

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

308-1737C-01

1 A bill to be entitled
2 An act relating to long-term care; amending s.
3 400.0073, F.S.; clarifying duties of the local
4 ombudsman councils with respect to inspections
5 of nursing homes and long-term-care facilities;
6 amending s. 400.021, F.S.; defining the terms
7 "controlling interest" and "voluntary board
8 member" and revising the definition of
9 "resident care plan" for purposes of part II of
10 ch. 400, F.S., relating to the regulation of
11 nursing homes; creating s. 400.0223, F.S.;
12 requiring a nursing home facility to permit
13 electronic monitoring devices in a resident's
14 room; specifying conditions under which
15 monitoring may occur; providing that electronic
16 monitoring tapes are admissible in civil or
17 criminal actions; providing penalties; amending
18 s. 400.023, F.S.; providing for election of
19 survival damages, wrongful death damages, or
20 recovery for negligence; providing for
21 attorney's fees for injunctive relief or
22 administrative remedy; providing that ch. 766,
23 F.S., does not apply to actions under this
24 section; providing burden of proof; providing
25 that a violation of a right is not negligence
26 per se; prescribing the duty of care;
27 prescribing a nurse's duty of care; eliminating
28 presuit provisions; eliminating the requirement
29 for presuit mediation; prohibiting the
30 concealment of information relating to the
31 settlement or resolution of a claim or action;

1 requiring that certain documents relating to
2 settlements or resolution of a claim or action
3 be provided to the agency; creating s.
4 400.0233, F.S.; providing for presuit notice;
5 prohibiting the filing of suit for a specified
6 time; requiring a response to the notice;
7 tolling the statute of limitations; limiting
8 discovery of presuit investigation documents;
9 limiting liability of presuit investigation
10 participants; authorizing the obtaining of
11 opinions from a nurse or doctor; authorizing
12 the obtaining of unsworn statements;
13 authorizing discovery of relevant documents;
14 prescribing the time for acceptance of
15 settlement offers; requiring mediation;
16 prescribing the time to file suit; creating s.
17 400.0234, F.S.; requiring the availability of
18 facility records for presuit investigation;
19 specifying the records to be made available;
20 specifying what constitutes evidence of failure
21 to make records available in good faith;
22 specifying the consequences of such failure;
23 creating s. 400.0235, F.S.; providing that the
24 provisions of s. 768.21(8), F.S., do not apply
25 to actions under part II of ch. 400, F.S.;
26 creating s. 400.0236, F.S.; providing a statute
27 of limitations; providing a statute of
28 limitations when there is fraudulent
29 concealment or intentional misrepresentation of
30 fact; providing for application of the statute
31 of limitation to accrued actions; creating s.

1 400.0237, F.S.; requiring evidence of the basis
2 for punitive damages; prohibiting discovery
3 relating to financial worth; providing for
4 proof of punitive damages; defining the terms
5 "intentional misconduct" and "gross
6 negligence"; prescribing criteria governing
7 employers' liability for punitive damages;
8 providing for the remedial nature of
9 provisions; creating s. 400.0238, F.S.;
10 prescribing limits on the amount of punitive
11 damages; providing for the calculation of
12 attorney's fees; amending s. 768.735, F.S.;
13 providing that the section is inapplicable to
14 actions brought under ch. 400, F.S.; amending
15 s. 415.1111, F.S.; limiting actions against
16 nursing homes and assisted living facilities;
17 creating s. 400.0247, F.S.; requiring that
18 copies of certain documents be forwarded to the
19 state attorney if punitive damages are awarded;
20 amending s. 400.0255, F.S.; providing for
21 applicability of provisions relating to
22 transfer or discharge of nursing home
23 residents; amending s. 400.062, F.S.;
24 increasing the bed license fee for nursing home
25 facilities; amending s. 400.071, F.S.; revising
26 license application requirements; requiring
27 certain disclosures; authorizing the Agency for
28 Health Care Administration to issue an inactive
29 license; requiring quality assurance and
30 risk-management plans; amending s. 400.102,
31 F.S.; providing additional grounds for action

1 by the agency against a licensee; amending s.
2 400.111, F.S.; prohibiting renewal of a license
3 if an applicant has failed to pay certain
4 fines; authorizing placing fines in escrow;
5 amending s. 400.118, F.S.; revising duties of
6 quality-of-care monitors in nursing facilities;
7 amending s. 400.121, F.S.; specifying
8 additional circumstances under which the agency
9 may deny, revoke, or suspend a facility's
10 license or impose a fine; authorizing placing
11 fines in escrow; specifying facts and
12 conditions upon which administrative actions
13 that are challenged must be reviewed; amending
14 s. 400.126, F.S.; requiring an assessment of
15 residents in nursing homes under receivership;
16 providing for alternative care for qualified
17 residents; amending s. 400.141, F.S.; providing
18 additional administrative and management
19 requirements for licensed nursing home
20 facilities; requiring a facility to submit
21 information on staff-to-resident ratios, staff
22 turnover, and staff stability; requiring that
23 certain residents be examined by a licensed
24 physician; providing requirements for dining
25 and hospitality attendants; requiring
26 additional reports to the agency; requiring
27 minimum amounts of liability insurance
28 coverage; creating s. 400.1413, F.S.;
29 authorizing nursing homes to impose certain
30 requirements on volunteers; creating s.
31 400.147, F.S.; requiring each licensed nursing

1 home facility to establish an internal risk
2 management and quality assurance program;
3 providing requirements of the program;
4 requiring the use of incident reports; defining
5 the term "adverse incident"; requiring that the
6 agency be notified of adverse incidents;
7 requiring reporting of liability claims;
8 specifying duties of the internal risk manager;
9 requiring the reporting of sexual abuse;
10 limiting the liability of a risk manager;
11 requiring that the agency report certain
12 conduct to the appropriate regulatory board;
13 requiring that the agency annually report to
14 the Legislature on the internal risk management
15 of nursing homes; creating s. 400.148, F.S.;
16 providing for a pilot project to coordinate
17 resident quality of care through the use of
18 medical personnel to monitor patients;
19 providing purpose; providing for appointment of
20 guardians; creating s. 400.1755, F.S.;
21 prescribing training standards for employees of
22 nursing homes that provide care for persons
23 with Alzheimer's disease or related disorders;
24 prescribing duties of the Department of Elderly
25 Affairs; amending s. 400.19, F.S.; providing
26 for inspections; amending s. 400.191, F.S.;
27 requiring the agency to publish a Nursing Home
28 Guide Watch List; specifying contents of the
29 watch list; specifying distribution of the
30 watch list; requiring that nursing homes post
31 certain additional information; amending s.

1 400.211, F.S.; revising employment requirements
2 for nursing assistants; requiring in-service
3 training; amending s. 400.23, F.S.; revising
4 minimum staffing requirements for nursing
5 homes; requiring the documentation and posting
6 of compliance with such standards; requiring
7 correction of deficiencies prior to change in
8 conditional status; providing definitions of
9 deficiencies; adjusting the fines imposed for
10 certain deficiencies; amending s. 400.235,
11 F.S.; revising requirements for the Gold Seal
12 Program; creating s. 400.275, F.S.; providing
13 for training of nursing-home survey teams;
14 amending s. 400.402, F.S.; revising definitions
15 applicable to part III of ch. 400, F.S.,
16 relating to the regulation of assisted living
17 facilities; amending s. 400.407, F.S.; revising
18 certain licensing requirements; providing for
19 the biennial license fee to be based on number
20 of beds; amending s. 400.414, F.S.; specifying
21 additional circumstances under which the Agency
22 for Health Care Administration may deny,
23 revoke, or suspend a license; providing for
24 issuance of a temporary license; amending s.
25 400.417, F.S.; providing for a standard
26 license; amending s. 400.419, F.S.; increasing
27 the fines imposed for certain violations;
28 creating s. 400.423, F.S.; requiring certain
29 assisted living facilities to establish an
30 internal risk management and quality assurance
31 program; providing requirements of the program;

1 requiring the use of incident reports; defining
2 the term "adverse incident"; requiring that the
3 agency be notified of adverse incidents;
4 requiring reporting of liability claims;
5 specifying duties of the internal risk manager;
6 requiring that the agency report certain
7 conduct to the appropriate regulatory board;
8 requiring that the agency annually report to
9 the Legislature on the internal risk management
10 of assisted living facilities; amending s.
11 400.426, F.S.; requiring that certain residents
12 be examined by a licensed physician; amending
13 s. 400.4275, F.S.; specifying minimum amounts
14 of liability insurance required to be carried
15 by an assisted living facility; amending s.
16 400.428, F.S.; revising requirements for the
17 survey conducted of licensed facilities by the
18 agency; amending s. 400.429, F.S.; providing
19 for election of survival damages, wrongful
20 death damages, or recovery for negligence;
21 providing for attorney's fees for injunctive
22 relief or administrative remedy; providing that
23 ch. 766, F.S., does not apply to actions under
24 this section; prescribing the burden of proof;
25 providing that a violation of a right is not
26 negligence per se; prescribing the duty of
27 care; prescribing a nurse's duty of care;
28 eliminating presuit provisions; eliminating the
29 requirement for presuit mediation; prohibiting
30 the concealment of information relating to the
31 settlement or resolution of a claim or action;

1 requiring that certain documents relating to
2 settlements or resolution of a claim or action
3 be provided to the agency; creating s.
4 400.4293, F.S.; providing for presuit notice;
5 prohibiting the filing of suit for a specified
6 time; requiring a response to the notice;
7 tolling the statute of limitations; limiting
8 the discovery of presuit investigation
9 documents; limiting liability of presuit
10 investigation participants; authorizing the
11 obtaining of opinions from a nurse or doctor;
12 authorizing the obtaining of unsworn
13 statements; authorizing discovery of relevant
14 documents; prescribing a time for acceptance of
15 settlement offers; requiring mediation;
16 prescribing the time to file suit; creating s.
17 400.4294, F.S.; requiring the availability of
18 facility records for presuit investigation;
19 specifying the records to be made available;
20 specifying what constitutes evidence of failure
21 to make records available in good faith;
22 specifying the consequences of such failure;
23 creating s. 400.4295, F.S.; providing that the
24 provisions of s. 768.21(8), F.S., do not apply
25 to actions under part III of ch. 400, F.S.;
26 creating s. 400.4296, F.S.; providing a statute
27 of limitations; providing a statute of
28 limitations when there is fraudulent
29 concealment or intentional misrepresentation of
30 fact; providing for application of the statute
31 of limitation to accrued actions; creating s.

1 400.4297, F.S.; requiring evidence of the basis
2 for punitive damages; prohibiting discovery
3 relating to financial worth; providing for
4 proof of punitive damages; defining the terms
5 "intentional misconduct" and "gross
6 negligence"; prescribing criteria governing
7 employers' liability for punitive damages;
8 providing for the remedial nature of
9 provisions; creating s. 400.4298, F.S.;
10 providing limits on the amount of punitive
11 damages; providing for the calculation of
12 attorney's fees; amending s. 768.735, F.S.;
13 providing that the section is inapplicable to
14 actions brought under ch. 400, F.S.; creating
15 s. 400.4303, F.S.; requiring that copies of
16 certain documents be forwarded to the state
17 attorney if punitive damages are awarded;
18 amending s. 400.434, F.S.; authorizing the
19 Agency for Health Care Administration to use
20 information obtained by certain councils;
21 amending s. 400.435, F.S., relating to
22 maintenance of records; conforming provisions
23 to changes made by the act; amending s.
24 400.441, F.S.; clarifying facility inspection
25 requirements; amending s. 400.442, F.S.,
26 relating to pharmacy and dietary services;
27 conforming provisions to changes made by the
28 act; creating s. 400.449, F.S.; prohibiting the
29 alteration or falsification of medical or other
30 records of an assisted living facility;
31 providing penalties; amending s. 464.203, F.S.;

1 revising certification requirements for nursing
2 assistants; authorizing employment of certain
3 nursing assistants pending certification;
4 requiring continuing education; amending s.
5 397.405, F.S., relating to service providers;
6 conforming provisions to changes made by the
7 act; amending s. 409.908, F.S.; specifying
8 components of the long-term-care reimbursement
9 plan; prohibiting the issuance of a certificate
10 of need for additional nursing home beds;
11 providing intent for such prohibition;
12 reenacting s. 400.0255(3), (8), F.S., relating
13 to discharge or transfer of residents;
14 reenacting s. 400.23(5), F.S., relating to
15 rules for standards of care for persons under a
16 specified age residing in nursing home
17 facilities; reenacting s. 400.191(2), (6),
18 F.S., relating to requirements for providing
19 information to consumers; reenacting s.
20 400.0225, F.S., relating to consumer
21 satisfaction surveys for nursing homes;
22 reenacting s. 400.141(4), (5), F.S., relating
23 to the repackaging of residents' medication and
24 access to other health-related services;
25 reenacting s. 400.235(3)(a), (4), (9), F.S.,
26 relating to designation under the nursing home
27 Gold Seal Program; reenacting s. 400.962(1),
28 F.S., relating to the requirement for licensure
29 under pt. IX of ch. 400, F.S.; reenacting s. 10
30 of ch. 2000-350, Laws of Florida, relating to
31 requirements for a study of the use of

1 automated medication-dispensing machines in
2 nursing facilities and for demonstration
3 projects and a report; amending s. 627.351,
4 F.S.; creating the Senior Care Facility Joint
5 Underwriting Association; defining the term
6 "senior care facility"; requiring that the
7 association operate under a plan approved by
8 the Department of Insurance; requiring that
9 certain insurers participate in the
10 association; providing for a board of governors
11 appointed by the Insurance Commissioner to
12 administer the association; providing for terms
13 of office; providing requirements for the plan
14 of operation of the association; requiring that
15 insureds of the association have a
16 risk-management program; providing procedures
17 for offsetting an underwriting deficit;
18 providing for assessments to offset a deficit;
19 providing that a participating insurer has a
20 cause of action against a nonpaying insurer to
21 collect an assessment; requiring the department
22 to review and approve rate filings of the
23 association; providing appropriations;
24 providing for severability; providing effective
25 dates.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (4) of section 400.0073, Florida
30 Statutes, is amended to read:

31

1 400.0073 State and local ombudsman council
2 investigations.--

3 (4) In addition to any specific investigation made
4 pursuant to a complaint, the local ombudsman council shall
5 conduct, at least annually, an investigation, which shall
6 consist, in part, of an onsite administrative inspection, of
7 each nursing home or long-term care facility within its
8 jurisdiction. This inspection shall focus on the rights,
9 health, safety, and welfare of the residents.

10 Section 2. Section 400.021, Florida Statutes, is
11 amended to read:

12 400.021 Definitions.--When used in this part, unless
13 the context otherwise requires, the term:

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

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

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

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

27 (5) "Controlling interest" means:

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

29 (b) A person or entity that serves as an officer of,
30 is on the board of directors of, or has a 5 percent or greater
31 ownership interest in the management company or other entity,

1 related or unrelated, which the applicant or licensee may
2 contract with to operate the facility; or

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

6
7 The term does not include a voluntary board member.

8 (6)(5) "Custodial service" means care for a person
9 which entails observation of diet and sleeping habits and
10 maintenance of a watchfulness over the general health, safety,
11 and well-being of the aged or infirm.

12 (7)(6) "Department" means the Department of Children
13 and Family Services.

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

28 (9)(8) "Geriatric outpatient clinic" means a site for
29 providing outpatient health care to persons 60 years of age or
30 older, which is staffed by a registered nurse or a physician
31 assistant.

1 (10)~~(9)~~ "Geriatric patient" means any patient who is
2 60 years of age or older.

3 (11)~~(10)~~ "Local ombudsman council" means a local
4 long-term care ombudsman council established pursuant to s.
5 400.0069, located within the Older Americans Act planning and
6 service areas.

7 (12)~~(11)~~ "Nursing home bed" means an accommodation
8 which is ready for immediate occupancy, or is capable of being
9 made ready for occupancy within 48 hours, excluding provision
10 of staffing; and which conforms to minimum space requirements,
11 including the availability of appropriate equipment and
12 furnishings within the 48 hours, as specified by rule of the
13 agency, for the provision of services specified in this part
14 to a single resident.

15 (13)~~(12)~~ "Nursing home facility" means any facility
16 which provides nursing services as defined in part I of
17 chapter 464 and which is licensed according to this part.

