



1 requiring a response to the notice; tolling the  
2 statute of limitations; limiting discovery of  
3 presuit investigation documents; limiting  
4 liability of presuit investigation  
5 participants; authorizing the obtaining of  
6 opinions from a nurse or doctor; authorizing  
7 the obtaining of unsworn statements;  
8 authorizing discovery of relevant documents;  
9 prescribing the time for acceptance of  
10 settlement offers; requiring mediation;  
11 prescribing the time to file suit; creating s.  
12 400.0234, F.S.; requiring the availability of  
13 facility records for presuit investigation;  
14 specifying the records to be made available;  
15 specifying what constitutes evidence of failure  
16 to make records available in good faith;  
17 specifying the consequences of such failure;  
18 creating s. 400.0235, F.S.; providing that the  
19 provisions of s. 768.21(8), F.S., do not apply  
20 to actions under part II of ch. 400, F.S.;  
21 creating s. 400.0236, F.S.; providing a statute  
22 of limitations; providing a statute of  
23 limitations when there is fraudulent  
24 concealment or intentional misrepresentation of  
25 fact; providing for application of the statute  
26 of limitation to accrued actions; creating s.  
27 400.0237, F.S.; requiring evidence of the basis  
28 for punitive damages; prohibiting discovery  
29 relating to financial worth; providing for  
30 proof of punitive damages; defining the terms  
31 "intentional misconduct" and "gross

1 negligence"; prescribing criteria governing  
2 employers' liability for punitive damages;  
3 providing for the remedial nature of  
4 provisions; creating s. 400.0238, F.S.;  
5 prescribing limits on the amount of punitive  
6 damages; providing for the calculation of  
7 attorney's fees; amending s. 768.735, F.S.;  
8 providing that the section is inapplicable to  
9 actions brought under ch. 400, F.S.; amending  
10 s. 415.1111, F.S.; limiting actions against  
11 nursing homes and assisted living facilities;  
12 creating s. 400.0247, F.S.; requiring that  
13 copies of certain documents be forwarded to the  
14 state attorney if punitive damages are awarded;  
15 amending s. 400.0255, F.S.; providing for  
16 applicability of provisions relating to  
17 transfer or discharge of nursing home  
18 residents; amending s. 400.062, F.S.;  
19 increasing the bed license fee for nursing home  
20 facilities; amending s. 400.071, F.S.; revising  
21 license application requirements; requiring  
22 certain disclosures; authorizing the Agency for  
23 Health Care Administration to issue an inactive  
24 license; requiring quality assurance and  
25 risk-management plans; amending s. 400.102,  
26 F.S.; providing additional grounds for action  
27 by the agency against a licensee; amending s.  
28 400.111, F.S.; prohibiting renewal of a license  
29 if an applicant has failed to pay certain  
30 fines; requiring licensees to disclose  
31 financial or ownership interests in certain

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

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

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

1           conduct to the appropriate regulatory board;  
2           requiring that the agency annually report to  
3           the Legislature on the internal risk management  
4           of assisted living facilities; amending s.  
5           400.426, F.S.; requiring that certain residents  
6           be examined by a licensed physician; amending  
7           s. 400.4275, F.S.; specifying minimum amounts  
8           of liability insurance required to be carried  
9           by an assisted living facility; amending s.  
10          400.428, F.S.; revising requirements for the  
11          survey conducted of licensed facilities by the  
12          agency; amending s. 400.429, F.S.; providing  
13          for election of survival damages, wrongful  
14          death damages, or recovery for negligence;  
15          providing for attorney's fees for injunctive  
16          relief or administrative remedy; providing that  
17          ch. 766, F.S., does not apply to actions under  
18          this section; prescribing the burden of proof;  
19          providing that a violation of a right is not  
20          negligence per se; prescribing the duty of  
21          care; prescribing a nurse's duty of care;  
22          eliminating presuit provisions; eliminating the  
23          requirement for presuit mediation; creating s.  
24          400.4293, F.S.; providing for presuit notice;  
25          prohibiting the filing of suit for a specified  
26          time; requiring a response to the notice;  
27          tolling the statute of limitations; limiting  
28          the discovery of presuit investigation  
29          documents; limiting liability of presuit  
30          investigation participants; authorizing the  
31          obtaining of opinions from a nurse or doctor;

