons under whose management or supervision the facility will be conducted and the name of the its licensed administrator.
- (e) A signed affidavit disclosing any financial or ownership interest that a person or entity described in paragraph (a) or paragraph (d) has held in the last 5 years in any entity licensed by this state or any other state to provide health or residential care which has closed voluntarily or involuntarily; has filed for bankruptcy; has had a receiver appointed; has had a license denied, suspended, or revoked; or has had an injunction issued against it which was initiated by a regulatory agency. The affidavit must disclose the reason any such entity was closed, whether voluntarily or involuntarily.
- (f) (e) The total number of beds and the total number 31 of Medicare and Medicaid certified beds.

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

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

(5) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the <u>nursing</u> home in accordance with the requirements of this part and all rules adopted under this part, and the agency shall establish standards for this purpose, including information reported <u>under paragraph (2)(e)</u>. The agency also shall establish

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

- nursing home that will be temporarily unable to provide services but that is reasonably expected to resume services. Such designation may be made for a period not to exceed 12 months but may be renewed by the agency for up to 6 additional months. Any request by a licensee that a nursing home become inactive must be submitted to the agency and approved by the agency prior to initiating any suspension of service or notifying residents. Upon agency approval, the nursing home shall notify residents of any necessary discharge or transfer as provided in s. 400.0255.
- (12) As a condition of licensure, each facility must establish and submit with its application a plan for quality assurance and for conducting risk management.

Section 8. Subsection (3) is added to section 400.111, Florida Statutes, to read:

400.111 Expiration of license; renewal.--

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

Section 9. Subsection (2) of section 400.118, Florida Statutes, is amended to read:

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

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(2)(a) The agency shall establish within each district office one or more quality-of-care monitors, based on the number of nursing facilities in the district, to monitor all nursing facilities in the district on a regular, unannounced, aperiodic basis, including nights, evenings, weekends, and holidays. Quality-of-care monitors shall visit each nursing facility at least quarterly. Priority for additional monitoring visits shall be given to nursing facilities with a history of resident patient care deficiencies. Quality-of-care monitors shall be registered nurses who are trained and experienced in nursing facility regulation, standards of practice in long-term care, and evaluation of patient care. Individuals in these positions shall not be deployed by the agency as a part of the district survey team in the conduct of routine, scheduled surveys, but shall function solely and independently as quality-of-care monitors. Quality-of-care monitors shall assess the overall quality of life in the nursing facility and shall assess specific conditions in the facility directly related to resident patient care, including the operations of internal quality-improvement and risk-management programs and adverse-incident reports. The quality-of-care monitor shall include in an assessment visit observation of the care and services rendered to residents and formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a long-term care ombudsman council or Florida advocacy council. (b) Findings of a monitoring visit, both positive and negative, shall be provided orally and in writing to the

facility administrator or, in the absence of the facility

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nursing. The quality-of-care monitor may recommend to the facility administrator procedural and policy changes and staff training, as needed, to improve the care or quality of life of facility residents. Conditions observed by the quality-of-care monitor which threaten the health or safety of a resident or that represent repeated observations of deficient practice shall be reported immediately to the agency area office supervisor for appropriate regulatory action and, as appropriate or as required by law, to law enforcement, adult protective services, or other responsible agencies.

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

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monitor makes a report to the appropriate authorities regarding a threat to the health or safety of a resident.

Section 10. Section 400.121, Florida Statutes, is amended to read:

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

- (1) The agency may deny, revoke, or suspend a license or impose an administrative fine, not to exceed \$500 per violation per day, for:
  - (a) A violation of any provision of s. 400.102(1);-
  - (b) A demonstrated pattern of deficient practice;
- (c) Failure to pay any outstanding fines assessed by final order of the agency or fines assessed by the Health Care Financing Administration pursuant to requirements for federal certification;
- Exclusion from the Medicare or Medicaid program; or
- (e) An adverse action against any controlling interest by a regulatory agency, including the appointment of a receiver; denial, suspension, or revocation of a license; or the issuance of an injunction by a regulatory agency. If the adverse action involves solely the management company, the applicant or licensee shall be given 30 days to remedy before final action is taken.

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

(2) Except as provided in s. 400.23(8), a \$500 fine 31 shall be imposed The agency, as a part of any final order

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issued by it under this part, may impose such fine as it deems proper, except that such fine may not exceed \$500 for each violation. Each day a violation of this part occurs constitutes a separate violation and is subject to a separate fine, but in no event may any fine aggregate more than \$5,000. A fine may be levied pursuant to this section in lieu of and notwithstanding the provisions of s. 400.23. Fines paid by any nursing home facility licensee under this subsection shall be deposited in the Resident Protection Trust Fund and expended as provided in s. 400.063.

- (3) The agency may issue an order immediately suspending or revoking a license when it determines that any condition in the facility presents a danger to the health, safety, or welfare of the residents in the facility.
- (4)(a) The agency may impose an immediate moratorium on admissions to any facility when the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility.
- (b) Where the agency has placed a moratorium on admissions on any facility two times within a 7-year period, the agency may suspend the license of the nursing home and the facility's management company, if any. The licensee shall be afforded an administrative hearing within 90 days after the suspension to determine whether the license should be revoked. During the suspension, the agency shall take the facility into receivership and shall operate the facility.
- (5) An action taken by the agency to deny, suspend, or revoke a facility's license under this part, in which the agency claims that the facility owner or an employee of the facility has threatened the health, safety, or welfare of a 31 resident of the facility, shall be heard by the Division of

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Administrative Hearings of the Department of Management Services within 120 days after receipt of the facility's request for a hearing, unless the time limitation is waived by both parties. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order. This subsection does not modify the requirement that an administrative hearing be held within 90 days after a license is suspended under paragraph (4)(b).

- (6) The agency is authorized to require a facility to increase staffing beyond the minimum required by law, if the agency has taken administrative action against the facility for care-related deficiencies directly attributable to insufficient staff. Under such circumstances, the facility may request an expedited interim rate increase. The agency shall process the request within 10 days after receipt of all required documentation from the facility. A facility that fails to maintain the required increased staffing is subject to a fine of \$500 per day for each day the staffing is below the level required by the agency.
- (7) An administrative proceeding challenging an action by the agency to enforce licensure requirements shall be reviewed on the basis of the facts and conditions that resulted in the initial agency action.

Section 11. Subsection (10) of section 400.141, Florida Statutes, is amended, and subsections (14), (15), (16), (17), (18), and (19) are added to that section, to read:

- 400.141 Administration and management of nursing home facilities .-- Every licensed facility shall comply with all applicable standards and rules of the agency and shall:
- (10) Keep full records of resident admissions and 31 discharges; medical and general health status, including

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medical records, personal and social history, and identity and address of next of kin or other persons who may have responsibility for the affairs of the residents; and individual resident care plans including, but not limited to, prescribed services, services related to assistance with activities of daily living, service frequency and duration, and service goals. The records shall be open to inspection by the agency.

- (14) Submit to the agency the information specified in s. 400.071(2)(e) for a management company within 30 days after the effective date of the management agreement.
- (15) Submit semiannually to the agency, or more frequently if requested by the agency, information regarding facility staff-to-resident ratios, staff turnover, and staff stability, including information regarding certified nursing assistants, licensed nurses, the director of nursing, and the facility administrator. For purposes of this reporting:
- (a) Staff-to-resident ratios must be reported in the categories specified in s. 400.23(3)(a) and applicable rules. The ratio must be reported as an average for the most recent calendar quarter.
- (b) Staff turnover must be reported for the most recent 12-month period ending on the last workday of the most recent calendar quarter prior to the date the information is submitted. The turnover rate must be computed quarterly, with the annual rate being the cumulative sum of the quarterly rates. The formula for determining the turnover rate is the total number of terminations or separations experienced during the quarter, excluding any employee terminated during a probationary period of 3 months or less, divided by the total

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number of staff employed at the end of the period for which the rate is computed, and expressed as a percentage.