18 (14)~~(13)~~ "Nursing service" means such services or acts
19 as may be rendered, directly or indirectly, to and in behalf
20 of a person by individuals as defined in s. 464.003.

21 (15)~~(14)~~ "Planning and service area" means the
22 geographic area in which the Older Americans Act programs are
23 administered and services are delivered by the Department of
24 Elderly Affairs.

25 (16)~~(15)~~ "Respite care" means admission to a nursing
26 home for the purpose of providing a short period of rest or
27 relief or emergency alternative care for the primary caregiver
28 of an individual receiving care at home who, without
29 home-based care, would otherwise require institutional care.

30 (17)~~(16)~~ "Resident care plan" means a written plan
31 developed, maintained, and reviewed not less than quarterly by

1 a registered nurse, with participation from other facility
2 staff and the resident or his or her designee or legal
3 representative, which includes a comprehensive assessment of
4 the needs of an individual resident, the type and frequency of
5 services required to provide the necessary care for the
6 resident to attain or maintain the highest practicable
7 physical, mental, and psychosocial well-being, a listing of
8 services provided within or outside the facility to meet those
9 needs, and an explanation of service goals. The resident care
10 plan must be signed by the director of nursing and the
11 resident, the resident's designee, or the resident's legal
12 representative.

13 (18)~~(17)~~ "Resident designee" means a person, other
14 than the owner, administrator, or employee of the facility,
15 designated in writing by a resident or a resident's guardian,
16 if the resident is adjudicated incompetent, to be the
17 resident's representative for a specific, limited purpose.

18 (19)~~(18)~~ "State ombudsman council" means the State
19 Long-Term Care Ombudsman Council established pursuant to s.
20 400.0067.

21 (20) "Voluntary board member" means a director of a
22 not-for-profit corporation or organization who serves solely
23 in a voluntary capacity for the corporation or organization,
24 does not receive any remuneration for his or her services on
25 the board of directors, and has no financial interest in the
26 corporation or organization. The agency shall recognize a
27 person as a voluntary board member following submission of a
28 statement to the agency by the director and the not-for-profit
29 corporation or organization which affirms that the director
30 conforms to this definition. The statement affirming the
31

1 status of the director must be submitted to the agency on a
2 form provided by the agency.

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

5 400.0223 Resident's right to have electronic
6 monitoring devices in room; requirements, penalties.--

7 (1) A nursing home facility shall permit a resident or
8 legal representative of the resident to monitor the resident
9 through the use of electronic monitoring devices. For the
10 purposes of this section the term "electronic monitoring
11 device" includes a video surveillance camera, an audio device,
12 a video telephone, and an internet video surveillance device.

13 (2) A nursing home facility shall require a resident
14 who engages in electronic monitoring to post a notice on the
15 door of the resident's room. The notice must state that the
16 room is being monitored by an electronic monitoring device.

17 (3) Monitoring conducted under this section must:

18 (a) Be noncompulsory and at the election of the
19 resident or legal representative of the resident;

20 (b) Be funded by the resident or legal representative
21 of the resident; and

22 (c) Protect the privacy rights of other residents and
23 visitors to the nursing home facility to the extent reasonably
24 possible.

25 (4) A nursing home facility may not refuse to admit an
26 individual to residency in the facility or remove a resident
27 from the facility because of a request for electronic
28 monitoring.

29 (5) A nursing home facility shall make reasonable
30 physical accommodation for electronic monitoring, by
31 providing:

1 (a) A reasonably secure place to mount the electronic
2 monitoring device; and

3 (b) Access to power sources.

4 (6) A nursing home facility shall inform a resident or
5 the legal representative of the resident of the resident's
6 right to electronic monitoring.

7 (7) A nursing home facility may request a resident or
8 a resident's personal representative to conduct electronic
9 monitoring within plain view.

10 (8) A resident who wishes to install an electronic
11 monitoring device may be required by the administrator of the
12 nursing home facility to make the request in writing.

13 (9) Subject to the Florida Rules of Evidence, a tape
14 created through the use of electronic monitoring is admissible
15 in either a civil or criminal action brought in a Florida
16 court.

17 (10)(a) A licensee who operates a nursing home
18 facility in violation of this section is subject to a fine not
19 exceeding \$500 per violation per day under ss. 400.102 and
20 400.121.

21 (b) A person who willfully and without the consent of
22 the resident hampers, obstructs, tampers with, or destroys an
23 electronic monitoring device or tape shall be guilty of a
24 misdemeanor of the first degree punishable as provided in s.
25 775.082 or s. 775.083.

26 Section 4. Effective July 1, 2001, and applying to
27 causes of action accruing on or after that date, section
28 400.023, Florida Statutes, is amended to read:

29 400.023 Civil enforcement.--

30 (1) Any resident whose rights as specified in this
31 part are violated ~~deprived or infringed upon~~ shall have a

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

1 ~~plaintiff has acted in bad faith, with malicious purpose, and~~
2 ~~that there was a complete absence of a justiciable issue of~~
3 ~~either law or fact. Prevailing defendants may be entitled to~~
4 ~~recover reasonable attorney's fees pursuant to s. 57.105. The~~
5 theories of recovery remedies provided in this section are in
6 addition to and cumulative with other legal and administrative
7 actions remedies available to a resident and to the agency,
8 and the provisions of chapter 766 do not apply.

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

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

20
21 Nothing in this part shall be interpreted to create strict
22 liability. A violation of the rights set forth in s. 400.022
23 or in any other standard or guidelines specified in this part
24 or in any applicable administrative standard or guidelines of
25 this state or a federal regulatory agency shall be evidence of
26 negligence but shall not be considered negligence per se.

27 ~~(2) Attorneys' fees shall be based on the following~~
28 ~~criteria:~~

- 29 ~~(a) The time and labor required;~~
30 ~~(b) The novelty and difficulty of the questions;~~

31

1 ~~(c) The skill requisite to perform the legal service~~
2 ~~properly;~~

3 ~~(d) The preclusion of other employment by the attorney~~
4 ~~due to the acceptance of the case;~~

5 ~~(e) The customary fee;~~

6 ~~(f) Whether the fee is fixed or contingent;~~

7 ~~(g) The amount involved or the results obtained;~~

8 ~~(h) The experience, reputation, and ability of the~~
9 ~~attorneys;~~

10 ~~(i) The costs expended to prosecute the claim;~~

11 ~~(j) The type of fee arrangement between the attorney~~
12 ~~and the client;~~

13 ~~(k) Whether the relevant market requires a contingency~~
14 ~~fee multiplier to obtain competent counsel;~~

15 ~~(l) Whether the attorney was able to mitigate the risk~~
16 ~~of nonpayment in any way.~~

17 (3) In any claim brought pursuant to s. 400.023, a
18 licensee, person or entity shall have a duty to exercise
19 reasonable care. Reasonable care is that degree of care which
20 a reasonably careful licensee, person or entity would use
21 under like circumstances.

22 (4) In any claim for resident's rights violation or
23 negligence by a nurse licensed under Part I of chapter 464,
24 such nurse shall have the duty to exercise care consistent
25 with the prevailing professional standard of care for a nurse.
26 The prevailing professional standard of care for a nurse shall
27 be that level of care, skill, and treatment which, in light of
28 all relevant surrounding circumstances is recognized as
29 acceptable and appropriate by reasonably prudent similar
30 nurses.

31

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

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

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

1 \$500 for each day it is overdue. The agency shall develop
2 forms and adopt rules necessary to administer this subsection.

3 ~~(4) Claimants alleging a deprivation or infringement~~
4 ~~of adequate and appropriate health care pursuant to s.~~
5 ~~400.022(1)(k) which resulted in personal injury to or the~~
6 ~~death of a resident shall conduct an investigation which shall~~
7 ~~include a review by a licensed physician or registered nurse~~
8 ~~familiar with the standard of nursing care for nursing home~~
9 ~~residents pursuant to this part. Any complaint alleging such~~
10 ~~a deprivation or infringement shall be accompanied by a~~
11 ~~verified statement from the reviewer that there exists reason~~
12 ~~to believe that a deprivation or infringement occurred during~~
13 ~~the resident's stay at the nursing home. Such opinion shall~~
14 ~~be based on records or other information available at the time~~
15 ~~that suit is filed. Failure to provide records in accordance~~
16 ~~with the requirements of this chapter shall waive the~~
17 ~~requirement of the verified statement.~~

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

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

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

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

1 ~~a. Agree on a mediator. If the parties cannot agree on~~
2 ~~a mediator, the defendant shall immediately notify the court,~~
3 ~~which shall appoint a mediator within 10 days after such~~
4 ~~notice.~~

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

6 ~~c. Prepare an order for the court that identifies the~~
7 ~~mediator, the scheduled date of the mediation, and other terms~~
8 ~~of the mediation. Absent any disagreement between the parties,~~
9 ~~the court may issue the order for the mediation submitted by~~
10 ~~the parties without a hearing.~~

11 ~~2. The mediation must be concluded within 120 days~~
12 ~~after the filing of a responsive pleading or defensive motion.~~
13 ~~The date may be extended only by agreement of all parties~~
14 ~~subject to mediation under this subsection.~~

15 ~~3. The mediation shall be conducted in the following~~
16 ~~manner:~~

17 ~~a. Each party shall ensure that all persons necessary~~
18 ~~for complete settlement authority are present at the~~
19 ~~mediation.~~

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

21 ~~4. All aspects of the mediation which are not~~
22 ~~specifically established by this subsection must be conducted~~
23 ~~according to the rules of practice and procedure adopted by~~
24 ~~the Supreme Court of this state.~~

25 ~~(b) If the parties do not settle the case pursuant to~~
26 ~~mediation, the last offer of the defendant made at mediation~~
27 ~~shall be recorded by the mediator in a written report that~~
28 ~~states the amount of the offer, the date the offer was made in~~
29 ~~writing, and the date the offer was rejected. If the matter~~
30 ~~subsequently proceeds to trial under this section and the~~
31 ~~plaintiff prevails but is awarded an amount in damages,~~

1 ~~exclusive of attorney's fees, which is equal to or less than~~
2 ~~the last offer made by the defendant at mediation, the~~
3 ~~plaintiff is not entitled to recover any attorney's fees.~~

4 ~~(c) This subsection applies only to claims for~~
5 ~~liability and damages and does not apply to actions for~~
6 ~~injunctive relief.~~

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

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

14 ~~(8) In addition to any other standards for punitive~~
15 ~~damages, any award of punitive damages must be reasonable in~~
16 ~~light of the actual harm suffered by the resident and the~~
17 ~~egregiousness of the conduct that caused the actual harm to~~
18 ~~the resident.~~

19 Section 5. Effective July 1, 2001, and applying to
20 causes of action accruing on or after that date, section
21 400.0233, Florida Statutes, is created to read:

22 400.0233 Presuit notice; investigation; notification
23 of violation of resident's rights or alleged negligence;
24 claims evaluation procedure; informal discovery; review.--

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

26 (a) "Claim for resident's rights violation or
27 negligence" means a negligence claim alleging injury to or the
28 death of a resident arising out of an asserted violation of
29 the rights of a resident under s. 400.022 or an asserted
30 deviation from the applicable standard of care.

31

1 **(b) "Insurer" means any self-insurer authorized under**
2 **s. 627.357, liability insurance carrier, Joint Underwriting**
3 **Association, or any uninsured prospective defendant.**

4 **(2) Prior to filing a claim for a violation of a**
5 **resident's rights or a claim for negligence, a claimant**
6 **alleging injury to or the death of a resident shall notify**
7 **each prospective defendant by certified mail, return receipt**
8 **requested, of an asserted violation of a resident's rights**
9 **provided in s. 400.022 or deviation from the standard of care.**
10 **Such notification shall include an identification of the**
11 **rights the prospective defendant has violated and the**
12 **negligence alleged to have caused the incident or incidents**
13 **and a brief description of the injuries sustained by the**
14 **resident which are reasonably identifiable at the time of**
15 **notice. The notice shall contain a certificate of counsel that**
16 **counsel's reasonable investigation gave rise to a good-faith**
17 **belief that grounds exist for an action against each**
18 **prospective defendant.**

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

28 **1. Internal review by a duly qualified facility risk**
29 **manager or claims adjuster;**

30 **2. Internal review by counsel for each prospective**
31 **defendant;**

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

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

5
6 Each defendant or insurer of the defendant shall evaluate the
7 claim in good faith.

8 (b) At or before the end of the 75 days, the defendant
9 or insurer of the defendant shall provide the claimant with a
10 written response:

11 1. Rejecting the claim; or

12 2. Making a settlement offer.

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

19 (4) The notification of a violation of a resident's
20 rights or alleged negligence shall be served within the
21 applicable statute of limitations period; however, during the
22 75-day period, the statute of limitations is tolled as to all
23 prospective defendants. Upon stipulation by the parties, the
24 75-day period may be extended and the statute of limitations
25 is tolled during any such extension. Upon receiving written
26 notice by certified mail, return receipt requested, of
27 termination of negotiations in an extended period, the
28 claimant shall have 60 days or the remainder of the period of
29 the statute of limitations, whichever is greater, within which
30 to file suit.

31

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

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

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

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

1 taking of an unsworn statement. An unsworn statement may be
2 recorded electronically, stenographically, or on videotape.
3 The taking of unsworn statements is subject to the provisions
4 of the Florida Rules of Civil Procedure and may be terminated
5 for abuses.

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

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

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

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

29 (11) Within 30 days after the claimant's receipt of
30 the defendant's response to the claim, the parties or their
31 designated representatives shall meet in mediation to discuss

1 the issues of liability and damages in accordance with the
2 mediation rules of practice and procedures adopted by the
3 Supreme Court. Upon stipulation of the parties, this 30-day
4 period may be extended and the statute of limitations is
5 tolled during the mediation and any such extension. At the
6 conclusion of mediation the claimant shall have 60 days or the
7 remainder of the period of the statute of limitations,
8 whichever is greater, within which to file suit.

9 Section 6. Effective July 1, 2001, and applying to
10 causes of action accruing on or after that date, section
11 400.0234, Florida Statutes, is created to read:

12 400.0234 Availability of facility records for
13 investigation of resident's rights violations and defenses;
14 penalty.--

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

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

25 Section 7. Effective July 1, 2001, and applying to
26 causes of action accruing on or after that date, section
27 400.0235, Florida Statutes, is created to read:

28 400.0235 Certain provisions not applicable to actions
29 under this part.--An action under this part for a violation of
30 rights or negligence recognized under this part is not a claim
31

1 for medical malpractice, and the provisions of s. 768.21(8) do
2 not apply to a claim alleging death of the resident.

3 Section 8. Effective July 1, 2001, section 400.0236,
4 Florida Statutes, is created to read:

5 400.0236 Statute of limitations.--

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

14 (2) In those actions covered by this subsection in
15 which it can be shown that fraudulent concealment or
16 intentional misrepresentation of fact prevented the discovery
17 of the injury, the period of limitations is extended forward 2
18 years from the time that the injury is discovered with the
19 exercise of due diligence, but in no event for more than 6
20 years from the date the incident giving rise to the injury
21 occurred.

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

1 discovered with the exercise of due diligence but in no event
2 more than 4 years from the effective date of this section.

3 Section 9. Section 400.0237, Florida Statutes, is
4 created to read:

5 400.0237 Punitive damages; pleading; burden of
6 proof.--

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

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

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

30 (b) "Gross negligence" means that the defendant's
31 conduct was so reckless or wanting in care that it constituted

1 a conscious disregard or indifference to the life, safety, or
2 rights of persons exposed to such conduct.