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



1 attorney's fees; creating s. 400.4303, F.S.;  
2 requiring that copies of certain documents be  
3 forwarded to the state attorney if punitive  
4 damages are awarded; amending s. 400.434, F.S.;  
5 authorizing the Agency for Health Care  
6 Administration to use information obtained by  
7 certain councils; amending s. 400.435, F.S.,  
8 relating to maintenance of records; conforming  
9 provisions to changes made by the act; amending  
10 s. 400.441, F.S.; clarifying facility  
11 inspection requirements; amending s. 400.442,  
12 F.S., relating to pharmacy and dietary  
13 services; conforming provisions to changes made  
14 by the act; creating s. 400.449, F.S.;  
15 prohibiting the alteration or falsification of  
16 medical or other records of an assisted living  
17 facility; providing penalties; amending s.  
18 464.203, F.S.; revising certification  
19 requirements for nursing assistants;  
20 authorizing employment of certain nursing  
21 assistants pending certification; requiring  
22 continuing education; amending s. 397.405,  
23 F.S., relating to service providers; conforming  
24 provisions to changes made by the act;  
25 prohibiting the issuance of a certificate of  
26 need for additional nursing home beds;  
27 providing intent for such prohibition;  
28 reenacting s. 400.0255(3), (8), F.S., relating  
29 to discharge or transfer of residents;  
30 reenacting s. 400.23(5), F.S., relating to  
31 rules for standards of care for persons under a

1 specified age residing in nursing home  
2 facilities; reenacting s. 400.191(2), (6),  
3 F.S., relating to requirements for providing  
4 information to consumers; reenacting s.  
5 400.0225, F.S., relating to consumer  
6 satisfaction surveys for nursing homes;  
7 reenacting s. 400.141(4), (5), F.S., relating  
8 to the repackaging of residents' medication and  
9 access to other health-related services;  
10 reenacting s. 400.235(3)(a), (4), (9), F.S.,  
11 relating to designation under the nursing home  
12 Gold Seal Program; reenacting s. 400.962(1),  
13 F.S., relating to the requirement for licensure  
14 under pt. IX of ch. 400, F.S.; reenacting s. 10  
15 of ch. 2000-350, Laws of Florida, relating to  
16 requirements for a study of the use of  
17 automated medication-dispensing machines in  
18 nursing facilities and for demonstration  
19 projects and a report; amending s. 627.351,  
20 F.S.; creating the Senior Care Facility Joint  
21 Underwriting Association; defining the term  
22 "senior care facility"; requiring that the  
23 association operate under a plan approved by  
24 the Department of Insurance; requiring that  
25 certain insurers participate in the  
26 association; providing for a board of governors  
27 appointed by the Insurance Commissioner to  
28 administer the association; providing for terms  
29 of office; providing requirements for the plan  
30 of operation of the association; requiring that  
31 insureds of the association have a

1 risk-management program; providing procedures  
2 for offsetting an underwriting deficit;  
3 providing for assessments to offset a deficit;  
4 providing that a participating insurer has a  
5 cause of action against a nonpaying insurer to  
6 collect an assessment; requiring the department  
7 to review and approve rate filings of the  
8 association; providing appropriations;  
9 providing for severability; providing effective  
10 dates.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Subsection (4) of section 400.0073, Florida  
15 Statutes, is amended to read:

16 400.0073 State and local ombudsman council  
17 investigations.--

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

25 Section 2. Section 400.021, Florida Statutes, is  
26 amended to read:

27 400.021 Definitions.--When used in this part, unless  
28 the context otherwise requires, the term:

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

31

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

3           (3) "Bed reservation policy" means the number of  
4 consecutive days and the number of days per year that a  
5 resident may leave the nursing home facility for overnight  
6 therapeutic visits with family or friends or for  
7 hospitalization for an acute condition before the licensee may  
8 discharge the resident due to his or her absence from the  
9 facility.