- (c) The formula for determining staff stability is the total number of employees that have been employed over the previous 12 months, divided by the total number of employees employed at the end of the most recent calendar quarter, and expressed as a percentage.
- (16) Report monthly the number of vacant beds in the facility which are available for resident occupancy on the day the information is reported.
- (17) Ensure that any resident who displays mental, psychosocial or adjustment difficulty receives appropriate treatment and services to correct the assessed problem. The attending physician of any resident who exhibits signs of dementia or cognitive impairment must be notified by the facility of the impairment to rule out the presence of an underlying physiological condition that may be contributing to such dementia or impairment. The notification must occur within 7 days after admission of a resident to the facility or within 7 days after the acknowledgement of such sign by facility staff. The facility must notify the resident's designee or legal representative prior to the notification. If an underlying condition is determined to exist, the facility shall arrange for necessary care and services to treat the underlying condition.
- (18) If the facility implements a dining and hospitality attendant program, ensure that the program is developed and implemented under the supervision of the facility director of nursing. A licensed nurse or a registered dietitian must conduct training of dining and hospitality attendants. A person employed by a facility as a dining and

hospitality attendant must perform tasks under the direct
supervision of a licensed nurse.

(19) Report to the agency any filing for bankruptcy

protection by the facility or its parent corporation,
divestiture or spin-off of its assets, or corporate
reorganization within 30 days after the completion of such activity.

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

Section 12. Section 400.147, Florida Statutes, is created to read:

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

- (1) Every facility shall, as part of its administrative functions, establish an internal risk-management and quality-assurance program, the purpose of which is to assess resident-care practices; review facility quality indicators, facility incident reports, deficiencies cited by the agency, individual resident shared-risk agreements as defined in s. 400.021, and resident grievances; and develop plans of action to correct and respond quickly to identified quality deficiencies. The program must include:
- (a) A risk manager employed by the facility and licensed under chapter 395 who is responsible for implementation and oversight of the facility's internal risk-management and quality-assurance program as required by this section. A risk manager must not be made responsible for

more than four internal risk-management and quality-assurance programs in separate facilities licensed pursuant to chapter 400 or chapter 395.

- (b) A risk-management and quality-assurance committee consisting of the facility risk manager, the administrator, the director of nursing, the medical director, and at least three other members of the facility staff. The risk-management and quality-assurance committee shall meet at least monthly.
- (c) Policies and procedures to implement the internal risk-management and quality-assurance program, which must include the investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents to residents.
- (d) The development of appropriate measures to minimize the risk of adverse incidents to residents, including, but not limited to, education and training in risk management and risk prevention for all nonphysician personnel, as follows:
- 1. Such education and training of all nonphysician personnel shall be part of their initial orientation; and
- 2. At least 3 hours of such education and training shall be provided annually for all nonphysician personnel of the licensed facility working in clinical areas and providing resident care.
- (e) The analysis of resident grievances that relate to resident care and the quality of clinical services.
- (f) The development and implementation of an incident-reporting system based upon the affirmative duty of all health care providers and all agents and employees of the facility to report adverse incidents to the risk manager.

- (2) The internal risk-management and quality-assurance program is the responsibility of the facility administrator.
- (3) In addition to the programs mandated by this section, other innovative approaches intended to reduce the frequency and severity of adverse incidents to residents and violations of residents' rights shall be encouraged and their implementation and operation facilitated.
- quality-assurance program shall include the use of incident reports to be filed with the risk manager and the facility administrator. The risk manager shall have free access to all resident records of the licensed facility. The incident reports are confidential as provided by law, are part of the workpapers of the attorney defending the facility in litigation relating to the facility, and are subject to discovery but are not admissible as evidence in court. As a part of each internal risk-management and quality-assurance program, the incident reports shall be used to develop categories of incidents which identify problem areas. Once identified, procedures shall be adjusted to correct the problem areas.
- (5) For purposes of reporting to the agency under this section, the term "adverse incident" means:
- (a) An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:
  - 1. Death;
  - 2. Brain or spinal damage;
  - 3. Permanent disfigurement;

1 4. Fracture or dislocation of bones or joints; 5. A resulting limitation of neurological, physical, 2 3 or sensory function; 6. Any condition that required medical attention to 4 5 which the resident has not given his or her informed consent 6 including failure to honor advanced directives; or 7 7. Any condition that required the transfer of the 8 resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather 9 10 than the resident's condition prior to the adverse incident; 11 (b) Abuse, neglect, or exploitation as defined in s. 415.102 or s. 39.01; 12 (c) Resident elopement; or 13 An event that is reported to law enforcement. 14 (d) The facility shall notify the agency within 1 15 (6) business day after the occurrence of an adverse incident. The 16 17 notification must be made in writing and be provided by facsimile device or overnight mail delivery. The notification 18 19 must include information regarding the identity of the affected resident, the type of adverse incident, the 20 21 initiation of an investigation by the facility, and whether the events causing or resulting in the adverse incident 22 represent a potential risk to any other resident. The 23 24 notification is confidential as provided by law and is not discoverable or admissible in any civil or administrative 25 action, except in disciplinary proceedings by the agency or 26 27 the appropriate regulatory board. The agency may investigate, as it deems appropriate, any such incident and prescribe 28 29 measures that must or may be taken in response to the 30 incident. The agency shall review each incident and determine 31 whether it potentially involved conduct by the health care

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professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.

- (7)(a) Each facility subject to this section shall submit an adverse-incident report to the agency for each adverse incident within 15 calendar days after its occurrence on a form developed by the agency.
- (b) The information reported to the agency pursuant to paragraph (a) which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.
- (c) The report submitted to the agency must also contain the name and license number of the risk manager of the facility.
- (d) The adverse incident report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board.
- (8) Each facility subject to this section shall report monthly any liability claim filed against it. The report must include the name of the resident, the date or dates of the incident leading to the claim, and the type of injury or violation of rights alleged to have occurred.
  - (9) The internal risk manager of each facility shall:
- (a) Investigate every allegation of sexual misconduct which is made against a member of the facility's personnel who has direct resident contact if it is alleged that the sexual misconduct occurred at the facility or on the grounds of the facility;

- 1 (b) Report every allegation of sexual misconduct to
  2 the administrator of the facility; and
  3 (c) Notify the resident representative or guardian of
  - (c) Notify the resident representative or guardian of the victim that an allegation of sexual misconduct has been made and that an investigation is being conducted.
  - (10)(a) Any witness who witnessed or who possesses actual knowledge of the act that is the basis of an allegation of sexual abuse shall notify:
    - 1. The local law enforcement agency;
  - 2. The central abuse hotline of the Department of Children and Family Services; and
    - 3. The risk manager and the administrator.
  - (b) As used in this subsection, the term "sexual abuse" means acts of a sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult's informed consent, or a minor. The term includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult's or minor's sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. The term does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be a normal caregiving action.
  - inspection process, the internal risk-management and quality-assurance program at each facility regulated by this section to determine whether the program meets standards established in statutory laws and rules, is being conducted in a manner designed to reduce adverse incidents, and is appropriately reporting incidents as required by this section.

- (12) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any risk manager licensed under chapter 395 for the implementation and oversight of the internal risk-management and quality-assurance program in a facility licensed under this part as required by this section, or for any act or proceeding undertaken or performed within the scope of the functions of such internal risk-management and quality-assurance program if the risk manager acts without intentional fraud.
- incident reports prescribed in subsection (7), or through any investigation, has a reasonable belief that conduct by a staff member or employee of a facility is grounds for disciplinary action by the appropriate regulatory board, the agency shall report this fact to the regulatory board.
- (14) The agency may adopt rules to administer this section.
- (15) The agency shall annually submit to the

  Legislature a report on nursing home internal risk management.

  The report must include the following information arrayed by county:
  - (a) The total number of adverse incidents.
- (b) A listing, by category, of the types of adverse incidents, the number of incidents occurring within each category, and the type of staff involved.
- (c) A listing, by category, of the types of injury caused and the number of injuries occurring within each category.
- (d) Types of liability claims filed based on an adverse incident or reportable injury.

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

Section 13. Section 400.1755, Florida Statutes, is created to read:

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

- (1)(a) An individual who is employed by a facility that provides care for residents with Alzheimer's disease or other related disorders must complete up to 4 hours of initial dementia-specific training developed or approved by the Department of Elderly Affairs. The training must be completed within 3 months after beginning employment.
- (b) A direct caregiver who is employed by a facility that provides care for residents with Alzheimer's disease or other related disorders and who provides direct care to such residents must complete the required initial training and 4 additional hours of training developed or approved by the Department of Elderly Affairs. The training must be completed within 9 months after beginning employment.
- (2) In addition to the training required under subsection (1), a direct caregiver must participate in a minimum of 4 contact hours of dementia-specific continuing education each calendar year as approved by the Department of Elderly Affairs.
- (1), the employee or direct caregiver shall be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if

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the employee or direct caregiver changes employment to a different facility. The direct caregiver must comply with other applicable continuing education requirements.