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

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

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

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

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

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

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

26 400.0238 Punitive damages; limitation.--

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

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

1 2. The sum of \$1 million.
2 (b) Where the fact finder determines that the wrongful
3 conduct proven under this section was motivated solely by
4 unreasonable financial gain and determines that the
5 unreasonably dangerous nature of the conduct, together with
6 the high likelihood of injury resulting from the conduct, was
7 actually known by the managing agent, director, officer, or
8 other person responsible for making policy decisions on behalf
9 of the defendant, it may award an amount of punitive damages
10 not to exceed the greater of:
11 1. Four times the amount of compensatory damages
12 awarded to each claimant entitled thereto, consistent with the
13 remaining provisions of this section; or
14 2. The sum of \$4 million.
15 (c) Where the fact finder determines that at the time
16 of injury the defendant had a specific intent to harm the
17 claimant and determines that the defendant's conduct did in
18 fact harm the claimant, there shall be no cap on punitive
19 damages.
20 (d) This subsection is not intended to prohibit an
21 appropriate court from exercising its jurisdiction under s.
22 768.74 in determining the reasonableness of an award of
23 punitive damages that is less than three times the amount of
24 compensatory damages.
25 (2) The claimant's attorney's fees, if payable from
26 the judgment, are, to the extent that the fees are based on
27 the punitive damages, calculated based on the final judgment
28 for punitive damages. This subsection does not limit the
29 payment of attorney's fees based upon an award of damages
30 other than punitive damages.
31

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

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

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

8 768.735 Punitive damages; exceptions; limitation.--

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

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

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

27 Section 12. Section 415.1111, Florida Statutes, is
28 amended to read:

29 415.1111 Civil actions.--A vulnerable adult who has
30 been abused, neglected, or exploited as specified in this
31 chapter has a cause of action against any perpetrator and may

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

29 Section 13. Effective October 1, 2001, and applicable
30 to causes of action accruing on or after that date, section
31 400.0247, Florida Statutes, is created to read:

1 400.0247 Copies forwarded to state attorney.--In any
2 action in which punitive damages are awarded, notwithstanding
3 any appeals, the Clerk of the Court shall forward to the state
4 attorney of that circuit a copy of the complaint, any amended
5 complaints, the verdict form, and the final judgment.

6 Section 14. Subsection (17) is added to section
7 400.0255, Florida Statutes, to read:

8 400.0255 Resident transfer or discharge; requirements
9 and procedures; hearings.--

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

14 Section 15. Subsection (3) of section 400.062, Florida
15 Statutes, is amended to read:

16 400.062 License required; fee; disposition; display;
17 transfer.--

18 (3) The annual license fee required for each license
19 issued under this part shall be comprised of two parts. Part
20 I of the license fee shall be the basic license fee. The rate
21 per bed for the basic license fee shall be established
22 annually and must be reasonably calculated to cover the cost
23 of regulation under this part, but may not exceed~~\$50~~^{\$35} per
24 bed. Part II of the license fee shall be the resident
25 protection fee, which shall be at the rate of not less than 25
26 cents per bed. The rate per bed shall be the minimum rate per
27 bed, and such rate shall remain in effect until the effective
28 date of a rate per bed adopted by rule by the agency pursuant
29 to this part. At such time as the amount on deposit in the
30 Resident Protection Trust Fund is less than \$500,000, the
31 agency may adopt rules to establish a rate which may not

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

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

21 (b) The resident protection fee collected shall be
22 deposited in the Resident Protection Trust Fund for the sole
23 purpose of paying, in accordance with the provisions of s.
24 400.063, for the appropriate alternate placement, care, and
25 treatment of a resident removed from a nursing home facility
26 on a temporary, emergency basis or for the maintenance and
27 care of residents in a nursing home facility pending removal
28 and alternate placement.

29 Section 16. Subsections (2) and (5) of section
30 400.071, Florida Statutes, are amended, and subsections (11)
31 and (12) are added to that section, to read:

1 400.071 Application for license.--

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

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

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

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

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

28 (e) A signed affidavit disclosing any financial or
29 ownership interest that a person or entity described in
30 paragraph (a) or paragraph (d) has held in the last 5 years in
31 any entity licensed by this state or any other state to

1 provide health or residential care which has closed
2 voluntarily or involuntarily; has filed for bankruptcy; has
3 had a receiver appointed; has had a license denied, suspended,
4 or revoked; or has had an injunction issued against it which
5 was initiated by a regulatory agency. The affidavit must
6 disclose the reason any such entity was closed, whether
7 voluntarily or involuntarily.

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

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

24 (h)~~(g)~~ Copies of any civil verdict or judgment
25 involving the applicant rendered within the 10 years preceding
26 the application, relating to medical negligence, violation of
27 residents' rights, or wrongful death. As a condition of
28 licensure, the licensee agrees to provide to the agency copies
29 of any new verdict or judgment involving the applicant,
30 relating to such matters, within 30 days after filing with the
31 clerk of the court. The information required in this

1 paragraph shall be maintained in the facility's licensure file
2 and in an agency database which is available as a public
3 record.

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

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

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

29 Section 17. Subsection (1) of section 400.102, Florida
30 Statutes, is amended to read:

31 400.102 Action by agency against licensee; grounds.--

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

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

5 (b) Misappropriation or conversion of the property of
6 a resident of the facility;

7 (c) Failure to follow the criteria and procedures
8 provided under part I of chapter 394 relating to the
9 transportation, voluntary admission, and involuntary
10 examination of a nursing home resident;

11 (d) Violation of provisions of this part or rules
12 adopted under this part; ~~or~~

13 (e) Fraudulent altering, defacing, or falsifying any
14 medical or nursing home records, or causing or procuring any
15 of these offenses to be committed; or

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

18 Section 18. Subsection (3) is added to section
19 400.111, Florida Statutes, to read:

20 400.111 Expiration of license; renewal.--

21 (3) The agency may not renew a license if the
22 applicant has failed to pay any fines assessed by final order
23 of the agency or final order of the Health Care Financing
24 Administration under requirements for federal certification.
25 The agency may renew the license of an applicant following the
26 assessment of a fine by final order if such fine has been paid
27 into an escrow account pending an appeal of a final order.

28 Section 19. Subsection (2) of section 400.118, Florida
29 Statutes, is amended to read:

30 400.118 Quality assurance; early warning system;
31 monitoring; rapid response teams.--

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

28 (b) Findings of a monitoring visit, both positive and
29 negative, shall be provided orally and in writing to the
30 facility administrator or, in the absence of the facility
31 administrator, to the administrator on duty or the director of

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

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

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

3 Section 20. Section 400.121, Florida Statutes, is
4 amended to read:

5 400.121 Denial, suspension, revocation of license;
6 moratorium on admissions; administrative fines; procedure;
7 order to increase staffing.--

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

11 (a) A violation of any provision of s. 400.102(1);

12 (b) A demonstrated pattern of deficient practice;

13 (c) Failure to pay any outstanding fines assessed by
14 final order of the agency or final order of the Health Care
15 Financing Administration pursuant to requirements for federal
16 certification. The agency may renew or approve the license of
17 an applicant following the assessment of a fine by final order
18 if such fine has been paid into an escrow account pending an
19 appeal of a final order;

20 (d) Exclusion from the Medicare or Medicaid program;
21 or

22 (e) An adverse action against any controlling interest
23 by a regulatory agency, including the appointment of a
24 receiver; denial, suspension, or revocation of a license; or
25 the issuance of an injunction by a regulatory agency. If the
26 adverse action involves solely the management company, the
27 applicant or licensee shall be given 30 days to remedy before
28 final action is taken.

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

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

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

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

24 (b) Where the agency has placed a moratorium on
25 admissions on any facility two times within a 7-year period,
26 the agency may suspend the license of the nursing home and the
27 facility's management company, if any. The licensee shall be
28 afforded an administrative hearing within 90 days after the
29 suspension to determine whether the license should be revoked.
30 During the suspension, the agency shall take the facility into
31 receivership and shall operate the facility.

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

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

25 (7) An administrative proceeding challenging an action
26 by the agency to enforce licensure requirements shall be
27 reviewed on the basis of the facts and conditions that
28 resulted in the initial agency action.

29 Section 21. Subsection (12) is added to section
30 400.126, Florida Statutes, to read:

31 400.126 Receivership proceedings.--

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

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

20 400.141 Administration and management of nursing home
21 facilities.--Every licensed facility shall comply with all
22 applicable standards and rules of the agency and shall:

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

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

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

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

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

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

24 (17) Notify a licensed physician when a resident
25 exhibits signs of dementia or cognitive impairment or has a
26 change of condition in order to rule out the presence of an
27 underlying physiological condition that may be contributing to
28 such dementia or impairment. The notification must occur
29 within 30 days after the acknowledgement of such signs by
30 facility staff. If an underlying condition is determined to
31 exist, the facility shall arrange, with the appropriate health

1 care provider, the necessary care and services to treat the
2 condition.

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

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

16 (20) Maintain liability insurance coverage of at least
17 \$250,000 per claim and an annual aggregate amount of \$500,000
18 which is in force at all times.

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

25 Section 23. Section 400.1413, Florida Statutes, is
26 created to read:

27 400.1413 Volunteers in nursing homes.--

28 (1) It is the intent of the Legislature to encourage
29 the involvement of volunteers in nursing homes in this state.
30 The Legislature also acknowledges that the licensee is
31 responsible for all the activities that take place in the

1 nursing home and recognizes the licensee's need to be aware of
2 and coordinate volunteer activities in the nursing home.

3 Therefore, a nursing home may require that volunteers:

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

6 (b) Wear an identification badge while in the
7 building.

8 (c) Participate in a facility orientation and training
9 program.

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

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

15 400.147 Internal risk-management and quality-assurance
16 program.--

17 (1) Every facility shall, as part of its
18 administrative functions, establish an internal
19 risk-management and quality-assurance program, the purpose of
20 which is to assess resident-care practices; review facility
21 quality indicators, facility incident reports, deficiencies
22 cited by the agency, and resident grievances; and develop
23 plans of action to correct and respond quickly to identified
24 quality deficiencies. The program must include:

25 (a) A designated person to serve as risk manager, who
26 is responsible for implementation and oversight of the
27 facility's risk-management and quality-assurance program as
28 required by this section.

29 (b) A risk-management and quality-assurance committee
30 consisting of the facility risk manager, the administrator,
31 the director of nursing, the medical director, and at least

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

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

8 (d) The development and implementation of an incident
9 reporting system based upon the affirmative duty of all health
10 care providers and all agents and employees of the licensed
11 health care facility to report adverse incidents to the risk
12 manager, or to his or her designee, within 3 business days
13 after their occurrence.

14 (e) The development of appropriate measures to
15 minimize the risk of adverse incidents to residents,
16 including, but not limited to, education and training in risk
17 management and risk prevention for all nonphysician personnel,
18 as follows:

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

21 2. At least 1 hour of such education and training must
22 be provided annually for all nonphysician personnel of the
23 licensed facility working in clinical areas and providing
24 resident care.

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

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

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

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

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

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

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

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

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

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

8 (b) Abuse, neglect, or exploitation as defined in s.
9 415.102;

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

11 (d) Resident elopement; or

12 (e) An event that is reported to law enforcement.

13 (6) The internal risk manager of each licensed
14 facility shall:

15 (a) Investigate every allegation of sexual misconduct
16 which is made against a member of the facility's personnel who
17 has direct patient contact when the allegation is that the
18 sexual misconduct occurred at the facility or at the grounds
19 of the facility;

20 (b) Report every allegation of sexual misconduct to
21 the administrator of the licensed facility; and

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

25 (7) The facility shall initiate an investigation and
26 shall notify the agency within 1 business day after the risk
27 manager or his or her designee has received a report pursuant
28 to paragraph (1)(d). The notification must be made in writing
29 and be provided electronically, by facsimile device or
30 overnight mail delivery. The notification must include
31 information regarding the identity of the affected resident,

1 the type of adverse incident, the initiation of an
2 investigation by the facility, and whether the events causing
3 or resulting in the adverse incident represent a potential
4 risk to any other resident. The notification is confidential
5 as provided by law and is not discoverable or admissible in
6 any civil or administrative action, except in disciplinary
7 proceedings by the agency or the appropriate regulatory board.
8 The agency may investigate, as it deems appropriate, any such
9 incident and prescribe measures that must or may be taken in
10 response to the incident. The agency shall review each
11 incident and determine whether it potentially involved conduct
12 by the health care professional who is subject to disciplinary
13 action, in which case the provisions of s. 456.073 shall
14 apply.

15 (8)(a) Each facility shall complete the investigation
16 and submit an adverse-incident report to the agency for each
17 adverse incident within 15 calendar days after its occurrence.
18 If after a complete investigation, the risk manager determines
19 that the incident was not an adverse incident as defined in
20 subsection (5), the facility shall include this information in
21 the report. The agency shall develop a form for reporting this
22 information.

23 (b) The information reported to the agency pursuant to
24 paragraph (a) which relates to persons licensed under chapter
25 458, chapter 459, chapter 461, or chapter 466 shall be
26 reviewed by the agency. The agency shall determine whether any
27 of the incidents potentially involved conduct by a health care
28 professional who is subject to disciplinary action, in which
29 case the provisions of s. 456.073 shall apply.

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

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

5 (9) Each facility subject to this section shall report
6 monthly any liability claim filed against it. The report must
7 include the name of the resident, the date or dates of the
8 incident leading to the claim, if applicable, and the type of
9 injury or violation of rights alleged to have occurred. This
10 report is confidential as provided by law and is not
11 discoverable or admissible in any civil or administrative
12 action, except in such actions brought by the agency to
13 enforce the provisions of this part.

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

21 (11) There is no monetary liability on the part of,
22 and a cause of action for damages may not arise against, any
23 risk manager for the implementation and oversight of the
24 internal risk-management and quality-assurance program in a
25 facility licensed under this part as required by this section,
26 or for any act or proceeding undertaken or performed within
27 the scope of the functions of such internal risk-management
28 and quality-assurance program if the risk manager acts without
29 intentional fraud.

30 (12) If the agency, through its receipt of the adverse
31 incident reports prescribed in subsection (7), or through any

1 investigation, has a reasonable belief that conduct by a staff
2 member or employee of a facility is grounds for disciplinary
3 action by the appropriate regulatory board, the agency shall
4 report this fact to the regulatory board.

5 (13) The agency may adopt rules to administer this
6 section.

7 (14) The agency shall annually submit to the
8 Legislature a report on nursing home adverse incidents. The
9 report must include the following information arranged by
10 county:

11 (a) The total number of adverse incidents.

12 (b) A listing, by category, of the types of adverse
13 incidents, the number of incidents occurring within each
14 category, and the type of staff involved.

15 (c) A listing, by category, of the types of injury
16 caused and the number of injuries occurring within each
17 category.

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

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

22 Section 25. Section 400.148, Florida Statutes, is
23 created to read:

24 400.148 Medicaid "Up-or-Out" Quality of Care Contract
25 Management Program.--

26 (1) The Legislature finds that the federal Medicare
27 program has implemented successful models of managing the
28 medical and supportive-care needs of long-term nursing home
29 residents. These programs have maintained the highest
30 practicable level of good health and have the potential to
31 reduce the incidence of preventable illnesses among long-stay

1 residents of nursing homes, thereby increasing the quality of
2 care for residents and reducing the number of lawsuits against
3 nursing homes. Such models are operated at no cost to the
4 state. It is the intent of the Legislature that the Agency for
5 Health Care Administration replicate such oversight for
6 Medicaid recipients in poor-performing nursing homes and in
7 assisted living facilities and nursing homes that are
8 experiencing disproportionate numbers of lawsuits, with the
9 goal of improving the quality of care in such homes or
10 facilitating the revocation of licensure.

11 (2) The Agency for Health Care Administration shall
12 develop a pilot project in selected counties to demonstrate
13 the effect of assigning skilled and trained medical personnel
14 to ensure the quality of care, safety, and continuity of care
15 for long-stay Medicaid recipients in the 100 highest-scoring
16 nursing homes in the Florida Nursing Home Guide on the date
17 the project is implemented and in the 25 assisted living
18 facilities with the poorest regulatory history on the date the
19 project is implemented. The staff of the pilot project shall
20 assist regulatory staff in imposing regulatory sanctions,
21 including revocation of licensure, pursuant to s. 400.121
22 against nursing homes that have quality-of-care violations.

23 (3) The pilot project must ensure:

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

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

30 (c) Frequent onsite visits to the resident;

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1 (d) Early detection of medical or quality problems
2 that have the potential to lead to adverse outcomes and
3 unnecessary hospitalization;

4 (e) Close communication with regulatory staff;

5 (f) Immediate investigation of resident
6 quality-of-care complaints and communication and cooperation
7 with the appropriate entity to address those complaints,
8 including the ombudsman, state agencies, agencies responsible
9 for Medicaid program integrity, and local law enforcement
10 agencies;

11 (g) Assistance to the resident or the resident's
12 representative to relocate the resident if quality-of-care
13 issues are not otherwise addressed; and

14 (h) Use of Medicare and other third-party funds to
15 support activities of the program, to the extent possible.