10          (4) "Board" means the Board of Nursing Home  
11 Administrators.

12           (5) "Controlling interest" means:

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

14           (b) A person or entity that serves as an officer of,  
15 is on the board of directors of, or has a 5 percent or greater  
16 ownership interest in the management company or other entity,  
17 related or unrelated, which the applicant or licensee may  
18 contract with to operate the facility; or

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

22  
23 The term does not include a voluntary board member.

24           ~~(6)~~<sup>(5)</sup> "Custodial service" means care for a person  
25 which entails observation of diet and sleeping habits and  
26 maintenance of a watchfulness over the general health, safety,  
27 and well-being of the aged or infirm.

28           ~~(7)~~<sup>(6)</sup> "Department" means the Department of Children  
29 and Family Services.

30           ~~(8)~~<sup>(7)</sup> "Facility" means any institution, building,  
31 residence, private home, or other place, whether operated for

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

13 (9)~~(8)~~ "Geriatric outpatient clinic" means a site for  
14 providing outpatient health care to persons 60 years of age or  
15 older, which is staffed by a registered nurse or a physician  
16 assistant.

17 (10)~~(9)~~ "Geriatric patient" means any patient who is  
18 60 years of age or older.

19 (11)~~(10)~~ "Local ombudsman council" means a local  
20 long-term care ombudsman council established pursuant to s.  
21 400.0069, located within the Older Americans Act planning and  
22 service areas.

23 (12)~~(11)~~ "Nursing home bed" means an accommodation  
24 which is ready for immediate occupancy, or is capable of being  
25 made ready for occupancy within 48 hours, excluding provision  
26 of staffing; and which conforms to minimum space requirements,  
27 including the availability of appropriate equipment and  
28 furnishings within the 48 hours, as specified by rule of the  
29 agency, for the provision of services specified in this part  
30 to a single resident.

31

1           ~~(13)~~~~(12)~~ "Nursing home facility" means any facility  
2 which provides nursing services as defined in part I of  
3 chapter 464 and which is licensed according to this part.

4           ~~(14)~~~~(13)~~ "Nursing service" means such services or acts  
5 as may be rendered, directly or indirectly, to and in behalf  
6 of a person by individuals as defined in s. 464.003.

7           ~~(15)~~~~(14)~~ "Planning and service area" means the  
8 geographic area in which the Older Americans Act programs are  
9 administered and services are delivered by the Department of  
10 Elderly Affairs.

11           ~~(16)~~~~(15)~~ "Respite care" means admission to a nursing  
12 home for the purpose of providing a short period of rest or  
13 relief or emergency alternative care for the primary caregiver  
14 of an individual receiving care at home who, without  
15 home-based care, would otherwise require institutional care.

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

30           ~~(18)~~~~(17)~~ "Resident designee" means a person, other  
31 than the owner, administrator, or employee of the facility,

1 designated in writing by a resident or a resident's guardian,  
2 if the resident is adjudicated incompetent, to be the  
3 resident's representative for a specific, limited purpose.

4 (19)~~(18)~~ "State ombudsman council" means the State  
5 Long-Term Care Ombudsman Council established pursuant to s.  
6 400.0067.

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

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

21 400.0223 Resident's right to have electronic  
22 monitoring devices in room; requirements, penalties.--

23 (1) A nursing home facility shall permit a resident or  
24 legal representative of the resident to monitor the resident  
25 through the use of electronic monitoring devices. For the  
26 purposes of this section the term "electronic monitoring  
27 device" includes a video surveillance camera, an audio device,  
28 a video telephone, and an internet video surveillance device.

29 (2) A nursing home facility shall require a resident  
30 who engages in electronic monitoring to post a notice on the  
31

1 door of the resident's room. The notice must state that the  
2 room is being monitored by an electronic monitoring device.