- (4) The Department of Elderly Affairs, or its designee, shall approve the initial and continuing education courses and providers.
- (5) The Department of Elderly Affairs shall keep a current list of providers who are approved to provide initial and continuing education for staff of facilities that provide care for persons with Alzheimer's disease or other related disorders.
- (6) The Department of Elderly Affairs shall adopt rules to establish standards for trainers and training necessary to administer this section.

Section 14. Subsection (3) and paragraph (a) of subsection (5) of section 400.191, Florida Statutes, are amended to read:

- 400.191 Availability, distribution, and posting of reports and records.--
- (3) Each nursing home facility licensee shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. Copies of such reports shall be retained in such records for not less than 5 years from the date the reports are filed or issued.
- (a) The agency shall quarterly publish a "Nursing Home Guide Watch List" to assist consumers in evaluating the quality of nursing home care in Florida. The watch list must identify each facility that met the criteria for a conditional licensure status on any day within the quarter covered by the

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list; each facility that was operating under bankruptcy protection on any day within the quarter; and each facility that was operating without liability insurance. The watch list must include the facility's name, address, and ownership; the county in which the facility operates; the license expiration date; the number of licensed beds; a description of the deficiency causing the facility to be placed on the list; any corrective action taken; and the cumulative number of times the facility has been on a watch list. The watch list must include a brief description regarding how to choose a nursing home, the categories of licensure, the agency's inspection process, an explanation of terms used in the watch list, and the addresses and phone numbers of the agency's managed care and health quality area offices.

- (b) Upon publication of each quarterly watch list, the agency must transmit a copy of the watch list to each nursing home facility by mail and must make the watch list available on the agency's Internet web site.
  - (5) Every nursing home facility licensee shall:
- (a) Post, in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public:
- 1. A concise summary of the last inspection report pertaining to the nursing home and issued by the agency, with references to the page numbers of the full reports, noting any deficiencies found by the agency and the actions taken by the licensee to rectify such deficiencies and indicating in such summaries where the full reports may be inspected in the nursing home.
- 2. A copy of the most recent version of the Florida 31 Nursing Home Guide Watch List.

Section 15. Subsection (2) of section 400.211, Florida
Statutes, is amended, and subsection (4) is added to that
section, to read:
400.211 Persons employed as nursing assistants;

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

- (2) The following categories of persons who are not certified as nursing assistants under part II of chapter 464 may be employed <u>as a certified nursing assistant</u> by a nursing facility for a period of 4 months:
- (a) Persons who are enrolled in, or have completed, a state-approved nursing assistant program; or
- (b) Persons who have been positively verified as actively certified and on the registry in another state <u>and</u> who have not been found guilty of abuse, neglect, or exploitation in another state, regardless of adjudication and have not entered a plea of nolo contendere or guilty with no findings of abuse; or
- (c) Persons who have preliminarily passed the state's certification exam.

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

- (4) When employed by a nursing home facility for a 12-month period or longer, a nursing assistant, to maintain certification, shall submit to a performance review every 12 months and must receive regular in-service education based on the outcome of such reviews. The in-service training must:
- (a) Be sufficient to ensure the continuing competence of nursing assistants, must be at least 18 hours per year, and may include hours accrued under s. 464.203(8);

| 1  | (b) Include, at a minimum:                                     |
|----|--|
| 2  | 1. Techniques for assisting with eating and proper             |
| 3  | feeding;   |
| 4  | 2. Principles of adequate nutrition and hydration;             |
| 5  | 3. Techniques for assisting and responding to the              |
| 6  | cognitively impaired resident or the resident with difficult   |
| 7  | behaviors;   |
| 8  | 4. Techniques for caring for the resident at the               |
| 9  | end-of-life; and   |
| 10 | 5. Recognizing changes that place a resident at risk           |
| 11 | for pressure ulcers and falls; and                             |
| 12 | (c) Address areas of weakness as determined in nursing         |
| 13 | assistant performance reviews and may address the special      |
| 14 | needs of residents as determined by the nursing home facility  |
| 15 | staff.   |
| 16 | Section 16. Subsections (2), (3), and (8) of section           |
| 17 | 400.23, Florida Statutes, are amended to read:                 |
| 18 | 400.23 Rules; evaluation and deficiencies; licensure           |
| 19 | status   |
| 20 | (2) Pursuant to the intention of the Legislature, the          |
| 21 | agency, in consultation with the Department of Health and the  |
| 22 | Department of Elderly Affairs, shall adopt and enforce rules   |
| 23 | to implement this part, which shall include reasonable and     |
| 24 | fair criteria in relation to:                                  |
| 25 | (a) The location and construction of the facility;             |
| 26 | including fire and life safety, plumbing, heating, cooling,    |
| 27 | lighting, ventilation, and other housing conditions which will |
| 28 | ensure the health, safety, and comfort of residents, including |

an adequate call system. The agency shall establish standards

for facilities and equipment to increase the extent to which

31 new facilities and a new wing or floor added to an existing

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

- (b) The number and qualifications of all personnel, including management, medical, nursing, and other professional personnel, and nursing assistants, orderlies, and support personnel, having responsibility for any part of the care given residents.
- (c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene which will ensure the 31 health and comfort of residents.

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- (d) The equipment essential to the health and welfare of the residents.
  - (e) A uniform accounting system.
- (f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof, based on rules developed under this chapter and the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV (Medicare, Medicaid, and Other Health-Related Programs), Subtitle C (Nursing Home Reform), as amended.
- (g) The preparation and annual update of a comprehensive emergency management plan. The agency shall adopt rules establishing minimum criteria for the plan after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health, the Agency for Health Care Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

1 The implementation of the consumer-satisfaction survey pursuant to s. 400.0225; the availability, 2 3 distribution, and posting of reports and records pursuant to s. 400.191; and the Gold Seal Program pursuant to s. 400.235. 4 5 (3)(a) The agency shall adopt rules providing for the 6 minimum staffing requirements for nursing homes. These 7 requirements shall include, for each nursing home facility, a minimum certified nursing assistant staffing of 2.3 hours of 8 direct care per resident per day beginning January 1, 2002, 9 increasing to 2.6 hours of direct care per resident per day 10 11 beginning January 1, 2003, increasing to 2.8 hours of direct care per resident per day beginning January 1, 2004, and 12 increasing to 2.9 hours of direct care per resident per day 13 beginning January 1, 2005, but never below one certified 14 nursing assistant per 20 residents, and a minimum licensed 15 nursing staffing of 1.0 hour of direct resident care per 16 17 resident per day but never below one licensed nurse per 40 residents, including evening and night shifts and weekends. 18 19 Nursing assistants employed under s. 400.211(2) may be included in computing the staffing ratio for certified nursing 20 21 assistants only if they provide nursing assistance services to residents on a full-time basis. Each nursing home must 22 document compliance with staffing standards as required under 23 24 this paragraph and post daily Agency rules shall specify 25 requirements for documentation of compliance with staffing standards, sanctions for violation of such standards, and 26 27 requirements for daily posting of the names of staff on duty 28 for the benefit of facility residents and the public. The 29 agency shall recognize the use of licensed nurses for 30 compliance with minimum staffing requirements for certified 31 nursing assistants, provided that the facility otherwise meets

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the minimum staffing requirements for licensed nurses and that the licensed nurses so recognized are performing the duties of a certified nursing assistant. Unless otherwise approved by the agency, licensed nurses counted towards the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of a certified nursing assistant for the entire shift and shall not also be counted towards the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for certified and licensed nursing staff. In no event may the hours of a licensed nurse with dual job responsibilities be counted twice.

- (b) The agency shall adopt rules to allow properly trained staff of a nursing facility, in addition to certified nursing assistants and licensed nurses, to assist residents with eating. The rules shall specify the minimum training requirements and shall specify the physiological conditions or disorders of residents which would necessitate that the eating assistance be provided by nursing personnel of the facility. Nonnursing staff providing eating assistance to residents under the provisions of this subsection shall not count towards compliance with minimum staffing standards.
- (c) Licensed practical nurses licensed under chapter 464 who are providing nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such

 facilities in accordance with rules adopted by the Board of Nursing.