16 (4) The agency shall coordinate the pilot project
17 activities with providers approved by Medicare to operate
18 Evercare demonstration projects.

19 (5) Where there is no Evercare demonstration project
20 provider, the agency may otherwise contract to provide
21 oversight services to Medicaid recipients.

22 (6) The agency shall, jointly with the Statewide
23 Public Guardianship Office, develop a system in the pilot
24 project areas to identify Medicaid recipients who are
25 residents of a participating nursing home or assisted living
26 facility who have diminished ability to make their own
27 decisions and who do not have relatives or family available to
28 act as guardians in nursing homes listed on the Nursing Home
29 Guide Watch List. The agency and the Statewide Public
30 Guardianship Office shall give such residents priority for
31 publicly funded guardianship services.

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

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

5 (1)(a) An individual who is employed by a facility
6 that provides care for residents with Alzheimer's disease or
7 other related disorders must complete up to 4 hours of initial
8 dementia-specific training developed or approved by the
9 Department of Elderly Affairs. The training must be completed
10 within 3 months after beginning employment.

11 (b) A direct caregiver who is employed by a facility
12 that provides care for residents with Alzheimer's disease or
13 other related disorders and who provides direct care to such
14 residents must complete the required initial training and 4
15 additional hours of training developed or approved by the
16 Department of Elderly Affairs. The training must be completed
17 within 9 months after beginning employment.

18 (2) In addition to the training required under
19 subsection (1), a direct caregiver must participate in a
20 minimum of 4 contact hours of dementia-specific continuing
21 education each calendar year as approved by the Department of
22 Elderly Affairs.

23 (3) Upon completing any training listed in subsection
24 (1), the employee or direct caregiver shall be issued a
25 certificate that includes the name of the training provider,
26 the topic covered, and the date and signature of the training
27 provider. The certificate is evidence of completion of
28 training in the identified topic, and the employee or direct
29 caregiver is not required to repeat training in that topic if
30 the employee or direct caregiver changes employment to a

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1 different facility. The direct caregiver must comply with
2 other applicable continuing education requirements.

3 (4) The Department of Elderly Affairs, or its
4 designee, shall approve the initial and continuing education
5 courses and providers.

6 (5) The Department of Elderly Affairs shall keep a
7 current list of providers who are approved to provide initial
8 and continuing education for staff of facilities that provide
9 care for persons with Alzheimer's disease or other related
10 disorders.

11 (6) The Department of Elderly Affairs shall adopt
12 rules to establish standards for trainers and training
13 necessary to administer this section.

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

16 400.19 Right of entry and inspection.--

17 (4) The agency shall conduct unannounced onsite
18 facility reviews following written verification of licensee
19 noncompliance in instances in which a long-term care ombudsman
20 council, pursuant to ss. 400.0071 and 400.0075, has received a
21 complaint and has documented deficiencies in resident care or
22 in the physical plant of the facility that threaten the
23 health, safety, or security of residents, or when the agency
24 documents through inspection that conditions in a facility
25 present a direct or indirect threat to the health, safety, or
26 security of residents. However, the agency shall conduct ~~four~~
27 ~~or more~~ unannounced onsite reviews every 3 months ~~within a~~
28 ~~12-month period~~ of each facility while the facility ~~which~~ has
29 a conditional license ~~licensure status~~. Deficiencies related
30 to physical plant do not require followup reviews after the
31 agency has determined that correction of the deficiency has

1 | been accomplished and that the correction is of the nature
2 | that continued compliance can be reasonably expected.

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

6 | 400.191 Availability, distribution, and posting of
7 | reports and records.--

8 | (3) Each nursing home facility licensee shall maintain
9 | as public information, available upon request, records of all
10 | cost and inspection reports pertaining to that facility that
11 | have been filed with, or issued by, any governmental agency.
12 | Copies of such reports shall be retained in such records for
13 | not less than 5 years from the date the reports are filed or
14 | issued.

15 | (a) The agency shall quarterly publish a "Nursing Home
16 | Guide Watch List" to assist consumers in evaluating the
17 | quality of nursing home care in Florida. The watch list must
18 | identify each facility that met the criteria for a conditional
19 | licensure status on any day within the quarter covered by the
20 | list and each facility that was operating under bankruptcy
21 | protection on any day within the quarter. The watch list must
22 | include, but is not limited to, the facility's name, address,
23 | and ownership; the county in which the facility operates; the
24 | license expiration date; the number of licensed beds; a
25 | description of the deficiency causing the facility to be
26 | placed on the list; any corrective action taken; and the
27 | cumulative number of times the facility has been on a watch
28 | list. The watch list must include a brief description
29 | regarding how to choose a nursing home, the categories of
30 | licensure, the agency's inspection process, an explanation of
31 | terms used in the watch list, and the addresses and phone

1 numbers of the agency's managed care and health quality area
2 offices.

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

7 (5) Every nursing home facility licensee shall:

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

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

18 2. A copy of the most recent version of the Florida
19 Nursing Home Guide Watch List.

20 Section 29. Subsection (2) of section 400.211, Florida
21 Statutes, is amended, and subsection (4) is added to that
22 section, to read:

23 400.211 Persons employed as nursing assistants;
24 certification requirement.--

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

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

31

1 (b) Persons who have been positively verified as
2 actively certified and on the registry in another state with
3 no findings of abuse, neglect, or exploitation in that state;
4 or

5 (c) Persons who have preliminarily passed the state's
6 certification exam.

7
8 The certification requirement must be met within 4 months
9 after initial employment as a nursing assistant in a licensed
10 nursing facility.

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

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

19 (b) Include, at a minimum:

20 1. Techniques for assisting with eating and proper
21 feeding;

22 2. Principles of adequate nutrition and hydration;

23 3. Techniques for assisting and responding to the
24 cognitively impaired resident or the resident with difficult
25 behaviors;

26 4. Techniques for caring for the resident at the
27 end-of-life; and

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

30 (c) Address areas of weakness as determined in nursing
31 assistant performance reviews and may address the special

1 needs of residents as determined by the nursing home facility
2 staff.

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

5 400.23 Rules; evaluation and deficiencies; licensure
6 status.--

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

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

1 code standards applicable at the time of approval of their
2 construction plans. The agency may require alterations to a
3 building if it determines that an existing condition
4 constitutes a distinct hazard to life, health, or safety. The
5 agency shall adopt fair and reasonable rules setting forth
6 conditions under which existing facilities undergoing
7 additions, alterations, conversions, renovations, or repairs
8 shall be required to comply with the most recent updated or
9 revised standards.

10 (b) The number and qualifications of all personnel,
11 including management, medical, nursing, and other professional
12 personnel, and nursing assistants, orderlies, and support
13 personnel, having responsibility for any part of the care
14 given residents.

15 (c) All sanitary conditions within the facility and
16 its surroundings, including water supply, sewage disposal,
17 food handling, and general hygiene which will ensure the
18 health and comfort of residents.

19 (d) The equipment essential to the health and welfare
20 of the residents.

21 (e) A uniform accounting system.

22 (f) The care, treatment, and maintenance of residents
23 and measurement of the quality and adequacy thereof, based on
24 rules developed under this chapter and the Omnibus Budget
25 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
26 1987), Title IV (Medicare, Medicaid, and Other Health-Related
27 Programs), Subtitle C (Nursing Home Reform), as amended.

28 (g) The preparation and annual update of a
29 comprehensive emergency management plan. The agency shall
30 adopt rules establishing minimum criteria for the plan after
31 consultation with the Department of Community Affairs. At a

1 minimum, the rules must provide for plan components that
2 address emergency evacuation transportation; adequate
3 sheltering arrangements; postdisaster activities, including
4 emergency power, food, and water; postdisaster transportation;
5 supplies; staffing; emergency equipment; individual
6 identification of residents and transfer of records; and
7 responding to family inquiries. The comprehensive emergency
8 management plan is subject to review and approval by the local
9 emergency management agency. During its review, the local
10 emergency management agency shall ensure that the following
11 agencies, at a minimum, are given the opportunity to review
12 the plan: the Department of Elderly Affairs, the Department
13 of Health, the Agency for Health Care Administration, and the
14 Department of Community Affairs. Also, appropriate volunteer
15 organizations must be given the opportunity to review the
16 plan. The local emergency management agency shall complete
17 its review within 60 days and either approve the plan or
18 advise the facility of necessary revisions.

19 (h) The implementation of the consumer-satisfaction
20 survey pursuant to s. 400.0225; the availability,
21 distribution, and posting of reports and records pursuant to
22 s. 400.191; and the Gold Seal Program pursuant to s. 400.235.

23 (3)(a) ~~The agency shall adopt rules providing for the~~
24 ~~minimum staffing requirements for nursing homes. These~~
25 ~~requirements~~ shall include, for each nursing home facility, a
26 minimum certified nursing assistant staffing of 2.3 hours of
27 direct care per resident per day beginning January 1, 2002,
28 increasing to 2.6 hours of direct care per resident per day
29 beginning January 1, 2003, increasing to 2.8 hours of direct
30 care per resident per day beginning January 1, 2004, and
31 increasing to 2.9 hours of direct care per resident per day

1 beginning January 1, 2005, but never below one certified
2 nursing assistant per 20 residents, and a minimum licensed
3 nursing staffing of 1.0 hour of direct resident care per
4 resident per day but never below one licensed nurse per 40
5 residents, including evening and night shifts and weekends.
6 Nursing assistants employed under s. 400.211(2) may be
7 included in computing the staffing ratio for certified nursing
8 assistants only if they provide nursing assistance services to
9 residents on a full-time basis. Each nursing home must
10 document compliance with staffing standards as required under
11 this paragraph and post daily Agency rules shall specify
12 ~~requirements for documentation of compliance with staffing~~
13 ~~standards, sanctions for violation of such standards, and~~
14 ~~requirements for daily posting of the names of staff on duty~~
15 for the benefit of facility residents and the public. The
16 agency shall recognize the use of licensed nurses for
17 compliance with minimum staffing requirements for certified
18 nursing assistants, provided that the facility otherwise meets
19 the minimum staffing requirements for licensed nurses and that
20 the licensed nurses so recognized are performing the duties of
21 a certified nursing assistant. Unless otherwise approved by
22 the agency, licensed nurses counted towards the minimum
23 staffing requirements for certified nursing assistants must
24 exclusively perform the duties of a certified nursing
25 assistant for the entire shift and shall not also be counted
26 towards the minimum staffing requirements for licensed nurses.
27 If the agency approved a facility's request to use a licensed
28 nurse to perform both licensed nursing and certified nursing
29 assistant duties, the facility must allocate the amount of
30 staff time specifically spent on certified nursing assistant
31 duties for the purpose of documenting compliance with minimum

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

4 (b) The agency shall adopt rules to allow properly
5 trained staff of a nursing facility, in addition to certified
6 nursing assistants and licensed nurses, to assist residents
7 with eating. The rules shall specify the minimum training
8 requirements and shall specify the physiological conditions or
9 disorders of residents which would necessitate that the eating
10 assistance be provided by nursing personnel of the facility.

11 Nonnursing staff providing eating assistance to residents
12 under the provisions of this subsection shall not count
13 towards compliance with minimum staffing standards.

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

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

31

1 (a) A standard licensure status means that a facility
2 has no class I or class II deficiencies, has corrected all
3 class III deficiencies within the time established by the
4 agency, ~~and is in substantial compliance at the time of the~~
5 ~~survey with criteria established under this part, with rules~~
6 ~~adopted by the agency, and, if applicable, with rules adopted~~
7 ~~under the Omnibus Budget Reconciliation Act of 1987 (Pub. L.~~
8 ~~No. 100-203) (December 22, 1987), Title IV (Medicare,~~
9 ~~Medicaid, and Other Health-Related Programs), Subtitle C~~
10 ~~(Nursing Home Reform), as amended.~~

11 (b) A conditional licensure status means that a
12 facility, due to the presence of one or more class I or class
13 II deficiencies, or class III deficiencies not corrected
14 within the time established by the agency, is not in
15 substantial compliance at the time of the survey with criteria
16 established under this part or, with rules adopted by the
17 agency, ~~or, if applicable, with rules adopted under the~~
18 ~~Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.~~
19 ~~100-203) (December 22, 1987), Title IV (Medicare, Medicaid,~~
20 ~~and Other Health-Related Programs), Subtitle C (Nursing Home~~
21 ~~Reform), as amended. If the facility has no class I, class
22 II, or class III deficiencies ~~comes into substantial~~
23 ~~compliance~~ at the time of the followup survey, a standard
24 licensure status may be assigned.~~

25 (c) In evaluating the overall quality of care and
26 services and determining whether the facility will receive a
27 conditional or standard license, the agency shall consider the
28 needs and limitations of residents in the facility and the
29 results of interviews and surveys of a representative sampling
30 of residents, families of residents, ombudsman council members
31 in the planning and service area in which the facility is

1 located, guardians of residents, and staff of the nursing home
2 facility.

3 (d) The current licensure status of each facility must
4 be indicated in bold print on the face of the license. A list
5 of the deficiencies of the facility shall be posted in a
6 prominent place that is in clear and unobstructed public view
7 at or near the place where residents are being admitted to
8 that facility. Licensees receiving a conditional licensure
9 status for a facility shall prepare, within 10 working days
10 after receiving notice of deficiencies, a plan for correction
11 of all deficiencies and shall submit the plan to the agency
12 for approval. ~~Correction of all deficiencies, within the~~
13 ~~period approved by the agency, shall result in termination of~~
14 ~~the conditional licensure status. Failure to correct the~~
15 ~~deficiencies within a reasonable period approved by the agency~~
16 ~~shall be grounds for the imposition of sanctions pursuant to~~
17 ~~this part.~~

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

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

24 1. Establish uniform procedures for the evaluation of
25 facilities.

26 2. Provide criteria in the areas referenced in
27 paragraph (c).

28 3. Address other areas necessary for carrying out the
29 intent of this section.

30 (8) The agency shall adopt rules to provide that, when
31 the criteria established under subsection (2) are not met,

1 such deficiencies shall be classified according to the nature
2 and the scope of the deficiency. The scope shall be cited as
3 isolated, patterned, or widespread. An isolated deficiency is
4 a deficiency affecting one or a very limited number of
5 residents, or involving one or a very limited number of staff,
6 or a situation that occurred only occasionally or in a very
7 limited number of locations. A patterned deficiency is a
8 deficiency where more than a very limited number of residents
9 are affected, or more than a very limited number of staff are
10 involved, or the situation has occurred in several locations,
11 or the same resident or residents have been affected by
12 repeated occurrences of the same deficient practice but the
13 effect of the deficient practice is not found to be pervasive
14 throughout the facility. A widespread deficiency is a
15 deficiency in which the problems causing the deficiency are
16 pervasive in the facility or represent systemic failure that
17 has affected or has the potential to affect a large portion of
18 the facility's residents.The agency shall indicate the
19 classification on the face of the notice of deficiencies as
20 follows:

21 (a) A class I deficiency is a deficiency that
22 ~~deficiencies are those which~~ the agency determines presents a
23 situation in which immediate corrective action is necessary
24 because the facility's noncompliance has caused, or is likely
25 to cause, serious injury, harm, impairment, or death to a
26 resident receiving care in a facility ~~present an imminent~~
27 ~~danger to the residents or guests of the nursing home facility~~
28 ~~or a substantial probability that death or serious physical~~
29 ~~harm would result therefrom.~~ The condition or practice
30 constituting a class I violation shall be abated or eliminated
31 immediately, unless a fixed period of time, as determined by

1 the agency, is required for correction. ~~Notwithstanding s.~~
2 ~~400.121(2)~~, A class I deficiency is subject to a civil penalty
3 of \$10,000 for an isolated deficiency, \$12,500 for a patterned
4 deficiency, and \$15,000 for a widespread ~~in an amount not less~~
5 ~~than \$5,000 and not exceeding \$25,000 for each and every~~
6 ~~deficiency. The fine amount shall be doubled for each~~
7 ~~deficiency if the facility was previously cited for one or~~
8 ~~more class I or class II deficiencies during the last annual~~
9 ~~inspection or any inspection or complaint investigation since~~
10 ~~the last annual inspection.~~ A fine ~~must~~ may be levied
11 notwithstanding the correction of the deficiency.