3 (3) Monitoring conducted under this section must:

4 (a) Be noncompulsory and at the election of the  
5 resident or legal representative of the resident;

6 (b) Be funded by the resident or legal representative  
7 of the resident; and

8 (c) Protect the privacy rights of other residents and  
9 visitors to the nursing home facility to the extent reasonably  
10 possible.

11 (4) A nursing home facility may not refuse to admit an  
12 individual to residency in the facility or remove a resident  
13 from the facility because of a request for electronic  
14 monitoring.

15 (5) A nursing home facility shall make reasonable  
16 physical accommodation for electronic monitoring, by  
17 providing:

18 (a) A reasonably secure place to mount the electronic  
19 monitoring device; and

20 (b) Access to power sources.

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

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

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

30 (9) Subject to the Florida Rules of Evidence, a tape  
31 created through the use of electronic monitoring is admissible



1 in either a civil or criminal action brought in a Florida  
2 court.

3 (10)(a) A licensee who operates a nursing home  
4 facility in violation of this section is subject to a fine not  
5 exceeding \$500 per violation per day under ss. 400.102 and  
6 400.121.

7 (b) A person who willfully and without the consent of  
8 the resident hampers, obstructs, tampers with, or destroys an  
9 electronic monitoring device or tape shall be guilty of a  
10 misdemeanor of the first degree punishable as provided in s.  
11 775.082 or s. 775.083.

12 Section 4. Effective July 1, 2001, and applying to  
13 causes of action accruing on or after that date, section  
14 400.023, Florida Statutes, is amended to read:

15 400.023 Civil enforcement.--

16 (1) Any resident whose rights as specified in this  
17 part are violated ~~deprived or infringed upon~~ shall have a  
18 cause of action ~~against any licensee responsible for the~~  
19 ~~violation~~. The action may be brought by the resident or his or  
20 her guardian, by a person or organization acting on behalf of  
21 a resident with the consent of the resident or his or her  
22 guardian, or by the personal representative of the estate of a  
23 deceased resident regardless of the cause of death. If the  
24 action alleges a claim for the resident's rights or for  
25 negligence that caused the death of the resident, the claimant  
26 shall be required to elect either survival damages pursuant to  
27 s. 46.021 or wrongful death damages pursuant to s. 768.21 ~~when~~  
28 ~~the cause of death resulted from the deprivation or~~  
29 ~~infringement of the decedent's rights.~~ If the action alleges a  
30 claim for the resident's rights or for negligence that did not  
31 cause the death of the resident, the personal representative

1 of the estate may recover damages for the negligence that  
2 caused injury to the resident.The action may be brought in  
3 any court of competent jurisdiction to enforce such rights and  
4 to recover actual and punitive damages for any violation of  
5 ~~deprivation or infringement on~~ the rights of a resident or for  
6 negligence. Any resident who prevails in seeking injunctive  
7 relief or a claim for an administrative remedy is entitled to  
8 recover the costs of the action, and a reasonable attorney's  
9 fee assessed against the defendant not to exceed \$25,000. Fees  
10 shall be awarded solely for the injunctive or administrative  
11 relief and not for any claim or action for damages whether  
12 such claim or action is brought together with a request for an  
13 injunction or administrative relief or as a separate action,  
14 except as provided under s. 768.79 or the Florida Rules of  
15 Civil Procedure.~~Any plaintiff who prevails in any such action~~  
16 ~~may be entitled to recover reasonable attorney's fees, costs~~  
17 ~~of the action, and damages, unless the court finds that the~~  
18 ~~plaintiff has acted in bad faith, with malicious purpose, and~~  
19 ~~that there was a complete absence of a justiciable issue of~~  
20 ~~either law or fact. Prevailing defendants may be entitled to~~  
21 ~~recover reasonable attorney's fees pursuant to s. 57.105.~~The  
22 theories of recovery remedies provided in this section are in  
23 addition to and cumulative with other legal and administrative  
24 actions remedies available to a resident and to the agency,  
25 and the provisions of chapter 766 do not apply.