- (8) The agency shall adopt rules to provide that, when the criteria established under subsection (2) are not met, such deficiencies shall be classified according to the nature of the deficiency. The agency shall indicate the classification on the face of the notice of deficiencies as follows:
- determines present an imminent danger to the residents or guests of the nursing home facility or a substantial probability that death or serious physical harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the agency, is required for correction. Notwithstanding s. 400.121(2), A class I deficiency is subject to a civil penalty in an amount not less than \$10,000 \$5,000 and not exceeding \$25,000 for each and every deficiency. A fine must may be levied notwithstanding the correction of the deficiency.
- determines have a direct or immediate relationship to the health, safety, or security of the nursing home facility residents, other than class I deficiencies. A class II deficiency is subject to a civil penalty in an amount not less than \$5,000\$\frac{1,000}{1,000}\$ and not exceeding \$10,000 for each and every deficiency. A citation for a class II deficiency must shall specify the time within which the deficiency is required to be corrected. If a class II deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

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

Section 17. Subsection (5) of section 400.235, Florida Statutes, is amended to read:

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

- (5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:
- (a) Had no class I or class II deficiencies within the 30 months preceding application for the program.
- (b) Evidence financial soundness and stability according to standards adopted by the agency in administrative rule.
- (c) Participate consistently in the required consumer satisfaction process as prescribed by the agency, and demonstrate that information is elicited from residents, family members, and guardians about satisfaction with the nursing facility, its environment, the services and care provided, the staff's skills and interactions with residents, attention to resident's needs, and the facility's efforts to act on information gathered from the consumer satisfaction 31 measures.

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- (d) Evidence the involvement of families and members of the community in the facility on a regular basis.
- (e) Have a stable workforce, <u>as described in s.</u>

  400.141, as evidenced by a relatively low rate of turnover among certified nursing assistants and licensed nurses within the 30 months preceding application for the Gold Seal Program, and demonstrate a continuing effort to maintain a stable workforce and to reduce turnover of licensed nurses and certified nursing assistants.
- (f) Evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application for the program.
- (g) Provide targeted inservice training provided to meet training needs identified by internal or external quality assurance efforts.

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

Section 18. Section 400.237, Florida Statutes, is created to read:

- 400.237 Nursing home facility grading system; ranking of nursing home facilities; use of ranking information.--
- (1) It is the intent of the Legislature to encourage continuous improvement in the quality of care and quality of life of nursing home facility residents. It is further the intent of the Legislature that nursing home facilities with a record of providing good quality care receive favorable rates

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    from liability insurers and favorable consideration by the
    courts in civil litigation.
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          (2) The Legislature intends to develop a grading
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    system that measures nursing home facility performance related
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    to quality indicators. The system must build upon the
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    procedures for measuring quality of care developed by the Gold
7
    Seal Program under s. 400.235.
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          (3) By July 1, 2002, the agency shall prepare and
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    implement a system for grading nursing home facilities against
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    optimal standards for quality of care and quality of life. The
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    system must include a uniform method of evaluating nursing
    home facilities in the following areas:
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          (a) Staffing levels and ratios;
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          (b)
               Staff turnover rates;
               Credentials of key personnel;
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          (C)
               Pressure ulcers;
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          (d)
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               Nutrition and hydration;
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          (f)
               Use of restraints;
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               Dignity;
               Maintenance of residents' functioning;
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          (h)
               Resident and resident family satisfaction;
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          (i)
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               Substantiated complaints;
               Deficiency citations;
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          (1)
               Adverse incidents and past claims experience;
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               Hospitalizations;
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               Facility cleanliness;
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               Falls;
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               Community and family involvement;
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               Ombudsman program evaluation;
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          (r) Living environment;
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               Risk management, loss control, and general safety;
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(t) Privacy.

- (4) Each nursing home facility must be graded annually against an optimal quality score and ranked according to whether its score is at or above 80 percent of the optimal score, in which case the facility shall be given five stars; at or above 60 percent, but not greater than 79 percent of the optimal score, in which case the facility shall be given four stars; at or above 40 percent, but not greater than 59 percent of the optimal score, in which case the facility shall be given three stars; at or above 20 percent, but not greater than 39 percent of the optimal score, in which case the facility shall be given two stars; or at or below 19 percent of the optimal score, in which case the facility shall be given one star.
- (5) The agency shall reevaluate each nursing home facility quarterly through announced and unannounced inspections.
- (6) Beginning with the second annual grading period and every year thereafter, the agency shall identify each nursing home facility's performance as having improved, remained the same, or declined. The facility improvement rating shall be based on a comparison of the current year's and previous year's performance.
- (7) By July 1, 2007, and every 5 years thereafter, the agency shall reevaluate the optimal standards for nursing home facility quality of care and quality of life and raise the standards to reflect improvements in the grading scores of nursing home facilities.
- (8) The secretary of the agency shall convene a workgroup to assist the agency in developing the grading system. The workgroup shall be composed of two nursing home

administrators whose facilities have not had a class I or class II deficiency since January 1, 1999; a physician with geriatric training and experience in treating nursing home residents; a person with training and experience in designing grading and ranking systems; a licensed risk manager with experience in a nursing facility; the State Long-Term Care Ombudsman; a designee of the Secretary of Elderly Affairs; a quality-of-care monitor or licensure surveyor with monitoring or survey experience in nursing homes; and a representative of an organized group that advocates for the elderly.

- (9) Each nursing home facility shall post, in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the public, the facility's ranking and improvement ratings.
- (10) The agency shall publish the ranking and improvement rating of all nursing home facilities on the agency's website and in printed guides by region of the state.
- $\underline{\mbox{(11)}}$  The agency may adopt rules necessary to administer this section.

Section 19. Section 400.275, Florida Statutes, is created to read:

400.275 Agency duties.--

(1) The agency shall ensure that each newly hired nursing home surveyor, as a part of basic training, is assigned full-time to a licensed nursing home for at least 2 days within a 7-day period to observe facility operations outside of the survey process before the surveyor begins survey responsibilities. The agency may not assign an individual to be a member of a survey team for purposes of a survey, evaluation, or consultation visit at a nursing home

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facility in which the surveyor was an employee within the preceding 5 years.

- (2) The agency shall semiannually provide for joint training of nursing home surveyors and staff of facilities licensed under this part on at least one of the 10 federal citations that were most frequently issued against nursing facilities in this state during the previous calendar year.
- (3) Each member of a nursing home survey team who is a health professional licensed under part I of chapter 464, part X of chapter 468, or chapter 491, shall earn not less than 50 percent of required continuing education credits in geriatric care. Each member of a nursing home survey team who is a health professional licensed under chapter 465 shall earn not less than 30 percent of required continuing education credits in geriatric care.
- The agency must ensure that when a deficiency is related to substandard quality of care, a physician with geriatric experience licensed under chapter 458 or chapter 459 or a registered nurse with geriatric experience licensed under chapter 464 participates in the agency's informal dispute-resolution process.

Section 20. Section 400.402, Florida Statutes, is amended to read:

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

- "Activities of daily living" means functions and (1)tasks for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar tasks.
- "Administrator" means an individual at least 21 years of age who is responsible for the operation and 31 maintenance of an assisted living facility.

- 1 (3) "Agency" means the Agency for Health Care 2 Administration.
  - (4) "Aging in place" or "age in place" means the process of providing increased or adjusted services to a person to compensate for the physical or mental decline that may occur with the aging process, in order to maximize the person's dignity and independence and permit them to remain in a familiar, noninstitutional, residential environment for as long as possible. Such services may be provided by facility staff, volunteers, family, or friends, or through contractual arrangements with a third party.
  - (5) "Applicant" means an individual owner, corporation, partnership, firm, association, or governmental entity that applies for a license.
  - (6) "Assisted living facility" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.
  - (7) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, and is used for discipline or convenience and not required for the treatment of medical symptoms.
  - (8) "Community living support plan" means a written document prepared by a mental health resident and the resident's mental health case manager in consultation with the administrator of an assisted living facility with a limited

 mental health license or the administrator's designee. A copy must be provided to the administrator. The plan must include information about the supports, services, and special needs of the resident which enable the resident to live in the assisted living facility and a method by which facility staff can recognize and respond to the signs and symptoms particular to that resident which indicate the need for professional services.

- (9) "Cooperative agreement" means a written statement of understanding between a mental health care provider and the administrator of the assisted living facility with a limited mental health license in which a mental health resident is living. The agreement must specify directions for accessing emergency and after-hours care for the mental health resident. A single cooperative agreement may service all mental health residents who are clients of the same mental health care provider.
- (10) "Department" means the Department of Elderly Affairs.
- (11) "Emergency" means a situation, physical condition, or method of operation which presents imminent danger of death or serious physical or mental harm to facility residents.
- (12) "Extended congregate care" means acts beyond those authorized in subsection (16)(17) that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical

 limitations that might otherwise disqualify them from residency in a facility licensed under this part.