12 (b) A class II deficiency is a deficiency that
13 ~~deficiencies are those which~~ the agency determines has
14 compromised the resident's ability to maintain or reach his or
15 her highest practicable physical, mental, and psychosocial
16 well-being, as defined by an accurate and comprehensive
17 resident assessment, plan of care, and provision of services
18 ~~have a direct or immediate relationship to the health, safety,~~
19 ~~or security of the nursing home facility residents, other than~~
20 ~~class I deficiencies.~~ A class II deficiency is subject to a
21 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for
22 a patterned deficiency, and \$7,500 for a widespread in an
23 ~~amount not less than \$1,000 and not exceeding \$10,000 for each~~
24 ~~and every~~ deficiency. The fine amount shall be doubled for
25 each deficiency if the facility was previously cited for one
26 or more class I or class II deficiencies during the last
27 annual inspection or any inspection or complaint investigation
28 since the last annual inspection. A fine shall be levied
29 notwithstanding the correction of the deficiency. ~~A citation~~
30 ~~for a class II deficiency shall specify the time within which~~
31 ~~the deficiency is required to be corrected. If a class II~~

1 ~~deficiency is corrected within the time specified, no civil~~
2 ~~penalty shall be imposed, unless it is a repeated offense.~~

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

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

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

1 400.235 Nursing home quality and licensure status;
2 Gold Seal Program.--

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

5 (a) Had no class I or class II deficiencies within the
6 30 months preceding application for the program.

7 (b) Evidence financial soundness and stability
8 according to standards adopted by the agency in administrative
9 rule.

10 (c) Participate consistently in the required consumer
11 satisfaction process as prescribed by the agency, and
12 demonstrate that information is elicited from residents,
13 family members, and guardians about satisfaction with the
14 nursing facility, its environment, the services and care
15 provided, the staff's skills and interactions with residents,
16 attention to resident's needs, and the facility's efforts to
17 act on information gathered from the consumer satisfaction
18 measures.

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

21 (e) Have a stable workforce, as described in s.
22 400.141, as evidenced by a relatively low rate of turnover
23 among certified nursing assistants and licensed nurses within
24 the 30 months preceding application for the Gold Seal Program,
25 and demonstrate a continuing effort to maintain a stable
26 workforce and to reduce turnover of licensed nurses and
27 certified nursing assistants.

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

1 (g) Provide targeted inservice training provided to
2 meet training needs identified by internal or external quality
3 assurance efforts.

4
5 A facility assigned a conditional licensure status may not
6 qualify for consideration for the Gold Seal Program until
7 after it has operated for 30 months with no class I or class
8 II deficiencies and has completed a regularly scheduled
9 relicensure survey.

10 Section 32. Section 400.275, Florida Statutes, is
11 created to read:

12 400.275 Agency duties.--

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

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

29 (3) Each member of a nursing home survey team who is a
30 health professional licensed under part I of chapter 464, part
31 X of chapter 468, or chapter 491, shall earn not less than 50

1 percent of required continuing education credits in geriatric
2 care. Each member of a nursing home survey team who is a
3 health professional licensed under chapter 465 shall earn not
4 less than 30 percent of required continuing education credits
5 in geriatric care.

6 (4) The agency must ensure that when a deficiency is
7 related to substandard quality of care, a physician with
8 geriatric experience licensed under chapter 458 or chapter 459
9 or a registered nurse with geriatric experience licensed under
10 chapter 464 participates in the agency's informal
11 dispute-resolution process.

12 Section 33. Section 400.402, Florida Statutes, is
13 amended to read:

14 400.402 Definitions.--When used in this part, the
15 term:

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

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

22 (3) "Agency" means the Agency for Health Care
23 Administration.

24 (4) "Aging in place" or "age in place" means the
25 process of providing increased or adjusted services to a
26 person to compensate for the physical or mental decline that
27 may occur with the aging process, in order to maximize the
28 person's dignity and independence and permit them to remain in
29 a familiar, noninstitutional, residential environment for as
30 long as possible. Such services may be provided by facility
31

1 staff, volunteers, family, or friends, or through contractual
2 arrangements with a third party.

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

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

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

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

31

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

10 (10) "Department" means the Department of Elderly
11 Affairs.

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

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

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

29 (14) "Limited nursing services" means acts that may be
30 performed pursuant to part I of chapter 464 by persons
31 licensed thereunder while carrying out their professional

1 duties but limited to those acts which the department
2 specifies by rule. Acts which may be specified by rule as
3 allowable limited nursing services shall be for persons who
4 meet the admission criteria established by the department for
5 assisted living facilities and shall not be complex enough to
6 require 24-hour nursing supervision and may include such
7 services as the application and care of routine dressings, and
8 care of casts, braces, and splints.

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

19 (15)~~(16)~~ "Mental health resident" means an individual
20 who receives social security disability income due to a mental
21 disorder as determined by the Social Security Administration
22 or receives supplemental security income due to a mental
23 disorder as determined by the Social Security Administration
24 and receives optional state supplementation.

25 (16)~~(17)~~ "Personal services" means direct physical
26 assistance with or supervision of the activities of daily
27 living and the self-administration of medication and other
28 similar services which the department may define by rule.
29 "Personal services" shall not be construed to mean the
30 provision of medical, nursing, dental, or mental health
31 services.

1 (17)~~(18)~~ "Physical restraint" means a device which
2 physically limits, restricts, or deprives an individual of
3 movement or mobility, including, but not limited to, a
4 half-bed rail, a full-bed rail, a geriatric chair, and a posey
5 restraint. The term "physical restraint" shall also include
6 any device which was not specifically manufactured as a
7 restraint but which has been altered, arranged, or otherwise
8 used for this purpose. The term shall not include bandage
9 material used for the purpose of binding a wound or injury.

10 (18)~~(19)~~ "Relative" means an individual who is the
11 father, mother, stepfather, stepmother, son, daughter,
12 brother, sister, grandmother, grandfather, great-grandmother,
13 great-grandfather, grandson, granddaughter, uncle, aunt, first
14 cousin, nephew, niece, husband, wife, father-in-law,
15 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
16 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
17 half brother, or half sister of an owner or administrator.

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

20 (20)~~(21)~~ "Resident's representative or designee" means
21 a person other than the owner, or an agent or employee of the
22 facility, designated in writing by the resident, if legally
23 competent, to receive notice of changes in the contract
24 executed pursuant to s. 400.424; to receive notice of and to
25 participate in meetings between the resident and the facility
26 owner, administrator, or staff concerning the rights of the
27 resident; to assist the resident in contacting the ombudsman
28 council if the resident has a complaint against the facility;
29 or to bring legal action on behalf of the resident pursuant to
30 s. 400.429.

31

1 (21)~~(22)~~ "Service plan" means a written plan,
2 developed and agreed upon by the resident and, if applicable,
3 the resident's representative or designee or the resident's
4 surrogate, guardian, or attorney in fact, if any, and the
5 administrator or designee representing the facility, which
6 addresses the unique physical and psychosocial needs,
7 abilities, and personal preferences of each resident receiving
8 extended congregate care services. The plan shall include a
9 brief written description, in easily understood language, of
10 what services shall be provided, who shall provide the
11 services, when the services shall be rendered, and the
12 purposes and benefits of the services.

13 (22)~~(23)~~ "Shared responsibility" means exploring the
14 options available to a resident within a facility and the
15 risks involved with each option when making decisions
16 pertaining to the resident's abilities, preferences, and
17 service needs, thereby enabling the resident and, if
18 applicable, the resident's representative or designee, or the
19 resident's surrogate, guardian, or attorney in fact, and the
20 facility to develop a service plan which best meets the
21 resident's needs and seeks to improve the resident's quality
22 of life.

23 (23)~~(24)~~ "Supervision" means reminding residents to
24 engage in activities of daily living and the
25 self-administration of medication, and, when necessary,
26 observing or providing verbal cuing to residents while they
27 perform these activities.

28 (24)~~(25)~~ "Supplemental security income," Title XVI of
29 the Social Security Act, means a program through which the
30 Federal Government guarantees a minimum monthly income to
31

1 every person who is age 65 or older, or disabled, or blind and
2 meets the income and asset requirements.

3 (25)~~(26)~~ "Supportive services" means services designed
4 to encourage and assist aged persons or adults with
5 disabilities to remain in the least restrictive living
6 environment and to maintain their independence as long as
7 possible.

8 (26)~~(27)~~ "Twenty-four-hour nursing supervision" means
9 services that are ordered by a physician for a resident whose
10 condition requires the supervision of a physician and
11 continued monitoring of vital signs and physical status. Such
12 services shall be: medically complex enough to require
13 constant supervision, assessment, planning, or intervention by
14 a nurse; required to be performed by or under the direct
15 supervision of licensed nursing personnel or other
16 professional personnel for safe and effective performance;
17 required on a daily basis; and consistent with the nature and
18 severity of the resident's condition or the disease state or
19 stage.

20 Section 34. Subsections (3) and (4) of section
21 400.407, Florida Statutes, are amended to read:

22 400.407 License required; fee, display.--

23 (3) Any license granted by the agency must state the
24 maximum resident capacity of the facility, the type of care
25 for which the license is granted, the date the license is
26 issued, the expiration date of the license, and any other
27 information deemed necessary by the agency. Licenses shall be
28 issued for one or more of the following categories of care:
29 standard, extended congregate care, limited nursing services,
30 or limited mental health.

31

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

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

14 1. In order for extended congregate care services to
15 be provided in a facility licensed under this part, the agency
16 must first determine that all requirements established in law
17 and rule are met and must specifically designate, on the
18 facility's license, that such services may be provided and
19 whether the designation applies to all or part of a facility.
20 Such designation may be made at the time of initial licensure
21 or ~~biennial~~ relicensure, or upon request in writing by a
22 licensee under this part. Notification of approval or denial
23 of such request shall be made within 90 days after receipt of
24 such request and all necessary documentation. Existing
25 facilities qualifying to provide extended congregate care
26 services must have maintained a standard license and may not
27 have been subject to administrative sanctions during the
28 previous 2 years, or since initial licensure if the facility
29 has been licensed for less than 2 years, for any of the
30 following reasons:

31 a. A class I or class II violation;

1 b. Three or more repeat or recurring class III
2 violations of identical or similar resident care standards as
3 specified in rule from which a pattern of noncompliance is
4 found by the agency;

5 c. Three or more class III violations that were not
6 corrected in accordance with the corrective action plan
7 approved by the agency;

8 d. Violation of resident care standards resulting in a
9 requirement to employ the services of a consultant pharmacist
10 or consultant dietitian;

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

15 f. Imposition of a moratorium on admissions or
16 initiation of injunctive proceedings.

17 2. Facilities that are licensed to provide extended
18 congregate care services shall maintain a written progress
19 report on each person who receives such services, which report
20 describes the type, amount, duration, scope, and outcome of
21 services that are rendered and the general status of the
22 resident's health. A registered nurse, or appropriate
23 designee, representing the agency shall visit such facilities
24 at least quarterly ~~two times a year~~ to monitor residents who
25 are receiving extended congregate care services and to
26 determine if the facility is in compliance with this part and
27 with rules that relate to extended congregate care. One of
28 these visits may be in conjunction with the regular ~~biennial~~
29 survey. The monitoring visits may be provided through
30 contractual arrangements with appropriate community agencies.
31 A registered nurse shall serve as part of the team that

1 ~~biennially~~ inspects such facility. The agency may waive one of
2 the required yearly monitoring visits for a facility that has
3 been licensed for at least 24 months to provide extended
4 congregate care services, if, during the ~~biennial~~ inspection,
5 the registered nurse determines that extended congregate care
6 services are being provided appropriately, and if the facility
7 has no class I or class II violations and no uncorrected class
8 III violations. Before such decision is made, the agency shall
9 consult with the long-term care ombudsman council for the area
10 in which the facility is located to determine if any
11 complaints have been made and substantiated about the quality
12 of services or care. The agency may not waive one of the
13 required yearly monitoring visits if complaints have been made
14 and substantiated.

15 3. Facilities that are licensed to provide extended
16 congregate care services shall:

17 a. Demonstrate the capability to meet unanticipated
18 resident service needs.

19 b. Offer a physical environment that promotes a
20 homelike setting, provides for resident privacy, promotes
21 resident independence, and allows sufficient congregate space
22 as defined by rule.

23 c. Have sufficient staff available, taking into
24 account the physical plant and firesafety features of the
25 building, to assist with the evacuation of residents in an
26 emergency, as necessary.

27 d. Adopt and follow policies and procedures that
28 maximize resident independence, dignity, choice, and
29 decisionmaking to permit residents to age in place to the
30 extent possible, so that moves due to changes in functional
31 status are minimized or avoided.

1 e. Allow residents or, if applicable, a resident's
2 representative, designee, surrogate, guardian, or attorney in
3 fact to make a variety of personal choices, participate in
4 developing service plans, and share responsibility in
5 decisionmaking.

6 f. Implement the concept of managed risk.

7 g. Provide, either directly or through contract, the
8 services of a person licensed pursuant to part I of chapter
9 464.

10 h. In addition to the training mandated in s. 400.452,
11 provide specialized training as defined by rule for facility
12 staff.

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

23 5. The primary purpose of extended congregate care
24 services is to allow residents, as they become more impaired,
25 the option of remaining in a familiar setting from which they
26 would otherwise be disqualified for continued residency. A
27 facility licensed to provide extended congregate care services
28 may also admit an individual who exceeds the admission
29 criteria for a facility with a standard license, if the
30 individual is determined appropriate for admission to the
31 extended congregate care facility.

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

6 7. When a facility can no longer provide or arrange
7 for services in accordance with the resident's service plan
8 and needs and the facility's policy, the facility shall make
9 arrangements for relocating the person in accordance with s.
10 400.428(1)(k).

11 8. Failure to provide extended congregate care
12 services may result in denial of extended congregate care
13 license renewal.

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

22 a. A description of the facilities licensed to provide
23 such services, including total number of beds licensed under
24 this part.

25 b. The number and characteristics of residents
26 receiving such services.

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

29 d. An analysis of deficiencies cited during licensure
30 ~~biennial~~ inspections.

31

1 e. The number of residents who required extended
2 congregate care services at admission and the source of
3 admission.

4 f. Recommendations for statutory or regulatory
5 changes.

6 g. The availability of extended congregate care to
7 state clients residing in facilities licensed under this part
8 and in need of additional services, and recommendations for
9 appropriations to subsidize extended congregate care services
10 for such persons.

11 h. Such other information as the department considers
12 appropriate.

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

16 1. In order for limited nursing services to be
17 provided in a facility licensed under this part, the agency
18 must first determine that all requirements established in law
19 and rule are met and must specifically designate, on the
20 facility's license, that such services may be provided. Such
21 designation may be made at the time of initial licensure or
22 ~~biennial~~ relicensure, or upon request in writing by a licensee
23 under this part. Notification of approval or denial of such
24 request shall be made within 90 days after receipt of such
25 request and all necessary documentation. Existing facilities
26 qualifying to provide limited nursing services shall have
27 maintained a standard license and may not have been subject to
28 administrative sanctions that affect the health, safety, and
29 welfare of residents for the previous 2 years or since initial
30 licensure if the facility has been licensed for less than 2
31 years.

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

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

23 (4)(a) The biennial standard license fee required of a
24 facility is \$50 per bed based on the total licensed residence
25 capacity of the facility, except that no additional fee will
26 be assessed for beds designated for recipients of optional
27 state supplementation payments provided for in s. 409.212. The
28 total fee as described in this part may not exceed \$10,000.

29 (b) In addition to the total fee assessed under
30 paragraph (a), the agency shall require facilities that are
31 licensed to provide extended congregate care services under

1 this part to pay an additional fee per licensed extended
2 congregate care bed. The amount of the biennial fee shall be
3 \$100 per bed based on the total number of extended congregate
4 care licensed beds.