26 (2) In any claim brought pursuant to this part  
27 alleging a violation of resident's rights or negligence  
28 causing injury to or the death of a resident, the claimant  
29 shall have the burden of proving, by a preponderance of the  
30 evidence, that:

31 (a) The defendant owed a duty to the resident;

1           (b) The defendant breached the duty to the resident;

2           (c) The breach of the duty is a legal cause of loss,  
3 injury, death or damage to the resident; and

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

6  
7 Nothing in this part shall be interpreted to create strict  
8 liability. A violation of the rights set forth in s. 400.022  
9 or in any other standard or guidelines specified in this part  
10 or in any applicable administrative standard or guidelines of  
11 this state or a federal regulatory agency shall be evidence of  
12 negligence but shall not be considered negligence per se.

13           ~~(2) Attorneys' fees shall be based on the following~~  
14 ~~criteria:~~

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

16           ~~(b) The novelty and difficulty of the questions;~~

17           ~~(c) The skill requisite to perform the legal service~~  
18 ~~properly;~~

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

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

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

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

24           ~~(h) The experience, reputation, and ability of the~~  
25 ~~attorneys;~~

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

27           ~~(j) The type of fee arrangement between the attorney~~  
28 ~~and the client;~~

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

31

1           ~~(1) Whether the attorney was able to mitigate the risk~~  
2 ~~of nonpayment in any way.~~

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

8           (4) In any claim for resident's rights violation or  
9 negligence by a nurse licensed under Part I of chapter 464,  
10 such nurse shall have the duty to exercise care consistent  
11 with the prevailing professional standard of care for a nurse.  
12 The prevailing professional standard of care for a nurse shall  
13 be that level of care, skill, and treatment which, in light of  
14 all relevant surrounding circumstances is recognized as  
15 acceptable and appropriate by reasonably prudent similar  
16 nurses.

17           (5)~~(3)~~ A licensee shall not be liable for the medical  
18 negligence of any physician rendering care or treatment to the  
19 resident except for the administrative services of a medical  
20 director as required in this part. Nothing in this subsection  
21 shall be construed to protect a licensee from liability for  
22 failure to provide a resident with appropriate observation,  
23 assessment, nursing diagnosis, planning, intervention, and  
24 evaluation of care by nursing staff.

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

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

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

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

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

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

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

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

28 ~~c. Prepare an order for the court that identifies the~~  
29 ~~mediator, the scheduled date of the mediation, and other terms~~  
30 ~~of the mediation. Absent any disagreement between the parties,~~  
31

1 ~~the court may issue the order for the mediation submitted by~~  
2 ~~the parties without a hearing.~~

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

7 ~~3. The mediation shall be conducted in the following~~  
8 ~~manner:~~

9 ~~a. Each party shall ensure that all persons necessary~~  
10 ~~for complete settlement authority are present at the~~  
11 ~~mediation.~~

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

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

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

27 ~~(c) This subsection applies only to claims for~~  
28 ~~liability and damages and does not apply to actions for~~  
29 ~~injunctive relief.~~

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

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

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

11           Section 5. Effective July 1, 2001, and applying to  
12 causes of action accruing on or after that date, section  
13 400.0233, Florida Statutes, is created to read:

14           400.0233 Presuit notice; investigation; notification  
15 of violation of resident's rights or alleged negligence;  
16 claims evaluation procedure; informal discovery; review.--

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

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

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

26           (2) Prior to filing a claim for a violation of a  
27 resident's rights or a claim for negligence, a claimant  
28 alleging injury to or the death of a resident shall notify  
29 each prospective defendant by certified mail, return receipt  
30 requested, of an asserted violation of a resident's rights  
31 provided in s. 400.022 or deviation from the standard of care.

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

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

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

21 2. Internal review by counsel for each prospective  
22 defendant;

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

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

27  
28 Each defendant or insurer of the defendant shall evaluate the  
29 claim in good faith.  
30  
31



1           (b) At or before the end of the 75 days, the defendant  
2 or insurer of the defendant shall provide the claimant with a  
3 written response:

- 4           1. Rejecting the claim; or  
5           2. Making a settlement offer.