- (13) "Guardian" means a person to whom the law has entrusted the custody and control of the person or property, or both, of a person who has been legally adjudged incapacitated.
- (14) "Limited nursing services" means acts that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties but limited to those acts which the department specifies by rule. Acts which may be specified by rule as allowable limited nursing services shall be for persons who meet the admission criteria established by the department for assisted living facilities and shall not be complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints.
- (15) "Managed risk" means the process by which the facility staff discuss the service plan and the needs of the resident with the resident and, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact, in such a way that the consequences of a decision, including any inherent risk, are explained to all parties and reviewed periodically in conjunction with the service plan, taking into account changes in the resident's status and the ability of the facility to respond accordingly.
- $\underline{(15)(16)}$  "Mental health resident" means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental

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disorder as determined by the Social Security Administration and receives optional state supplementation.

(16)<del>(17)</del> "Personal services" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the department may define by rule. "Personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

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

 $(18)\frac{(19)}{(19)}$  "Relative" means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of an owner or administrator.

(19)<del>(20)</del> "Resident" means a person 18 years of age or older, residing in and receiving care from a facility.

(20)<del>(21)</del> "Resident's representative or designee" means a person other than the owner, or an agent or employee of the 31 | facility, designated in writing by the resident, if legally

 competent, to receive notice of changes in the contract executed pursuant to s. 400.424; to receive notice of and to participate in meetings between the resident and the facility owner, administrator, or staff concerning the rights of the resident; to assist the resident in contacting the ombudsman council if the resident has a complaint against the facility; or to bring legal action on behalf of the resident pursuant to s. 400.429.

(21)(22) "Service plan" means a written plan, developed and agreed upon by the resident and, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact, if any, and the administrator or designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

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

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1 (23)<del>(24)</del> "Supervision" means reminding residents to 2 engage in activities of daily living and the 3 self-administration of medication, and, when necessary, 4 observing or providing verbal cuing to residents while they 5 perform these activities. 6 (24)<del>(25)</del> "Supplemental security income," Title XVI of 7 the Social Security Act, means a program through which the Federal Government quarantees a minimum monthly income to 8 9 every person who is age 65 or older, or disabled, or blind and 10 meets the income and asset requirements. 11 (25)<del>(26)</del> "Supportive services" means services designed to encourage and assist aged persons or adults with 12 13 disabilities to remain in the least restrictive living 14 environment and to maintain their independence as long as 15 possible. (26)<del>(27)</del> "Twenty-four-hour nursing supervision" means 16 17 services that are ordered by a physician for a resident whose condition requires the supervision of a physician and 18 19 continued monitoring of vital signs and physical status. services shall be: medically complex enough to require 20 constant supervision, assessment, planning, or intervention by 21 a nurse; required to be performed by or under the direct 22 supervision of licensed nursing personnel or other 23 24 professional personnel for safe and effective performance; 25 required on a daily basis; and consistent with the nature and severity of the resident's condition or the disease state or 26 27 stage. 28 Section 21. Subsections (3) and (4) of section

400.407 License required; fee, display.--

400.407, Florida Statutes, are amended to read:

- (3) Any license granted by the agency must state the maximum resident capacity of the facility, the type of care for which the license is granted, the date the license is issued, the expiration date of the license, and any other information deemed necessary by the agency. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health.
- (a) A standard license shall be issued to facilities providing one or more of the <u>personal</u> services identified in s. 400.402. Such facilities may also employ or contract with a person licensed under part I of chapter 464 to administer medications and perform other tasks as specified in s. 400.4255.
- (b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including acts performed pursuant to part I of chapter 464 by persons licensed thereunder, and supportive services defined by rule to persons who otherwise would be disqualified from continued residence in a facility licensed under this part.
- 1. In order for extended congregate care services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided and whether the designation applies to all or part of a facility. Such designation may be made at the time of initial licensure or biennial relicensure, or upon request in writing by a licensee under this part. Notification of approval or denial of such request shall be made within 90 days after receipt of

such request and all necessary documentation. Existing facilities qualifying to provide extended congregate care services must have maintained a standard license and may not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

- a. A class I or class II violation;
- b. Three or more repeat or recurring class III violations of identical or similar resident care standards as specified in rule from which a pattern of noncompliance is found by the agency;
- c. Three or more class III violations that were not corrected in accordance with the corrective action plan approved by the agency;
- d. Violation of resident care standards resulting in a requirement to employ the services of a consultant pharmacist or consultant dietitian;
- e. Denial, suspension, or revocation of a license for another facility under this part in which the applicant for an extended congregate care license has at least 25 percent ownership interest; or
- f. Imposition of a moratorium on admissions or initiation of injunctive proceedings.
- 2. Facilities that are licensed to provide extended congregate care services shall maintain a written progress report on each person who receives such services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse, or appropriate designee, representing the agency shall visit such facilities

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

- 3. Facilities that are licensed to provide extended congregate care services shall:
- a. Demonstrate the capability to meet unanticipated resident service needs.
- b. Offer a physical environment that promotes a homelike setting, provides for resident privacy, promotes resident independence, and allows sufficient congregate space as defined by rule.

emergency, as necessary.

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Adopt and follow policies and procedures that maximize resident independence, dignity, choice, and decisionmaking to permit residents to age in place to the extent possible, so that moves due to changes in functional

account the physical plant and firesafety features of the

building, to assist with the evacuation of residents in an

Have sufficient staff available, taking into

- status are minimized or avoided.
- Allow residents or, if applicable, a resident's representative, designee, surrogate, guardian, or attorney in fact to make a variety of personal choices, participate in developing service plans, and share responsibility in decisionmaking.
  - Implement the concept of managed risk.
- Provide, either directly or through contract, the services of a person licensed pursuant to part I of chapter 464.
- In addition to the training mandated in s. 400.452, provide specialized training as defined by rule for facility staff.
- Facilities licensed to provide extended congregate care services are exempt from the criteria for continued residency as set forth in rules adopted under s. 400.441. Facilities so licensed shall adopt their own requirements within guidelines for continued residency set forth by the department in rule. However, such facilities may not serve residents who require 24-hour nursing supervision. Facilities licensed to provide extended congregate care services shall provide each resident with a written copy of facility policies 31 governing admission and retention.

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- 5. The primary purpose of extended congregate care services is to allow residents, as they become more impaired, the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency. A facility licensed to provide extended congregate care services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the extended congregate care facility.
  - 6. Before admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 400.426(4) and the facility must develop a preliminary service plan for the individual.
  - 7. When a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the facility shall make arrangements for relocating the person in accordance with s. 400.428(1)(k).
  - 8. Failure to provide extended congregate care services may result in denial of extended congregate care license renewal.
  - 9. No later than January 1 of each year, the department, in consultation with the agency, shall prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of appropriate legislative committees, a report on the status of, and recommendations related to, extended congregate care services. The status report must include, but need not be limited to, the following information:

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- 1 A description of the facilities licensed to provide 2 such services, including total number of beds licensed under 3 this part.
  - The number and characteristics of residents b. receiving such services.
  - The types of services rendered that could not be provided through a standard license.
  - An analysis of deficiencies cited during licensure biennial inspections.
  - The number of residents who required extended congregate care services at admission and the source of admission.
  - f. Recommendations for statutory or regulatory changes.
  - The availability of extended congregate care to state clients residing in facilities licensed under this part and in need of additional services, and recommendations for appropriations to subsidize extended congregate care services for such persons.
  - h. Such other information as the department considers appropriate.
  - (c) A limited nursing services license shall be issued to a facility that provides services beyond those authorized in paragraph (a) and as specified in this paragraph.
- In order for limited nursing services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided. Such designation may be made at the time of initial licensure or 31 biennial relicensure, or upon request in writing by a licensee

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

- 2. Facilities that are licensed to provide limited nursing services shall maintain a written progress report on each person who receives such nursing services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse representing the agency shall visit such facilities at least twice once a year to monitor residents who are receiving limited nursing services and to determine if the facility is in compliance with applicable provisions of this part and with related rules. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall also serve as part of the team that biennially inspects such facility.
- 3. A person who receives limited nursing services under this part must meet the admission criteria established by the agency for assisted living facilities. When a resident no longer meets the admission criteria for a facility licensed under this part, arrangements for relocating the person shall be made in accordance with s. 400.428(1)(k), unless the facility is licensed to provide extended congregate care 31 services.