5 (c) In addition to the total fee assessed under
6 paragraph (a), the agency shall require facilities that are
7 licensed to provide limited nursing services under this part
8 to pay an additional fee per licensed limited nursing services
9 licensed bed. The amount of this biennial fee shall be \$75 per
10 bed based on the total number of limited nursing services
11 licensed beds.~~\$240 per license, with an additional fee of \$30~~
12 ~~per resident based on the total licensed resident capacity of~~
13 ~~the facility, except that no additional fee will be assessed~~
14 ~~for beds designated for recipients of optional state~~
15 ~~supplementation payments provided for in s. 409.212. The total~~
16 ~~fee may not exceed \$10,000, no part of which shall be returned~~
17 ~~to the facility. The agency shall adjust the per bed license~~
18 ~~fee and the total licensure fee annually by not more than the~~
19 ~~change in the consumer price index based on the 12 months~~
20 ~~immediately preceding the increase.~~

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

30 ~~(c) In addition to the total fee assessed under~~
31 ~~paragraph (a), the agency shall require facilities that are~~

1 ~~licensed to provide limited nursing services under this part~~
2 ~~to pay an additional fee per licensed facility. The amount of~~
3 ~~the biennial fee shall be \$200 per license, with an additional~~
4 ~~fee of \$10 per resident based on the total licensed resident~~
5 ~~capacity of the facility. The total biennial fee may not~~
6 ~~exceed \$2,000, no part of which shall be returned to the~~
7 ~~facility. The agency may adjust the \$200 biennial license fee~~
8 ~~and the maximum total license fee once each year by not more~~
9 ~~than the average rate of inflation for the 12 months~~
10 ~~immediately preceding the increase.~~

11 Section 35. Paragraph (n) is added to subsection (1)
12 of section 400.414, Florida Statutes, and subsection (8) is
13 added to that section, to read:

14 400.414 Denial, revocation, or suspension of license;
15 imposition of administrative fine; grounds.--

16 (1) The agency may deny, revoke, or suspend any
17 license issued under this part, or impose an administrative
18 fine in the manner provided in chapter 120, for any of the
19 following actions by an assisted living facility, any person
20 subject to level 2 background screening under s. 400.4174, or
21 any facility employee:

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

24
25 Administrative proceedings challenging agency action under
26 this subsection shall be reviewed on the basis of the facts
27 and conditions that resulted in the agency action.

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

31

1 Section 36. Subsection (1) of section 400.417, Florida
2 Statutes, is amended to read:

3 400.417 Expiration of license; renewal; conditional
4 license.--

5 (1) A standard license ~~Biennial licenses~~, unless
6 sooner suspended or revoked, shall expire 2 years from the
7 date of issuance. Limited nursing, extended congregate care,
8 and limited mental health licenses shall expire at the same
9 time as the facility's standard license, regardless of when
10 issued. The agency shall notify the facility by certified mail
11 at least 120 days prior to expiration that a renewal license
12 is necessary to continue operation. Ninety days prior to the
13 expiration date, an application for renewal shall be submitted
14 to the agency. Fees must be prorated. The failure to file a
15 timely renewal application shall result in a late fee charged
16 to the facility in an amount equal to 50 percent of the
17 current fee.

18 Section 37. Section 400.419, Florida Statutes, is
19 amended to read:

20 400.419 Violations; administrative fines.--

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

26 (a) Class "I" violations are those conditions or
27 occurrences related to the operation and maintenance of a
28 facility or to the personal care of residents which the agency
29 determines present an imminent danger to the residents or
30 guests of the facility or a substantial probability that death
31 or serious physical or emotional harm would result therefrom.

1 The condition or practice constituting a class I violation
2 shall be abated or eliminated within 24 hours, unless a fixed
3 period, as determined by the agency, is required for
4 correction. A class I violation is subject to an
5 administrative fine in an amount not less than \$5,000~~\$1,000~~
6 and not exceeding \$10,000 for each violation. A fine may be
7 levied notwithstanding the correction of the violation.

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

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

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

14 ~~(2) The agency may set and levy a fine not to exceed~~
15 ~~\$1,000 for each violation which cannot be classified according~~
16 ~~to subsection (1). Such fines in the aggregate may not exceed~~
17 ~~\$10,000 per survey.~~

18 (2)~~(3)~~ In determining if a penalty is to be imposed
19 and in fixing the amount of the fine, the agency shall
20 consider the following factors:

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

26 (b) Actions taken by the owner or administrator to
27 correct violations.

28 (c) Any previous violations.

29 (d) The financial benefit to the facility of
30 committing or continuing the violation.

31 (e) The licensed capacity of the facility.

1 (3)~~(4)~~ Each day of continuing violation after the date
2 fixed for termination of the violation, as ordered by the
3 agency, constitutes an additional, separate, and distinct
4 violation.

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

12 (5)~~(6)~~ For fines that are upheld following
13 administrative or judicial review, the violator shall pay the
14 fine, plus interest at the rate as specified in s. 55.03, for
15 each day beyond the date set by the agency for payment of the
16 fine.

17 (6)~~(7)~~ Any unlicensed facility that continues to
18 operate after agency notification is subject to a \$1,000 fine
19 per day. ~~Each day beyond 5 working days after agency~~
20 ~~notification constitutes a separate violation, and the~~
21 ~~facility is subject to a fine of \$500 per day.~~

22 (7)~~(8)~~ Any licensed facility whose owner or
23 administrator concurrently operates an unlicensed facility
24 shall be subject to an administrative fine of \$5,000 per day.
25 ~~Each day that the unlicensed facility continues to operate~~
26 ~~beyond 5 working days after agency notification constitutes a~~
27 ~~separate violation, and the licensed facility shall be subject~~
28 ~~to a fine of \$500 per day retroactive to the date of agency~~
29 ~~notification.~~

30 (8)~~(9)~~ Any facility whose owner fails to apply for a
31 change-of-ownership license in accordance with s. 400.412 and

1 operates the facility under the new ownership is subject to a
2 fine of ~~not to exceed~~ \$5,000.

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

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

22 (11)~~(12)~~ Administrative fines paid by any facility
23 under this section shall be deposited into the Health Care
24 Trust Fund and expended as provided in s. 400.418.

25 (12)~~(13)~~ The agency shall develop and disseminate an
26 annual list of all facilities sanctioned or fined \$5,000 or
27 more for violations of state standards, the number and class
28 of violations involved, the penalties imposed, and the current
29 status of cases. The list shall be disseminated, at no charge,
30 to the Department of Elderly Affairs, the Department of
31 Health, the Department of Children and Family Services, the

1 area agencies on aging, the Florida Statewide Advocacy
2 Council, and the state and local ombudsman councils. The
3 Department of Children and Family Services shall disseminate
4 the list to service providers under contract to the department
5 who are responsible for referring persons to a facility for
6 residency. The agency may charge a fee commensurate with the
7 cost of printing and postage to other interested parties
8 requesting a copy of this list.

9 Section 38. Section 400.423, Florida Statutes, is
10 created to read:

11 400.423 Internal risk-management and quality-assurance
12 program; adverse incidents and reporting requirements.--

13 (1) Every facility licensed under this part may, as
14 part of its administrative functions, voluntarily establish a
15 risk-management and quality-assurance program, the purpose of
16 which is to assess resident care practices, facility incident
17 reports, deficiencies cited by the agency, adverse-incident
18 reports, and resident grievances and develop plans of action
19 to correct and respond quickly to identify quality
20 differences.

21 (2) Every facility licensed under this part is
22 required to maintain adverse-incident reports. For purposes of
23 this section, the term, "adverse incident" means:

24 (a) An event over which facility personnel could
25 exercise control rather than as a result of the resident's
26 condition and results in:

- 27 1. Death;
- 28 2. Brain or spinal damage;
- 29 3. Permanent disfigurement;
- 30 4. Fracture or dislocation of bones or joints;

31

1 5. Any condition that required medical attention to
2 which the resident has not given his or her consent, including
3 failure to honor advanced directives;

4 6. Any condition that requires the transfer of the
5 resident from the facility to a unit providing more acute care
6 due to the incident rather than the resident's condition
7 before the incident.

8 (b) Abuse, neglect, or exploitation as defined in s.
9 415.102;

10 (c) Events reported to law enforcement; or

11 (d) Elopement.

12 (3) Licensed facilities shall provide within 1
13 business day after the occurrence of an adverse incident, by
14 electronic mail, facsimile, or United States mail, a
15 preliminary report to the agency on all adverse incidents
16 specified under this section. The report must include
17 information regarding the identity of the affected resident,
18 the type of adverse incident, and the status of the facility's
19 investigation of the incident.

20 (4) Licensed facilities shall provide within 15 days,
21 by electronic mail, facsimile, or United States mail, a full
22 report to the agency on all adverse incidents specified in
23 this section. The report must include the results of the
24 facility's investigation into the adverse incident.

25 (5) The agency shall annually submit to the
26 Legislature a report on assisted living facility
27 adverse-incident reports. The report must include the
28 following information arranged by county:

29 (a) A total number of adverse incidents;
30
31

1 (b) A listing, by category, of the type of adverse
2 incidents occurring within each category and the type of staff
3 involved;

4 (c) A listing, by category, of the types of injuries,
5 if any, and the number of injuries occurring within each
6 category;

7 (d) Types of liability claims filed based on an
8 adverse-incident report or reportable injury; and

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

11 (6) The information reported to the agency pursuant to
12 subsection (3) which relates to persons licensed under chapter
13 458, chapter 459, chapter 461, chapter 464, or chapter 465
14 shall be reviewed by the agency. The agency shall determine
15 whether any of the incidents potentially involved conduct by a
16 health care professional who is subject to disciplinary
17 action, in which case the provisions of s. 456.073 apply. The
18 agency may investigate, as it deems appropriate, any such
19 incident and prescribe measures that must or may be taken in
20 response to the incident. The agency shall review each
21 incident and determine whether it potentially involved conduct
22 by a health care professional who is subject to disciplinary
23 action, in which case the provisions of s. 456.073 apply.

24 (7) If the agency, through its receipt of the
25 adverse-incident reports prescribed in this part or through
26 any investigation, has reasonable belief that conduct by a
27 staff member or employee of a licensed facility is grounds for
28 disciplinary action by the appropriate board, the agency shall
29 report this fact to such regulatory board.

30 (8) Notwithstanding any other law to the contrary, any
31 record or report produced pursuant to this part shall not be

1 discoverable or admissible in any civil or administrative
2 action, except in disciplinary proceedings by the agency or
3 the appropriate regulatory board.

4 (9) The Department of Elderly Affairs may adopt rules
5 necessary to administer this section.

6 Section 39. Present subsections (7), (8), (9), (10),
7 and (11) of section 400.426, Florida Statutes, are
8 redesignated as subsections (8), (9), (10), (11), and (12),
9 respectively, and a new subsection (7) is added to that
10 section, to read:

11 400.426 Appropriateness of placements; examinations of
12 residents.--

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

23 Section 40. Subsection (3) of section 400.4275,
24 Florida Statutes, is amended to read:

25 400.4275 Business practice; personnel records;
26 liability insurance.--The assisted living facility shall be
27 administered on a sound financial basis that is consistent
28 with good business practices.

29 (3) The administrator or owner of a facility shall
30 maintain liability insurance coverage of at least \$250,000 per
31

1 claim and an annual aggregate of \$500,000 which ~~that~~ is in
2 force at all times.

3 Section 41. Subsection (3) of section 400.428, Florida
4 Statutes, is amended to read:

5 400.428 Resident bill of rights.--

6 (3)(a) The agency shall conduct a survey to determine
7 general compliance with facility standards and compliance with
8 residents' rights as a prerequisite to initial licensure or
9 licensure renewal.

10 (b) In order to determine whether the facility is
11 adequately protecting residents' rights, the licensure
12 ~~biennial~~ survey shall include private informal conversations
13 with a sample of residents and consultation with the ombudsman
14 council in the planning and service area in which the facility
15 is located to discuss residents' experiences within the
16 facility.

17 (c) During any calendar year in which no standard
18 licensure survey is conducted, the agency shall conduct at
19 least one monitoring visit of each facility cited in the
20 previous year for a class I or class II violation, or more
21 than three uncorrected class III violations.

22 (d) The agency may conduct periodic followup
23 inspections as necessary to monitor the compliance of
24 facilities with a history of any class I, class II, or class
25 III violations that threaten the health, safety, or security
26 of residents.

27 (e) The agency may conduct complaint investigations as
28 warranted to investigate any allegations of noncompliance with
29 requirements required under this part or rules adopted under
30 this part.

31

1 Section 42. Effective July 1, 2001, and applying to
2 causes of action accruing on or after that date, section
3 400.429, Florida Statutes, is amended to read:

4 400.429 Civil actions to enforce rights.--

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

1 injunctive or administrative relief and not for any claim or
2 action for damages whether such claim or action is brought
3 together with a request for an injunction or administrative
4 relief or as a separate action, except as provided under s.
5 768.79 or the Florida Rules of Civil Procedure.~~Any plaintiff~~
6 ~~who prevails in any such action may be entitled to recover~~
7 ~~reasonable attorney's fees, costs of the action, and damages,~~
8 ~~unless the court finds that the plaintiff has acted in bad~~
9 ~~faith, with malicious purpose, and that there was a complete~~
10 ~~absence of a justiciable issue of either law or fact. A~~
11 ~~prevailing defendant may be entitled to recover reasonable~~
12 ~~attorney's fees pursuant to s. 57.105. The theories of~~
13 recovery remedies provided in this section are in addition to
14 and cumulative with other legal and administrative actions
15 remedies available to a resident or to the agency, and the
16 provisions of chapter 766 do not apply.

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

- 22 (a) The defendant owed a duty to the resident;
23 (b) The defendant breached the duty to the resident;
24 (c) The breach of the duty is a legal cause of loss,
25 injury, death or damage to the resident; and
26 (d) The resident sustained loss, injury, death, or
27 damage as a result of the breach.

28
29 Nothing in this part shall be interpreted to create strict
30 liability. A violation of the rights set forth in s. 400.428
31 or in any other standard or guidelines specified in this part

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

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

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

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

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

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

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

1 ~~c. Prepare an order for the court that identifies the~~
2 ~~mediator, the scheduled date of the mediation, and other terms~~
3 ~~of the mediation. Absent any disagreement between the parties,~~
4 ~~the court may issue the order for the mediation submitted by~~
5 ~~the parties without a hearing.~~

6 ~~2. The mediation must be concluded within 120 days~~
7 ~~after the filing of a responsive pleading or defensive motion.~~
8 ~~The date may be extended only by agreement of all parties~~
9 ~~subject to mediation under this subsection.~~

10 ~~3. The mediation shall be conducted in the following~~
11 ~~manner:~~

12 ~~a. Each party shall ensure that all persons necessary~~
13 ~~for complete settlement authority are present at the~~
14 ~~mediation.~~

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

16 ~~4. All aspects of the mediation which are not~~
17 ~~specifically established by this subsection must be conducted~~
18 ~~according to the rules of practice and procedure adopted by~~
19 ~~the Supreme Court of this state.~~

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

1 ~~(c) This subsection applies only to claims for~~
2 ~~liability and damages and does not apply to actions for~~
3 ~~injunctive relief.~~

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

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

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

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

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

9 Section 43. Effective July 1, 2001, and applying to
10 causes of action accruing on or after that date, section
11 400.4293, Florida Statutes, is created to read:

12 400.4293 Presuit notice; investigation; notification
13 of violation of residents' rights or alleged negligence;
14 claims evaluation procedure; informal discovery; review.--

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

16 (a) "Claim for residents' rights violation or
17 negligence" means a negligence claim alleging injury to or the
18 death of a resident arising out of an asserted violation of
19 the rights of a resident under s. 400.428 or an asserted
20 deviation from the applicable standard of care.

21 (b) "Insurer" means any self-insurer authorized under
22 s. 627.357, liability insurance carrier, Joint Underwriting
23 Association, or any uninsured prospective defendant.

24 (2) Prior to filing a claim for a violation of a
25 resident's rights or a claim for negligence, a claimant
26 alleging injury to or the death of a resident shall notify
27 each prospective defendant by certified mail, return receipt
28 requested, of an asserted violation of a resident's rights
29 provided in s. 400.428 or deviation from the standard of care.
30 Such notification shall include an identification of the
31 rights the prospective defendant has violated and the

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

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

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

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

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

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

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

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

31 1. Rejecting the claim; or

1 2. Making a settlement offer.

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

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

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

31

1 expert are not discoverable or admissible in any civil action
2 for any purpose by the opposing party.