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

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

24           (5) No statement, discussion, written document,  
25 report, or other work product generated by presuit claims  
26 evaluation procedures under this section is discoverable or  
27 admissible in any civil action for any purpose by the opposing  
28 party. All participants, including, but not limited to,  
29 physicians, investigators, witnesses, and employees or  
30 associates of the defendant, are immune from civil liability  
31 arising from participation in the presuit claims evaluation

1 procedure. Any licensed physician or registered nurse may be  
2 retained by either party to provide an opinion regarding the  
3 reasonable basis of the claim. The presuit opinions of the  
4 expert are not discoverable or admissible in any civil action  
5 for any purpose by the opposing party.

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

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

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

29 (b) Documents or things.--Any party may request  
30 discovery of relevant documents or things. The documents or  
31 things must be produced, at the expense of the requesting

1 party, within 20 days after the date of receipt of the  
2 request. A party is required to produce relevant and  
3 discoverable documents or things within that party's  
4 possession or control, if in good faith it can reasonably be  
5 done within the timeframe of the claims evaluation process.

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

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

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

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

1           Section 6. Effective July 1, 2001, and applying to  
2 causes of action accruing on or after that date, section  
3 400.0234, Florida Statutes, is created to read:

4           400.0234 Availability of facility records for  
5 investigation of resident's rights violations and defenses;  
6 penalty.--

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

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

17           Section 7. Effective July 1, 2001, and applying to  
18 causes of action accruing on or after that date, section  
19 400.0235, Florida Statutes, is created to read:

20           400.0235 Certain provisions not applicable to actions  
21 under this part.--An action under this part for a violation of  
22 rights or negligence recognized under this part is not a claim  
23 for medical malpractice, and the provisions of s. 768.21(8) do  
24 not apply to a claim alleging death of the resident.

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

27           400.0236 Statute of limitations.--

28           (1) Any action for damages brought under this part  
29 shall be commenced within 2 years from the time the incident  
30 giving rise to the action occurred or within 2 years from the  
31 time the incident is discovered or should have been discovered

1 with the exercise of due diligence; however, in no event shall  
2 the action be commenced later than 4 years from the date of  
3 the incident or occurrence out of which the cause of action  
4 accrued.

5 (2) In those actions covered by this subsection in  
6 which it can be shown that fraudulent concealment or  
7 intentional misrepresentation of fact prevented the discovery  
8 of the injury, the period of limitations is extended forward 2  
9 years from the time that the injury is discovered with the  
10 exercise of due diligence, but in no event for more than 6  
11 years from the date the incident giving rise to the injury  
12 occurred.

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

25 Section 9. Section 400.0237, Florida Statutes, is  
26 created to read:

27 400.0237 Punitive damages; pleading; burden of  
28 proof.--

29 (1) In any action for damages brought under this part,  
30 no claim for punitive damages shall be permitted unless there  
31 is a reasonable showing by evidence in the record or proffered

1 by the claimant which would provide a reasonable basis for  
2 recovery of such damages. The claimant may move to amend her  
3 or his complaint to assert a claim for punitive damages as  
4 allowed by the rules of civil procedure. The rules of civil  
5 procedure shall be liberally construed so as to allow the  
6 claimant discovery of evidence which appears reasonably  
7 calculated to lead to admissible evidence on the issue of  
8 punitive damages. No discovery of financial worth shall  
9 proceed until after the pleading concerning punitive damages  
10 is permitted.

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

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

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

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

30  
31

1           (a) The employer, principal, corporation, or other  
2 legal entity actively and knowingly participated in such  
3 conduct;

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

7           (c) The employer, principal, corporation, or other  
8 legal entity engaged in conduct that constituted gross  
9 negligence and that contributed to the loss, damages, or  
10 injury suffered by the claimant.

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

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

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

19           400.0238 Punitive damages; limitation.--

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

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

25           2. The sum of \$1 million.