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(4) (4) Each facility shall be assessed a bed fee of \$100 for each initial, renewal, and change-of-ownership application processed, except that a bed fee may not be assessed for any bed designated for recipients of optional state supplementation payments. The fee for processing an application, as described in this part, may not exceed \$10,000.<del>The biennial license fee required of a facility is</del> \$240 per license, with an additional fee of \$30 per resident based on the total licensed resident capacity of the facility, except that no additional fee will be assessed for beds designated for recipients of optional state supplementation payments provided for in s. 409.212. The total fee may not exceed \$10,000, no part of which shall be returned to the facility. The agency shall adjust the per bed license fee and the total licensure fee annually by not more than the change in the consumer price index based on the 12 months immediately preceding the increase. (b) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide extended congregate care services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be \$400 per license, no part of which shall be returned to the facility. The agency may adjust the annual license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase. (c) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide limited nursing services under this part

to pay an additional fee per licensed facility. The amount of

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fee of \$10 per resident based on the total licensed resident capacity of the facility. The total biennial fee may not exceed \$2,000, no part of which shall be returned to the facility. The agency may adjust the \$200 biennial license fee and the maximum total license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.

Section 22. Paragraph (n) is added to subsection (1) of section 400.414, Florida Statutes, and subsection (8) is added to that section, to read:

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

- (1) The agency may deny, revoke, or suspend any license issued under this part, or impose an administrative fine in the manner provided in chapter 120, for any of the following actions by an assisted living facility, any person subject to level 2 background screening under s. 400.4174, or any facility employee:
- (n) Any act constituting a ground upon which application for a license may be denied.

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

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

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

400.417 Expiration of license; renewal; conditional 31 license.--

- (1) A standard license Biennial licenses, unless sooner suspended or revoked, shall expire 2 years from the date of issuance. Limited nursing, extended congregate care, and limited mental health licenses shall expire 1 year after the date of issuance at the same time as the facility's standard license, regardless of when issued. The agency shall notify the facility by certified mail at least 120 days prior to expiration that a renewal license is necessary to continue operation. Ninety days prior to the expiration date, an application for renewal shall be submitted to the agency. Fees must be prorated. The failure to file a timely renewal application shall result in a late fee charged to the facility in an amount equal to 50 percent of the current fee.
- (6) When an extended care or limited nursing license is requested during a facility's biennial license period, the fee shall be prorated in order to permit the additional license to expire at the end of the biennial license period. The fee shall be calculated as of the date the additional license application is received by the agency.

Section 24. Section 400.419, Florida Statutes, is amended to read:

400.419 Violations; administrative fines.--

- (1) Each violation of this part and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The agency shall indicate the classification on the written notice of the violation as follows:
- (a) Class "I" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines present an imminent danger to the residents or

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guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. A class I violation is subject to an administrative fine in an amount not less than \$5,000\$\frac{\$1,000}{\$1,000}\$ and not exceeding \$10,000 for each violation. A fine may be levied notwithstanding the correction of the violation.

- occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the facility residents, other than class I violations. A class II violation is subject to an administrative fine in an amount not less than \$1,000 \$500 and not exceeding \$5,000 for each violation. A citation for a class II violation must shall specify the time within which the violation is required to be corrected. If a class II violation is corrected within the time specified, no fine may be imposed, unless it is a repeated offense.
- (c) Class "III" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of facility residents, other than class I or class II violations. A class III violation is subject to an administrative fine of not less than \$500\$100 and not exceeding \$1,000 for each violation. A citation for a class III violation must shall specify the time within which the violation is required to be corrected. If a

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30 31 class III violation is corrected within the time specified, no fine may be imposed, unless it is a repeated offense.

- (d) Class "IV" violations are those conditions or occurrences related to the operation and maintenance of a building or to required reports, forms, or documents that do not have the potential of negatively affecting residents. These violations are of a type that the agency determines do not threaten the health, safety, or security of residents of the facility. A facility that does not correct a class IV violation within the time specified in the agency-approved corrective action plan is subject to an administrative fine of not less than \$100\$ for more than \$200 for each violation. Any class IV violation that is corrected during the time an agency survey is being conducted will be identified as an agency finding and not as a violation.
- (2) The agency may set and levy a fine not to exceed \$1,000 for each violation which cannot be classified according to subsection (1). Such fines in the aggregate may not 19 \$10,000 per survey.
  - (2) (3) In determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:
  - (a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.
  - (b) Actions taken by the owner or administrator to correct violations.
    - (c) Any previous violations.

- (d) The financial benefit to the facility of committing or continuing the violation.
  - (e) The licensed capacity of the facility.
- (3) (4) Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.
- (4)(5) Any action taken to correct a violation shall be documented in writing by the owner or administrator of the facility and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated facility, revoke or deny a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.
- (5)(6) For fines that are upheld following administrative or judicial review, the violator shall pay the fine, plus interest at the rate as specified in s. 55.03, for each day beyond the date set by the agency for payment of the fine.
- (6)(7) Any unlicensed facility that continues to operate after agency notification is subject to a \$1,000 fine per day. Each day beyond 5 working days after agency notification constitutes a separate violation, and the facility is subject to a fine of \$500 per day.
- (7)(8) Any licensed facility whose owner or administrator concurrently operates an unlicensed facility shall be subject to an administrative fine of \$5,000 per day. Each day that the unlicensed facility continues to operate beyond 5 working days after agency notification constitutes a separate violation, and the licensed facility shall be subject

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to a fine of \$500 per day retroactive to the date of agency notification.

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

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

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

(11)<del>(12)</del> Administrative fines paid by any facility under this section shall be deposited into the Health Care Trust Fund and expended as provided in s. 400.418.

(12)<del>(13)</del> The agency shall develop and disseminate an annual list of all facilities sanctioned or fined \$5,000 or 31 more for violations of state standards, the number and class

of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Family Services, the area agencies on aging, the Florida Statewide Advocacy Council, and the state and local ombudsman councils. The Department of Children and Family Services shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list.

Section 25. Section 400.423, Florida Statutes, is created to read:

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

- (1) Each facility with a minimum of 26 beds shall, as part of its administrative functions, establish an internal risk-management and quality-assurance program, the purpose of which is to assess resident-care practices; review facility quality indicators, facility incident reports, deficiencies cited by the agency, individual resident shared-risk agreements as defined in s. 400.402, and resident grievances; and develop plans of action to correct and respond quickly to identified quality deficiencies. The program must include:
- (a) A risk manager employed by the facility and licensed under chapter 395 who is responsible for implementation and oversight of the facility's internal risk-management and quality-assurance program as required by this section. A risk manager must not be made responsible for more than four internal risk-management and quality-assurance

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programs in separate facilities licensed pursuant to chapter 400 or chapter 395. However, a risk manager may be made responsible for as many as eight assisted living facilities with a standard license if the risk manager is not responsible for any other facilities licensed under this chapter or chapter 395.

- (b) A risk-management and quality-assurance committee consisting of the facility risk manager, the administrator, and at least three other members of the facility staff. The risk-management and quality-assurance committee shall meet at least monthly.
- (c) Policies and procedures to implement the internal risk-management and quality-assurance program, which must include the investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents to residents.
- The development of appropriate measures to minimize the risk of adverse incidents to residents, including, but not limited to, education and training in risk management and risk prevention for all nonphysician personnel, as follows:
- 1. Such education and training of all nonphysician personnel shall be part of their initial orientation; and
- 2. At least 3 hours of such education and training shall be provided annually for all nonphysician personnel of the licensed facility working in clinical areas and providing resident care.
- The analysis of resident grievances that relate to resident care and the quality of clinical services.
- (f) The development and implementation of an incident 31 reporting system based upon the affirmative duty of all health

care providers and all agents and employees of the facility to report adverse incidents to the risk manager.