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

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

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

26 (b) Documents or things.--Any party may request
27 discovery of relevant documents or things. The documents or
28 things must be produced, at the expense of the requesting
29 party, within 20 days after the date of receipt of the
30 request. A party is required to produce relevant and
31 discoverable documents or things within that party's

1 possession or control, if in good faith it can reasonably be
2 done within the timeframe of the claims evaluation process.

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

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

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

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

29 Section 44. Effective July 1, 2001, and applying to
30 causes of action accruing on or after that date, section
31 400.4294, Florida Statutes, is created to read:

1 400.4294 Availability of facility records for
2 investigation of resident's rights violations and defenses;
3 penalty.--

4 (1) Failure to provide complete copies of a resident's
5 records including, but not limited to, all medical records and
6 the resident's chart, within the control or possession of the
7 facility within 10 days, in accordance with the provisions of
8 s. 400.145, shall constitute evidence of failure of that party
9 to comply with good-faith discovery requirements and shall
10 waive the good-faith certificate and presuit notice
11 requirements under this part by the requesting party.

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

14 Section 45. Effective July 1, 2001, section 400.4295,
15 Florida Statutes, is created to read:

16 400.4295 Certain provisions not applicable to actions
17 under this part.--An action under this part for a violation of
18 rights or negligence recognized herein is not a claim for
19 medical malpractice, and the provisions of s. 768.21(8) do not
20 apply to a claim alleging death of the resident.

21 Section 46. Effective July 1, 2001, section 400.4296,
22 Florida Statutes, is created to read:

23 400.4296 Statute of limitations.--

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

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

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

21 Section 47. Section 400.4297, Florida Statutes, is
22 created to read:

23 400.4297 Punitive damages; pleading; burden of
24 proof.--

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

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

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

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

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

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

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

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

1 (c) The employer, principal, corporation, or other
2 legal entity engaged in conduct that constituted gross
3 negligence and that contributed to the loss, damages, or
4 injury suffered by the claimant.

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

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

11 Section 48. Section 400.4298, Florida Statutes, is
12 created to read:

13 400.4298 Punitive damages; limitation.--

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

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

19 2. The sum of \$1 million.

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

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

1 2. The sum of \$4 million.

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

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

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

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

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

22 Section 49. Effective October 1, 2001, and applicable
23 to causes of action accruing on or after that date, section
24 400.4303, Florida Statutes, is created to read:

25 400.4303 Copies forwarded to state attorney.--In any
26 action in which punitive damages are awarded, notwithstanding
27 any appeals, the Clerk of the Court shall forward to the state
28 attorney of that circuit a copy of the complaint, any amended
29 complaints, the verdict form, and the final judgment.

30 Section 50. Section 400.434, Florida Statutes, is
31 amended to read:

1 400.434 Right of entry and inspection.--Any duly
2 designated officer or employee of the department, the
3 Department of Children and Family Services, the agency, the
4 state or local fire marshal, or a member of the state or local
5 long-term care ombudsman council shall have the right to enter
6 unannounced upon and into the premises of any facility
7 licensed pursuant to this part in order to determine the state
8 of compliance with the provisions of this part and of rules or
9 standards in force pursuant thereto. The right of entry and
10 inspection shall also extend to any premises which the agency
11 has reason to believe is being operated or maintained as a
12 facility without a license; but no such entry or inspection of
13 any premises may be made without the permission of the owner
14 or person in charge thereof, unless a warrant is first
15 obtained from the circuit court authorizing such entry. The
16 warrant requirement shall extend only to a facility which the
17 agency has reason to believe is being operated or maintained
18 as a facility without a license. Any application for a
19 license or renewal thereof made pursuant to this part shall
20 constitute permission for, and complete acquiescence in, any
21 entry or inspection of the premises for which the license is
22 sought, in order to facilitate verification of the information
23 submitted on or in connection with the application; to
24 discover, investigate, and determine the existence of abuse or
25 neglect; or to elicit, receive, respond to, and resolve
26 complaints. Any current valid license shall constitute
27 unconditional permission for, and complete acquiescence in,
28 any entry or inspection of the premises by authorized
29 personnel. The agency shall retain the right of entry and
30 inspection of facilities that have had a license revoked or
31 suspended within the previous 24 months, to ensure that the

1 facility is not operating unlawfully. However, before entering
2 the facility, a statement of probable cause must be filed with
3 the director of the agency, who must approve or disapprove the
4 action within 48 hours. Probable cause shall include, but is
5 not limited to, evidence that the facility holds itself out to
6 the public as a provider of personal care services or the
7 receipt of a complaint by the long-term care ombudsman council
8 about the facility. Data collected by the state or local
9 long-term care ombudsman councils or the state or local
10 advocacy councils may be used by the agency in investigations
11 involving violations of regulatory standards.

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

14 400.435 Maintenance of records; reports.--

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

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

28 400.441 Rules establishing standards.--

29 (1) It is the intent of the Legislature that rules
30 published and enforced pursuant to this section shall include
31 criteria by which a reasonable and consistent quality of

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

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

- 17 1. The supervision of residents;
- 18 2. The provision of personal services;
- 19 3. The provision of, or arrangement for, social and
20 leisure activities;
- 21 4. The arrangement for appointments and transportation
22 to appropriate medical, dental, nursing, or mental health
23 services, as needed by residents;
- 24 5. The management of medication;
- 25 6. The nutritional needs of residents; ~~and~~
- 26 7. Resident records; and-
- 27 8. Internal risk management and quality assurance.

28 (4) The agency may use an abbreviated biennial
29 standard licensure inspection that ~~which~~ consists of a review
30 of key quality-of-care standards in lieu of a full inspection
31 in facilities which have a good record of past performance.

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

26 Section 53. Section 400.442, Florida Statutes, is
27 amended to read:

28 400.442 Pharmacy and dietary services.--

29 (1) Any assisted living facility in which the agency
30 has documented a class I or class II deficiency or uncorrected
31 class III deficiencies regarding medicinal drugs or

1 over-the-counter preparations, including their storage, use,
2 delivery, or administration, or dietary services, or both,
3 during a licensure ~~biennial~~ survey or a monitoring visit or an
4 investigation in response to a complaint, shall, in addition
5 to or as an alternative to any penalties imposed under s.
6 400.419, be required to employ the consultant services of a
7 licensed pharmacist, a licensed registered nurse, or a
8 registered or licensed dietitian, as applicable. The
9 consultant shall, at a minimum, provide onsite quarterly
10 consultation until the inspection team from the agency
11 determines that such consultation services are no longer
12 required.

13 (2) A corrective action plan for deficiencies related
14 to assistance with the self-administration of medication or
15 the administration of medication must be developed and
16 implemented by the facility within 48 hours after notification
17 of such deficiency, or sooner if the deficiency is determined
18 by the agency to be life-threatening.

19 (3) The agency shall employ at least two pharmacists
20 licensed pursuant to chapter 465 among its personnel who
21 ~~biennially~~ inspect assisted living facilities licensed under
22 this part, to participate in licensure ~~biennial~~ inspections or
23 consult with the agency regarding deficiencies relating to
24 medicinal drugs or over-the-counter preparations.

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

28 Section 54. Section 400.449, Florida Statutes, is
29 created to read:

30 400.449 Resident records; penalties for alteration.--
31

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

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

9 Section 55. Section 464.203, Florida Statutes, is
10 amended to read:

11 464.203 Certified nursing assistants; certification
12 requirement.--

13 (1) The board shall issue a certificate to practice as
14 a certified nursing assistant to any person who demonstrates a
15 minimum competency to read and write and successfully passes
16 the required Level I or Level II screening pursuant to s.
17 400.215 and meets one of the following requirements:

18 (a) Has successfully completed an approved training
19 program and achieved a minimum score, established by rule of
20 the board, on the nursing assistant competency examination,
21 which consists of a written portion and skills-demonstration
22 portion approved by the board and administered at a site and
23 by personnel approved by the department.

24 (b) Has achieved a minimum score, established by rule
25 of the board, on the nursing assistant competency examination,
26 which consists of a written portion and skills-demonstration
27 portion, approved by the board and administered at a site and
28 by personnel approved by the department and:

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

31

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

5 (d) Has completed the curriculum developed under the
6 Enterprise Florida Jobs and Education Partnership Grant and
7 achieved a minimum score, established by rule of the board, on
8 the nursing assistant competency examination, which consists
9 of a written portion and skills-demonstration portion,
10 approved by the board and administered at a site and by
11 personnel approved by the department.

12 (2) If an applicant fails to pass the nursing
13 assistant competency examination in three attempts, the
14 applicant is not eligible for reexamination unless the
15 applicant completes an approved training program.

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

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

22 (5) Certification as a nursing assistant, in
23 accordance with this part, continues in effect until such time
24 as the nursing assistant allows a period of 24 consecutive
25 months to pass during which period the nursing assistant fails
26 to perform any nursing-related services for monetary
27 compensation. When a nursing assistant fails to perform any
28 nursing-related services for monetary compensation for a
29 period of 24 consecutive months, the nursing assistant must
30 complete a new training and competency evaluation program or a
31 new competency evaluation program.

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

3 (7) A certified nursing assistant shall complete 18
4 hours of in-service training during each calendar year. The
5 certified nursing assistant shall be responsible for
6 maintaining documentation demonstrating compliance with these
7 provisions. The Council on Certified Nursing Assistants, in
8 accordance with s. 464.0285(2)(b), shall propose rules to
9 implement this subsection.

10 Section 56. Subsection (2) of section 397.405, Florida
11 Statutes, is amended to read:

12 397.405 Exemptions from licensure.--The following are
13 exempt from the licensing provisions of this chapter:

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

16
17 The exemptions from licensure in this section do not apply to
18 any facility or entity which receives an appropriation, grant,
19 or contract from the state to operate as a service provider as
20 defined in this chapter or to any substance abuse program
21 regulated pursuant to s. 397.406. No provision of this
22 chapter shall be construed to limit the practice of a
23 physician licensed under chapter 458 or chapter 459, a
24 psychologist licensed under chapter 490, or a psychotherapist
25 licensed under chapter 491, providing outpatient or inpatient
26 substance abuse treatment to a voluntary patient, so long as
27 the physician, psychologist, or psychotherapist does not
28 represent to the public that he or she is a licensed service
29 provider under this act. Failure to comply with any
30 requirement necessary to maintain an exempt status under this
31

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

3 Section 57. Paragraph (b) of subsection (2) of section
4 409.908, Florida Statutes, is amended to read:

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

26 (2)

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

1 applicable state and federal laws, rules, regulations, and
2 quality and safety standards and to ensure that individuals
3 eligible for medical assistance have reasonable geographic
4 access to such care. The agency shall amend the long-term-care
5 reimbursement plan to create direct-care and indirect-care
6 subcomponents. These two subcomponents together shall equal
7 the patient-care component of the per-diem rate. The
8 direct-care subcomponent shall include only the salaries and
9 benefits of direct-care staff who provide nursing services to
10 the residents of the nursing facility. As used in this
11 paragraph, the term "direct-care staff" means registered
12 nurses, licensed practical nurses, and certified nurses
13 assistants who deliver care directly to residents in nursing
14 home facilities. There shall be not cost directly or
15 indirectly allocated to the direct-care subcomponent from a
16 home office or management company. Separate cost-based
17 ceilings shall be calculated for each patient-care
18 subcomponent, and the direct-care subcomponent shall be
19 limited by the cost-based class ceiling, and the indirect-care
20 subcomponent shall be limited by the individual provider
21 target, target rate class ceiling, or the cost-based ceiling.
22 The agency shall make the required changes to the nursing home
23 cost-reporting forms to implement this requirement effective
24 January 1, 2002. It is the intent of the Legislature that the
25 reimbursement plan achieve the goal of providing access to
26 health care for nursing home residents who require large
27 amounts of care while encouraging diversion services as an
28 alternative to nursing home care for residents who can be
29 served within the community. The agency shall base the
30 establishment of any maximum rate of payment, whether overall
31 or component, on the available moneys as provided for in the

1 General Appropriations Act. The agency may base the maximum
2 rate of payment on the results of scientifically valid
3 analysis and conclusions derived from objective statistical
4 data pertinent to the particular maximum rate of payment.
5 ~~Under the plan, interim rate adjustments shall not be granted~~
6 ~~to reflect increases in the cost of general or professional~~
7 ~~liability insurance for nursing homes unless the following~~
8 ~~criteria are met: have at least a 65 percent Medicaid~~
9 ~~utilization in the most recent cost report submitted to the~~
10 ~~agency, and the increase in general or professional liability~~
11 ~~costs to the facility for the most recent policy period~~
12 ~~affects the total Medicaid per diem by at least 5 percent.~~
13 ~~This rate adjustment shall not result in the per diem~~
14 ~~exceeding the class ceiling. This provision shall apply only~~
15 ~~to fiscal year 2000-2001 and shall be implemented to the~~
16 ~~extent existing appropriations are available. The agency shall~~
17 ~~report to the Governor, the Speaker of the House of~~
18 ~~Representatives, and the President of the Senate by December~~
19 ~~31, 2000, on the cost of liability insurance for Florida~~
20 ~~nursing homes for fiscal years 1999 and 2000 and the extent to~~
21 ~~which these costs are not being compensated by the Medicaid~~
22 ~~program. Medicaid-participating nursing homes shall be~~
23 ~~required to report to the agency information necessary to~~
24 ~~compile this report. Effective no earlier than the~~
25 ~~rate-setting period beginning April 1, 1999, the agency shall~~
26 ~~establish a case-mix reimbursement methodology for the rate of~~
27 ~~payment for long-term care services for nursing home~~
28 ~~residents. The agency shall compute a per diem rate for~~
29 ~~Medicaid residents, adjusted for case mix, which is based on a~~
30 ~~resident classification system that accounts for the relative~~
31 ~~resource utilization by different types of residents and which~~

1 ~~is based on level of care data and other appropriate data. The~~
2 ~~case-mix methodology developed by the agency shall take into~~
3 ~~account the medical, behavioral, and cognitive deficits of~~
4 ~~residents. In developing the reimbursement methodology, the~~
5 ~~agency shall evaluate and modify other aspects of the~~
6 ~~reimbursement plan as necessary to improve the overall~~
7 ~~effectiveness of the plan with respect to the costs of patient~~
8 ~~care, operating costs, and property costs. In the event~~
9 ~~adequate data are not available, the agency is authorized to~~
10 ~~adjust the patient's care component or the per diem rate to~~
11 ~~more adequately cover the cost of services provided in the~~
12 ~~patient's care component. The agency shall work with the~~
13 ~~Department of Elderly Affairs, the Florida Health Care~~
14 ~~Association, and the Florida Association of Homes for the~~
15 ~~Aging in developing the methodology. It is the intent of the~~
16 ~~Legislature that the reimbursement plan achieve the goal of~~
17 ~~providing access to health care for nursing home residents who~~
18 ~~require large amounts of care while encouraging diversion~~
19 ~~services as an alternative to nursing home care for residents~~
20 ~~who can be served within the community. The agency shall base~~
21 ~~the establishment of any maximum rate of payment, whether~~
22 ~~overall or component, on the available moneys as provided for~~
23 ~~in the General Appropriations Act. The agency may base the~~
24 ~~maximum rate of payment on the results of scientifically valid~~
25 ~~analysis and conclusions derived from objective statistical~~
26 ~~data pertinent to the particular maximum rate of payment.~~

27 Section 58. Notwithstanding the establishment of need
28 as provided for in chapter 408, no certificate of need for
29 additional nursing home beds shall be approved by the agency
30 until July 1, 2006. The Legislature finds that the continued
31 growth in the Medicaid budget for nursing home care has

1 constrained the ability of the state to meet the needs of its
2 elderly residents through the use of less restrictive and less
3 institutional methods of long-term care. It is therefore the
4 intent of the Legislature to limit the increase in Medicaid
5 nursing home expenditures in order to provide funds to invest
6 in long-term care that is community-based and provides
7 supportive services in a manner that is both more
8 cost-effective and more in keeping with the wishes of the
9 elderly residents of this state.