26           (b) Where the fact finder determines that the wrongful  
27 conduct proven under this section was motivated solely by  
28 unreasonable financial gain and determines that the  
29 unreasonably dangerous nature of the conduct, together with  
30 the high likelihood of injury resulting from the conduct, was  
31 actually known by the managing agent, director, officer, or

1 other person responsible for making policy decisions on behalf  
2 of the defendant, it may award an amount of punitive damages  
3 not to exceed the greater of:

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

7 2. The sum of \$4 million.

8 (c) Where the fact finder determines that at the time  
9 of injury the defendant had a specific intent to harm the  
10 claimant and determines that the defendant's conduct did in  
11 fact harm the claimant, there shall be no cap on punitive  
12 damages.

13 (d) This subsection is not intended to prohibit an  
14 appropriate court from exercising its jurisdiction under s.  
15 768.74 in determining the reasonableness of an award of  
16 punitive damages that is less than three times the amount of  
17 compensatory damages.

18 (2) The claimant's attorney's fees, if payable from  
19 the judgment, are, to the extent that the fees are based on  
20 the punitive damages, calculated based on the final judgment  
21 for punitive damages. This subsection does not limit the  
22 payment of attorney's fees based upon an award of damages  
23 other than punitive damages.

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

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

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

31 768.735 Punitive damages; exceptions; limitation.--



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

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

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

19           Section 12. Section 415.1111, Florida Statutes, is  
20 amended to read:

21           415.1111 Civil actions.--A vulnerable adult who has  
22 been abused, neglected, or exploited as specified in this  
23 chapter has a cause of action against any perpetrator and may  
24 recover actual and punitive damages for such abuse, neglect,  
25 or exploitation. The action may be brought by the vulnerable  
26 adult, or that person's guardian, by a person or organization  
27 acting on behalf of the vulnerable adult with the consent of  
28 that person or that person's guardian, or by the personal  
29 representative of the estate of a deceased victim without  
30 regard to whether the cause of death resulted from the abuse,  
31 neglect, or exploitation. The action may be brought in any

1 court of competent jurisdiction to enforce such action and to  
2 recover actual and punitive damages for any deprivation of or  
3 infringement on the rights of a vulnerable adult. A party who  
4 prevails in any such action may be entitled to recover  
5 reasonable attorney's fees, costs of the action, and damages.  
6 The remedies provided in this section are in addition to and  
7 cumulative with other legal and administrative remedies  
8 available to a vulnerable adult. Notwithstanding the  
9 foregoing, any civil action for damages against any licensee  
10 or entity who establishes, controls, conducts, manages, or  
11 operates a facility licensed under part II of chapter 400  
12 relating to its operation of the licensed facility shall be  
13 brought pursuant to s. 400.023, or against any licensee or  
14 entity who establishes, controls, conducts, manages, or  
15 operates a facility licensed under part III of chapter 400  
16 relating to its operation of the licensed facility shall be  
17 brought pursuant to s. 400.429. Such licensee or entity shall  
18 not be vicariously liable for the acts or omissions of its  
19 employees or agents or any other third party in an action  
20 brought under this section.

21 Section 13. Effective October 1, 2001, and applicable  
22 to causes of action accruing on or after that date, section  
23 400.0247, Florida Statutes, is created to read:

24 400.0247 Copies forwarded to state attorney.--In any  
25 action in which punitive damages are awarded, notwithstanding  
26 any appeals, the Clerk of the Court shall forward to the state  
27 attorney of that circuit a copy of the complaint, any amended  
28 complaints, the verdict form, and the final judgment.