- (2) The internal risk-management and quality-assurance program is the responsibility of the facility administrator.
- (3) In addition to the programs mandated by this section, other innovative approaches intended to reduce the frequency and severity of adverse incidents to residents and violations of residents' rights shall be encouraged and their implementation and operation facilitated.
- (4) Each internal risk-management and quality-assurance program shall include the use of incident reports to be filed with the risk manager and the facility administrator. The risk manager shall have free access to all resident records of the facility. The incident reports are confidential as provided by law, are part of the workpapers of the attorney defending the facility in litigation relating to the facility, and are subject to discovery but are not admissible as evidence in court. As a part of each internal risk-management and quality-assurance program, the incident reports shall be used to develop categories of incidents which identify problem areas. Once identified, procedures shall be adjusted to correct the problem areas.
- (5) For purposes of reporting to the agency under this section, the term "adverse incident" means:
- (a) An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:
  - 1. Death;
  - 2. Brain or spinal damage;

1 3. Permanent disfigurement; 2 4. Fracture or dislocation of bones or joints; 3 5. A resulting limitation of neurological, physical, 4 or sensory function; 5 Any condition that required medical attention to 6 which the resident has not given his or her informed consent, 7 including failure to honor advanced directives; or 8 7. Any condition that required the transfer of the patient, within or outside the facility, to a unit providing a 9 10 more acute level of care due to the adverse incident rather 11 than to the resident's condition prior to the adverse 12 incident; 13 (b) Abuse, neglect, or exploitation, as defined in s. 415.102 or s. 39.01; 14 (c) Resident elopement; or 15 An event that is reported to law enforcement. 16 (d) Every facility, regardless of the number of beds, 17 shall notify the agency within 1 business day after the 18 19 occurrence of an adverse incident. The notification must be made in writing and be provided by facsimile device or 20 21 overnight mail delivery. The notification must include information regarding the identity of the affected resident, 22 the type of adverse incident, the initiation of an 23 investigation by the facility, and whether the events causing 24 or resulting in the adverse incident represent a potential 25 risk to any other resident. The notification is confidential 26 27 as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary 28 29 proceedings by the agency or the appropriate regulatory board. 30 The agency may investigate, as it deems appropriate, any such

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

- (7)(a) Every facility, regardless of the number of beds, shall submit an adverse-incident report to the agency for each adverse incident within 15 calendar days after its occurrence on a form developed by the agency. The Department of Elderly Affairs shall have access to such reports as it deems appropriate.
- (b) The information reported to the agency pursuant to paragraph (a) which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.
- (c) The report submitted to the agency must also contain the name and license number of the risk manager, if applicable, of the licensed facility.
- (d) The adverse-incident report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board.
- (8) Each facility subject to this section shall report monthly any liability claim files against it. The report must include the name of the resident, the date or dates of the incident leading to the claim, and the type of injury or violation of rights alleged to have occurred.

- (9) The internal risk manager or administrator of each
  facility shall:
- (a) Investigate every allegation of sexual misconduct which is made against a member of the facility's personnel who has direct resident contact if it is alleged that the sexual misconduct occurred at the facility or on the grounds of the facility;
- (b) If the allegation is investigated by the internal risk manager, report the allegation of sexual misconduct to the administrator of the facility; and
- (c) Notify the resident representative or guardian of the victim that an allegation of sexual misconduct has been made and that an investigation is being conducted.
- (10)(a) Any witness who witnessed or who possesses actual knowledge of the act that is the basis of an allegation of sexual abuse shall notify:
  - 1. The local law enforcement agency;
- 2. The central abuse hotline of the Department of Children and Family Services; and
- 3. The risk manager, if applicable, and the administrator.
- abuse" means acts of a sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult's informed consent, or a minor. The term includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult's or minor's sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. The term does not include

any act intended for a valid medical purpose or any act that may reasonably be construed to be a normal caregiving action.

(11) The agency shall review, as part of its licensure

- inspection process, the internal risk-management and quality-assurance program at each facility regulated by this section to determine whether the program meets standards established in statutory laws and rules, is being conducted in a manner designed to reduce adverse incidents, and is appropriately reporting incidents as required by this section.
- (12) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any risk manager licensed under chapter 395 for the implementation and oversight of the internal risk-management and quality-assurance program in a facility licensed under this part as required by this section, or for any act or proceeding undertaken or performed within the scope of the functions of such internal risk-management and quality-assurance program if the risk manager acts without intentional fraud.
- incident reports prescribed in subsection (7), or through any investigation, has a reasonable belief that conduct by a staff member or employee of a facility is grounds for disciplinary action by the appropriate regulatory board, the agency shall report this fact to the regulatory board.
- (14) The agency shall annually submit to the Legislature a report on assisted living facility internal risk management. The report must include the following information arrayed by county:
  - (a) The total number of adverse incidents.

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          (b) A listing, by category, of the types of adverse
    incidents, the number of incidents occurring within each
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    category, and the type of staff involved.
          (c) A listing, by category, of the types of injury
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    caused and the number of injuries occurring within each
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    category.
          (d) Types of liability claims filed based on an
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    adverse incident or reportable injury.
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          (e) Disciplinary action taken against staff,
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    categorized by type of staff involved.
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           Section 26. Present subsections (7), (8), (9), (10),
    and (11) of section 400.426, Florida Statutes, are
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    redesignated as subsections (8), (9), (10), (11), and (12),
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    respectively, and a new subsection (7) is added to that
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    section, to read:
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           400.426 Appropriateness of placements; examinations of
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    residents.--
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          (7) Any resident who exhibits signs of dementia or
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    cognitive impairment must be examined by a licensed physician
    to rule out the presence of an underlying physiological
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    condition that may be contributing to such dementia or
    impairment. The examination must occur within 7 days after the
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    admission of a resident to the facility or within 7 days after
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    the acknowledgement of such signs by facility staff. The
    facility must notify the resident's designee or legal
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    representative prior to the examination. If an underlying
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    condition is determined to exist, the facility shall arrange
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    for necessary care and services to treat the condition.
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           Section 27. Subsection (3) of section 400.428, Florida
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    Statutes, is amended to read:
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           400.428 Resident bill of rights.--
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- CODING: Words stricken are deletions; words underlined are additions.

- (3)(a) The agency shall conduct a survey to determine general compliance with facility standards and compliance with residents' rights as a prerequisite to initial licensure or licensure renewal.
- (b) In order to determine whether the facility is adequately protecting residents' rights, the licensure biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the planning and service area in which the facility is located to discuss residents' experiences within the facility.
- (c) During any calendar year in which no standard licensure survey is conducted, the agency shall conduct at least one monitoring visit of each facility cited in the previous year for a class I or class II violation, or more than three uncorrected class III violations.
- (d) The agency may conduct periodic followup inspections as necessary to monitor the compliance of facilities with a history of any class I, class II, or class III violations that threaten the health, safety, or security of residents.
- (e) The agency may conduct complaint investigations as warranted to investigate any allegations of noncompliance with requirements required under this part or rules adopted under this part.
- Section 28. Effective October 1, 2001, and applicable to causes of action accruing on or after that date, section 400.4303, Florida Statutes, is created to read:
- 400.4303 Copies forwarded to state attorney.--In any action in which punitive damages are awarded, notwithstanding any appeals, the Clerk of the Court shall forward to the state

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attorney of that circuit a copy of the complaint, any amended complaints, the verdict form, and the final judgment.

Section 29. Subsection (2) of section 400.435, Florida Statutes, is amended to read:

400.435 Maintenance of records; reports.--

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

Section 30. Paragraph (h) of subsection (1) and subsection (4) of section 400.441, Florida Statutes, are amended to read:

400.441 Rules establishing standards.--

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. In order to provide safe and sanitary facilities and the highest quality of resident 31 care accommodating the needs and preferences of residents, the

department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

- (h) The care and maintenance of residents, which must include, but is not limited to:
  - 1. The supervision of residents;
  - 2. The provision of personal services;
- 3. The provision of, or arrangement for, social and leisure activities;
- 4. The arrangement for appointments and transportation to appropriate medical, dental, nursing, or mental health services, as needed by residents;
  - 5. The management of medication;
  - 6. The nutritional needs of residents; and
  - 7. Resident records; and  $\overline{\cdot}$
  - 8. Internal risk management and quality assurance.
- standard licensure inspection that which consists of a review of key quality-of-care standards in lieu of a full inspection in facilities which have a good record of past performance. However, a full inspection shall be conducted in facilities which have had a history of class I or class II violations, uncorrected class III violations, confirmed ombudsman council complaints, or confirmed licensure complaints, within the previous licensure period immediately preceding the inspection or when a potentially serious problem is identified during the abbreviated inspection. The agency, in consultation with the department, shall develop the key quality-of-care standards with input from the State Long-Term Care Ombudsman Council and

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representatives of provider groups for incorporation into its rules. Beginning on or before March 1, 1991, The department, in consultation with the agency, shall report annually to the Legislature concerning its implementation of this subsection. The report shall include, at a minimum, the key quality-of-care standards which have been developed; the number of facilities identified as being eligible for the abbreviated inspection; the number of facilities which have received the abbreviated inspection and, of those, the number that were converted to full inspection; the number and type of subsequent complaints received by the agency or department on facilities which have had abbreviated inspections; any recommendations for modification to this subsection; any plans by the agency to modify its implementation of this subsection; and any other information which the department believes should be reported.