10 Section 59. Subsections (3) and (8) of section
11 400.0255, Florida Statutes, as amended by section 138 of
12 chapter 2000-349, section 3 of chapter 2000-350, and section
13 58 of chapter 2000-367, Laws of Florida, are reenacted to
14 read:

15 400.0255 Resident transfer or discharge; requirements
16 and procedures; hearings.--

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

30 (8) The notice required by subsection (7) must be in
31 writing and must contain all information required by state and

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

24 Section 60. Subsection (5) of section 400.23, Florida
25 Statutes, as amended by section 6 of chapter 2000-350, Laws of
26 Florida, is reenacted to read:

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

29 (5) The agency, in collaboration with the Division of
30 Children's Medical Services of the Department of Health, must,
31 no later than December 31, 1993, adopt rules for minimum

1 standards of care for persons under 21 years of age who reside
2 in nursing home facilities. The rules must include a
3 methodology for reviewing a nursing home facility under ss.
4 408.031-408.045 which serves only persons under 21 years of
5 age. A facility may be exempt from these standards for
6 specific persons between 18 and 21 years of age, if the
7 person's physician agrees that minimum standards of care based
8 on age are not necessary.

9 Section 61. Subsection (2) of section 400.191, Florida
10 Statutes, as amended by section 5 of chapter 2000-350, Laws of
11 Florida, and subsection (6) of that section, as created by
12 section 5 of chapter 2000-350, Laws of Florida, are reenacted
13 to read:

14 400.191 Availability, distribution, and posting of
15 reports and records.--

16 (2) The agency shall provide additional information in
17 consumer-friendly printed and electronic formats to assist
18 consumers and their families in comparing and evaluating
19 nursing home facilities.

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

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

26 2. Whether such nursing home facilities are
27 proprietary or nonproprietary.

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

30 4. The name of the owner or owners of each facility
31 and whether the facility is affiliated with a company or other

1 organization owning or managing more than one nursing facility
2 in this state.

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

4 6. The number of private and semiprivate rooms in each
5 facility.

6 7. The religious affiliation, if any, of each
7 facility.

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

10 9. Whether or not each facility accepts Medicare or
11 Medicaid recipients or insurance, health maintenance
12 organization, Veterans Administration, CHAMPUS program, or
13 workers' compensation coverage.

14 10. Recreational and other programs available at each
15 facility.

16 11. Special care units or programs offered at each
17 facility.

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

21 13. The results of consumer and family satisfaction
22 surveys for each facility, as described in s. 400.0225. The
23 results may be converted to a score or scores, which may be
24 presented in either numeric or symbolic form for the intended
25 consumer audience.

26 14. Survey and deficiency information contained on the
27 Online Survey Certification and Reporting (OSCAR) system of
28 the federal Health Care Financing Administration, including
29 annual survey, revisit, and complaint survey information, for
30 each facility for the past 45 months. For noncertified
31 nursing homes, state survey and deficiency information,

1 including annual survey, revisit, and complaint survey
2 information for the past 45 months shall be provided.

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

13 (b) The agency shall provide the following information
14 in printed form:

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

17 2. Whether such nursing home facilities are
18 proprietary or nonproprietary.

19 3. The current owner or owners of the facility's
20 license and the year that entity became the owner of the
21 license.

22 4. The total number of beds, and of private and
23 semiprivate rooms, in each facility.

24 5. The religious affiliation, if any, of each
25 facility.

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

30 7. The languages spoken by the administrator and staff
31 of each facility.

1 8. Whether or not each facility accepts Medicare or
2 Medicaid recipients or insurance, health maintenance
3 organization, Veterans Administration, CHAMPUS program, or
4 workers' compensation coverage.

5 9. Recreational programs, special care units, and
6 other programs available at each facility.

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

12 11. The Internet address for the site where more
13 detailed information can be seen.

14 12. A statement advising consumers that each facility
15 will have its own policies and procedures related to
16 protecting resident property.

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

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

1 (d) The agency may provide the following additional
2 information on an Internet site or in printed form as the
3 information becomes available:

- 4 1. The licensure status history of each facility.
- 5 2. The rating history of each facility.
- 6 3. The regulatory history of each facility, which may
7 include federal sanctions, state sanctions, federal fines,
8 state fines, and other actions.
- 9 4. Whether the facility currently possesses the Gold
10 Seal designation awarded pursuant to s. 400.235.
- 11 5. Internet links to the Internet sites of the
12 facilities or their affiliates.

13 (6) The agency may adopt rules as necessary to
14 administer this section.

15 Section 62. Section 400.0225, Florida Statutes, as
16 amended by section 2 of chapter 2000-350, Laws of Florida, is
17 reenacted to read:

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

1 the facility are prohibited from assisting a resident with or
2 attempting to influence a resident's responses to the consumer
3 satisfaction survey. The agency, or its contractor, shall
4 survey family members, guardians, or other resident designees.
5 The agency, or its contractor, shall specify the protocol for
6 conducting and reporting the consumer satisfaction surveys.
7 Reports of consumer satisfaction surveys shall protect the
8 identity of individual respondents. The agency shall contract
9 for consumer satisfaction surveys and report the results of
10 those surveys in the consumer information materials prepared
11 and distributed by the agency. The agency may adopt rules as
12 necessary to administer this section.

13 Section 63. Subsections (4) and (5) of section
14 400.141, Florida Statutes, as renumbered and amended by
15 section 4 of chapter 2000-350, Laws of Florida, are reenacted
16 to read:

17 400.141 Administration and management of nursing home
18 facilities.--Every licensed facility shall comply with all
19 applicable standards and rules of the agency and shall:

20 (4) Provide for resident use of a community pharmacy
21 as specified in s. 400.022(1)(q). Any other law to the
22 contrary notwithstanding, a registered pharmacist licensed in
23 Florida, that is under contract with a facility licensed under
24 this chapter, shall repackage a nursing facility resident's
25 bulk prescription medication which has been packaged by
26 another pharmacist licensed in any state in the United States
27 into a unit dose system compatible with the system used by the
28 nursing facility, if the pharmacist is requested to offer such
29 service. To be eligible for repackaging, a resident or the
30 resident's spouse must receive prescription medication
31 benefits provided through a former employer as part of his or

1 her retirement benefits a qualified pension plan as specified
2 in s. 4972 of the Internal Revenue Code, a federal retirement
3 program as specified under 5 C.F.R. s. 831, or a long-term
4 care policy as defined in s. 627.9404(1). A pharmacist who
5 correctly repackages and relabels the medication and the
6 nursing facility which correctly administers such repackaged
7 medication under the provisions of this subsection shall not
8 be held liable in any civil or administrative action arising
9 from the repackaging. In order to be eligible for the
10 repackaging, a nursing facility resident for whom the
11 medication is to be repackaged shall sign an informed consent
12 form provided by the facility which includes an explanation of
13 the repackaging process and which notifies the resident of the
14 immunities from liability provided herein. A pharmacist who
15 repackages and relabels prescription medications, as
16 authorized under this subsection, may charge a reasonable fee
17 for costs resulting from the implementation of this provision.

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

30
31

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

6 Section 64. Paragraph (a) of subsection (3) and
7 subsection (4) of section 400.235, Florida Statutes, as
8 amended by section 12 of chapter 2000-305 and section 7 of
9 chapter 2000-350, Laws of Florida, and subsection (9) of
10 section 400.235, Florida Statutes, as created by section 7 of
11 chapter 2000-350, Laws of Florida, are reenacted to read:

12 400.235 Nursing home quality and licensure status;
13 Gold Seal Program.--

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

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

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

9 Section 65. Subsection (1) of section 400.962, Florida
10 Statutes, as amended by section 8 of chapter 2000-350, Laws of
11 Florida, is reenacted to read:

12 400.962 License required; license application.--

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

15 Section 66. Section 10 of chapter 2000-350, Laws of
16 Florida, is reenacted to read:

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

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1 those specific statutory changes necessary to allow nursing
2 facilities to use automated medication dispensing machines.

3 Section 67. Present subsection (7) of section 627.351,
4 Florida Statutes, is redesignated as subsection (8), and a new
5 subsection (7) is added to that section, to read:

6 627.351 Insurance risk apportionment plans.--

7 (7) SENIOR-CARE-FACILITY JOINT UNDERWRITING
8 ASSOCIATION.--

9 (a) There is created a joint underwriting association
10 for senior-care facilities that are in good faith entitled,
11 but are unable, to procure liability insurance coverage
12 through the voluntary market, which is designated as the
13 Senior-Care-Facility Joint Underwriting Association. As used
14 in this subsection, the term "senior-care facility" means a
15 long-term-care facility as defined in s. 400.0060(2), a
16 nursing home facility as defined in s. 400.021(12), a
17 continuing care facility as licensed under s. 651.021, or an
18 assisted living facility as licensed under s. 400.407. A
19 senior-care facility any part of which is licensed under part
20 II or part III of chapter 400 is eligible to participate in a
21 joint underwriting association if it meets criteria in the
22 plan developed pursuant to paragraph (b).

23 (b) The association shall operate pursuant to a plan
24 of operation approved by order of the department. The plan is
25 subject to continuous review by the department. The department
26 may, by order, withdraw approval of all or part of the plan if
27 the department determines that conditions have changed since
28 approval was granted and the purposes of the plan require
29 changes in the plan.

30 (c) All insurers authorized to write one or more
31 subject lines of business in this state and insurers writing

1 one or more subject lines of business in this state under part
2 VIII of chapter 626 must participate in the association. An
3 authorized insurer's participation begins on the first day of
4 the calendar year in which the insurer was issued a
5 certificate of authority to transact insurance for one or more
6 subject lines of business in this state and terminates 1 year
7 after the end of the first calendar year during which the
8 member no longer holds a certificate of authority to transact
9 insurance for subject lines of business in this state. For
10 insurers transacting insurance for subject lines of business
11 in this state under part VIII of chapter 626, the insurer's
12 participation begins on the first day of the calendar year
13 following the year in which the insurer began transacting
14 insurance for one or more subject lines of business in this
15 state and terminates 1 year after the insurer no longer has
16 any liabilities in this state for the subject lines of
17 business. All such insurers shall be referred to in this
18 subsection as "participating insurers." As used in this
19 subsection, the term "subject lines of business" means
20 liability insurance as defined in s. 624.605(1)(b) which is
21 written in this state and does not include other casualty
22 insurance lines defined in s. 624.605 or homeowners liability
23 insurance which is reported as property insurance on financial
24 statements submitted to the department.

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

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

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

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

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

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

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

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

26 b. Developmental measures to avoid and control claims.

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

29 d. Investigation and analysis of resident complaints.

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

1 6. A requirement that coverage by the association
2 exclude coverage for punitive damages.

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

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

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

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

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

29 2. If there is any remaining operating deficit under
30 the plan after maximum billing of the premium contingency
31 assessment, the association shall levy and collect assessments

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

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

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

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

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

18 Section 68. The sum of \$500,000 is appropriated from
19 the General Revenue Fund for the Senior-Care-Facility Joint
20 Underwriting Association.

21 Section 69. The sum of \$_____ is appropriated from
22 the General Revenue Fund to the Agency for Health Care
23 Administration for the purpose of implementing the provisions
24 of this act during the 2001-2002 fiscal year.

25 Section 70. The sum of \$948,782 is appropriated from
26 the General Revenue Fund to the Department of Elderly Affairs
27 for the purpose of paying the salaries and other
28 administrative expenses of the Office of State Long-Term Care
29 Ombudsman to carry out the provisions of this act during the
30 2001-2002 fiscal year.

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1 Section 71. If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications of
4 the act which can be given effect without the invalid
5 provision or application, and to this end the provisions of
6 this act are severable.

7 Section 72. Except as otherwise expressly provided in
8 this act, this act shall take effect upon becoming a law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 1202

4 The committee substitute will expand a nursing home and
5 assisted living facility resident's right to bring a claim for
6 a violation of the resident's rights by increasing the number
7 of persons or entities who may be sued. Currently, only the
8 licensee of a nursing home, and only the owner, administrator,
9 or staff of an assisted living facility, may be sued under the
10 civil enforcement provisions contained in ss. 400.023 and
11 400.429, F.S. This amendment expands the responsible entities
12 to any person or entity who owes a statutory duty, or other
13 duty, to a resident.

14 The bill increases the types of damages a deceased resident's
15 estate can recover by allowing the estate of a deceased
16 resident to recover damages for pain and suffering incurred by
17 the resident prior to the resident's death, whether or not the
18 defendant's actions actually caused the resident's death.

19 The bill institutes a negligence standard that requires the
20 injured resident to prove the nursing home or assisted living
21 facility owed the resident a duty, the nursing home or
22 assisted living facility breached that duty, and that the
23 breach of that duty caused the resident injury and damages. A
24 resident's right under s. 400.023 and s. 400.429, F.S., to
25 seek injunctive or administrative relief for rights violations
26 is preserved and the facility is required to pay the
27 resident's reasonable attorney's fees in these cases. The bill
28 also creates a presuit investigation process.

29 The committee substitute provides punitive damages standards
30 similar to those in ss. 768.72 and 768.73, F.S. These include
31 a clear and convincing burden of proof, a level of conduct
wherein the defendant acted with intentional misconduct or
gross negligence, the imposition of vicarious liability for
punitive damages when the employer acted with gross
negligence, a limitation of the greater of 3 times
compensatory damages or \$1 million that may be exceeded to the
greater of 4 times compensatory damages or \$4 million when the
defendant's conduct was motivated solely by unreasonable
financial gain, or unlimited punitive damages when the
defendant had a specific intent to harm the claimant.

Liability insurance limits are set for both nursing homes and
assisted living facilities with limits of at least \$250,000
per claim and an aggregate of \$500,000.

The Senior-Care-Facility Joint Underwriting Association is
created to provide liability insurance where it is not
otherwise available in the market. A \$500,000 appropriation is
provided to initially fund the association and deficits are to
be funded by assessments against liability insurers as defined
in s. 624.605(1)(b), F.S.

The requirements for risk management programs in nursing homes
are amended to remove the requirement that the risk manager be
licensed under chapter 395 and to remove the requirement that
the risk manager serve no more than four homes. The risk

1 management education requirements are reduced from 3 hours to
2 1 hour and the use of information developed by the risk
3 management program for litigation is limited. The risk
4 management program for assisted living facilities is made
5 voluntary. The committee substitute also changes the assisted
6 living facility risk management requirements to remove
7 licensure of the assisted living facility risk manager, risk
8 management training for staff, and to remove the requirement
9 to report as incidents, limitations of neurological, physical
10 or sensory functions and violations of s. 39.01, F.S. The
11 definition of "sexual abuse" is removed from the assisted
12 living provisions as is the requirement that the department
13 review the risk management program as part of its annual
14 review of a facility.

15 The nursing home licensing provisions are amended as follows:

16 -- A facility may renew or retain its license if it places
17 in escrow the amount of a fine on appeal to the district
18 court of appeals.

19 -- The bill replaces the license fee schedules with a fee
20 of \$50 per bed. An additional fee of \$100 is charged for
21 each bed approved for extended congregate care and an
22 additional fee of \$75 for each bed approved for limited
23 nursing services to a maximum fee of \$10,000. The bill
24 exempts optional state supplementation beds from this
25 fee.

26 -- The definitions of the levels of deficiencies are
27 altered to classify deficiencies by the nature of the
28 deficiency and the scope of the deficiency as either
29 "isolated," "patterned," or "widespread."

30 -- The nursing home grading system is removed from the
31 bill.

Patient care issues were amended as follows:

-- A nursing home or assisted living facility is required
to refer a patient showing signs of dementia to a
physician within 30 days of observing the condition.

-- A pilot project is created to provide oversight of
patient care for medicaid recipients in the 100
highest-scoring nursing homes in the Florida Nursing
Home Guide and the 25 assisted living facilities with
the poorest regulatory history.

-- Staffing issues were altered to provide that the nursing
assistants must have 18 hours of training per year and
self report compliance as provided by rules of the
Council on Certified Nursing Assistants.

The agency is prohibited from issuing additional certificates
of need for new beds until 2006 and when a receiver is
appointed for a facility the residents are to be evaluated for
placement alternatives to moving to another long term care
facility prior to being moved. The facility is authorized to
place restrictions on volunteers in the facility.

A number of provisions of law are readopted and reenacted.

1 The agency is given authority to take administrative action
2 where a facility fraudulently alters its records. The
3 committee substitute alters the manner of payment for purposes
4 of medicaid reimbursement and the reporting of the expenditure
5 of those funds to better identify direct care expenditures.
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