Section 31. Section 400.442, Florida Statutes, is amended to read:

400.442 Pharmacy and dietary services .--

(1) Any assisted living facility in which the agency has documented a class I or class II deficiency or uncorrected class III deficiencies regarding medicinal drugs or over-the-counter preparations, including their storage, use, delivery, or administration, or dietary services, or both, during a <u>licensure biennial</u> survey or a monitoring visit or an investigation in response to a complaint, shall, in addition to or as an alternative to any penalties imposed under s. 400.419, be required to employ the consultant services of a licensed pharmacist, a licensed registered nurse, or a registered or licensed dietitian, as applicable. The consultant shall, at a minimum, provide onsite quarterly

consultation until the inspection team from the agency determines that such consultation services are no longer required.

- (2) A corrective action plan for deficiencies related to assistance with the self-administration of medication or the administration of medication must be developed and implemented by the facility within 48 hours after notification of such deficiency, or sooner if the deficiency is determined by the agency to be life-threatening.
- (3) The agency shall employ at least two pharmacists licensed pursuant to chapter 465 among its personnel who biennially inspect assisted living facilities licensed under this part, to participate in <a href="Licensure">Licensure</a> biennial inspections or consult with the agency regarding deficiencies relating to medicinal drugs or over-the-counter preparations.
- (4) The department may by rule establish procedures and specify documentation as necessary to <u>administer</u> <u>implement</u> this section.

Section 32. Section 400.449, Florida Statutes, is created to read:

400.449 Resident records; penalties for alteration .--

- (1) Any person who fraudulently alters, defaces, or falsifies any medical or other record of an assisted living facility, or causes or procures any such offense to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
- (2) A conviction under subsection (1) is also grounds for restriction, suspension, or termination of license privileges.

Section 33. Subsection (1) of section 464.201, Florida Statutes, is amended to read:

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

- (1) "Approved training program" means:
- (a) A course of training conducted by a public sector or private sector educational center licensed by the Department of Education to implement the basic curriculum for nursing assistants which is approved by the Department of Education. Beginning October 1, 2000, the board shall assume responsibility for approval of training programs under this paragraph.
  - (b) A training program operated under s. 400.141.
- (c) A nursing assistant training program developed under the Enterprise Florida Jobs and Education Partnership Grant.

Section 34. Section 464.203, Florida Statutes, is amended to read:

464.203 Certified nursing assistants; certification requirement.--

- (1) The board shall issue a certificate to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write and successfully passes the required Level I or Level II screening pursuant to s. 400.215 and meets one of the following requirements:
- (a) Has successfully completed an approved training program and achieved a minimum score, established by rule of the board, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion approved by the board and administered at a site and by personnel approved by the department.
- (b) Has achieved a minimum score, established by rule of the board, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration

portion, approved by the board and administered at a site and by personnel approved by the department and:

- 1. Has a high school diploma, or its equivalent; or
- 2. Is at least 18 years of age.
- (c) Is currently certified in another state; is listed on that state's certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that state.
- (d) Has completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieved a minimum score, established by rule of the board, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the board and administered at a site and by personnel approved by the department.
- (2) If an applicant fails to pass the nursing assistant competency examination in three attempts, the applicant is not eligible for reexamination unless the applicant completes an approved training program.
- (3) An oral examination shall be administered as a substitute for the written portion of the examination upon request. The oral examination shall be administered at a site and by personnel approved by the department.
- (4) The board shall adopt rules to provide for the initial certification of certified nursing assistants.
- (5) Certification as a nursing assistant, in accordance with this part, continues in effect until such time as the nursing assistant allows a period of 24 consecutive months to pass during which period the nursing assistant fails to perform any nursing-related services for monetary compensation. When a nursing assistant fails to perform any

nursing-related services for monetary compensation for a

period of 24 consecutive months, the nursing assistant must

complete a new training and competency evaluation program or a

new competency evaluation program.

- $\underline{(6)}$  (5) A certified nursing assistant shall maintain a current address with the board in accordance with s. 456.035.
- (7) A certified nursing assistant must complete a minimum of 18 hours of continuing education during each calendar year of certification. Continuing education must include training in assisting and responding to individuals who are cognitively impaired or who exhibit difficult behaviors.

Section 35. Subsection (2) of section 397.405, Florida Statutes, is amended to read:

- 397.405 Exemptions from licensure.--The following are exempt from the licensing provisions of this chapter:
- (2) A nursing home facility as defined in  $\underline{s.\ 400.021}$   $\underline{s.\ 400.021(12)}$ .

The exemptions from licensure in this section do not apply to any facility or entity which receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. No provision of this chapter shall be construed to limit the practice of a physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a psychotherapist licensed under chapter 491, providing outpatient or inpatient substance abuse treatment to a voluntary patient, so long as the physician, psychologist, or psychotherapist does not

31 represent to the public that he or she is a licensed service

provider under this act. Failure to comply with any 2 requirement necessary to maintain an exempt status under this 3 section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. 4 5 Section 36. The Agency for Health Care Administration 6 shall require that a portion of each nursing facility's 7 Medicaid rate be used exclusively for wage and benefit 8 increases for nursing home direct care staff. Such funds shall be used only for actual wage or benefit improvements. Eligible 9 10 staff members include all direct care workers (including RNs, 11 LPNs and CNAs), and all dietary, housekeeping, laundry, and maintenance workers. Temporary, contract, agency, and pool 12 employees are excluded. The agency shall develop 13 14 cost-reporting systems to ensure that the funds the agency has required to be used for wage and benefit increases for direct 15 care staff are used for this purpose. On January 1 of each 16 17 year, the agency shall report to the Legislature the effect of such wage and benefit increases for employees in nursing 18 19 facilities in this state. The sum of \$\_\_\_\_ is appropriated from 20 Section 37. the General Revenue Fund to the Agency for Health Care 21 22 Administration for the purpose of implementing the provisions of this act during the 2001-2002 fiscal year. 23 24 Section 38. The sum of \$948,782 is appropriated from 25 the General Revenue Fund to the Department of Elderly Affairs for the purpose of paying the salaries and other 26 27 administrative expenses of the Office of State Long-Term Care Ombudsman to carry out the provisions of this act during the 28 29 2001-2002 fiscal year. 30 Section 39. If any provision of this act or its

invalidity does not affect other provisions or applications of
the act which can be given effect without the invalid
provision or application, and to this end the provisions of
this act are severable.

Section 40. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 1202

The committee substitute removes provisions pertaining to civil actions against nursing homes and assisted living facilities based on residents rights, abuse, neglect or exploitation; changes requirements for resident care plans; removes provisions relating to shared-risk agreements in nursing homes and assisted living facilities; allows use of electronic monitoring devices in resident's rooms in nursing facilities, provides standards for the use of such devices, provides for the admissibility of tapes so created in civil and criminal actions and provides penalties for hampering use of or tampering with monitoring devices; clarifies provisions relating to resident transfers and discharges; requires submission of quality assurance and risk management plans as a condition of licensure for nursing homes; requires action on the part of a facility to ensure that residents with mental, psychosocial or adjustment difficulty, dementia or cognitive impairment receive appropriate treatment; requires nursing homes and assisted living facilities to report liability claims filed against them to the Agency for Health Care Administration; requires specialized training for individuals employed by facilities who provide care for residents with Alzheimer' disease; requires publication and posting of a "Nursing Home Guide Watch List"; allows inclusion of CNAs who are awaiting certification in staffing counts only if they are providing services on a full-time basis; requires documenting of compliance with staffing standards and posting of staff rosters; incrementally increases minimum staffing requirements for nursing homes over the next 4 years; revises requirements for nursing homes over the next 4 years; revises requirements for he Gold Seal Program; requires development of a nursing home grading system; removes a requirement to establish an in-house pool of receivers at the Agency for Health Care Administration to require that a portion of each nursing facilities; removes a requirement for a study of the effects of the bill on