29 Section 14. Subsection (17) is added to section  
30 400.0255, Florida Statutes, to read:

31

1           400.0255 Resident transfer or discharge; requirements  
2 and procedures; hearings.--

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

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

9           400.062 License required; fee; disposition; display;  
10 transfer.--

11           (3) The annual license fee required for each license  
12 issued under this part shall be comprised of two parts. Part  
13 I of the license fee shall be the basic license fee. The rate  
14 per bed for the basic license fee shall be established  
15 annually and shall be \$50 per bed. The agency may adjust the  
16 per bed licensure fees by the Consumer Price Index based on  
17 the 12 months immediately preceding the increase ~~must be~~  
18 ~~reasonably calculated~~ to cover the cost of regulation under  
19 this part, ~~but may not exceed \$35 per bed.~~ Part II of the  
20 license fee shall be the resident protection fee, which shall  
21 be at the rate of not less than 25 cents per bed. The rate per  
22 bed shall be the minimum rate per bed, and such rate shall  
23 remain in effect until the effective date of a rate per bed  
24 adopted by rule by the agency pursuant to this part. At such  
25 time as the amount on deposit in the Resident Protection Trust  
26 Fund is less than ~~\$1 million~~~~\$500,000~~, the agency may adopt  
27 rules to establish a rate which may not exceed \$10 per bed.  
28 The rate per bed shall revert back to the minimum rate per bed  
29 when the amount on deposit in the Resident Protection Trust  
30 Fund reaches ~~\$1 million~~~~\$500,000~~, except that any rate  
31 established by rule shall remain in effect until such time as

1 the rate has been equally required for each license issued  
2 under this part. Any amount in the fund in excess of \$2  
3 million~~\$800,000~~ shall revert to the Health Care Trust Fund  
4 and may not be expended without prior approval of the  
5 Legislature. The agency may prorate the annual license fee  
6 for those licenses which it issues under this part for less  
7 than 1 year. Funds generated by license fees collected in  
8 accordance with this section shall be deposited in the  
9 following manner:

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

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

26 Section 16. Subsections (2) and (5) of section  
27 400.071, Florida Statutes, are amended, and subsections (11)  
28 and (12) are added to that section, to read:

29 400.071 Application for license.--

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

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

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

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

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

25           (e) A signed affidavit disclosing any financial or  
26 ownership interest that a person or entity described in  
27 paragraph (a) or paragraph (d) has held in the last 5 years in  
28 any entity licensed by this state or any other state to  
29 provide health or residential care which has closed  
30 voluntarily or involuntarily; has filed for bankruptcy; has  
31 had a receiver appointed; has had a license denied, suspended,

1 or revoked; or has had an injunction issued against it which  
2 was initiated by a regulatory agency. The affidavit must  
3 disclose the reason any such entity was closed, whether  
4 voluntarily or involuntarily.

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

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

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

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

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

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

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

28           400.102 Action by agency against licensee; grounds.--

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

31

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

3 (b) Misappropriation or conversion of the property of  
4 a resident of the facility;

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

9 (d) Violation of provisions of this part or rules  
10 adopted under this part; ~~or~~

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

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

16 Section 18. Subsections (3) and (4) are added to  
17 section 400.111, Florida Statutes, to read:

18 400.111 Expiration of license; renewal.--

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

26 (4) The licensee shall submit a signed affidavit  
27 disclosing any financial or ownership interest that a licensee  
28 has held within the last 5 years in any entity licensed by the  
29 state or any other state to provide health or residential care  
30 which entity has closed voluntarily or involuntarily; has  
31 filed for bankruptcy; has had a receiver appointed; has had a



1 license denied, suspended, or revoked; or has had an  
2 injunction issued against it which was initiated by a  
3 regulatory agency. The affidavit must disclose the reason such  
4 entity was closed, whether voluntarily or involuntarily.

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

7 400.118 Quality assurance; early warning system;  
8 monitoring; rapid response teams.--

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

1 formal and informal interviews with residents, family members,  
2 facility staff, resident guests, volunteers, other regulatory  
3 staff, and representatives of a long-term care ombudsman  
4 council or Florida advocacy council.

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

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

1 during monitoring visits or evaluations, and any person who  
2 participates in such activities may not be prevented from  
3 testifying as to matters within his or her knowledge, but such  
4 witness may not be asked about his or her participation in  
5 such activities. The exclusion from the discovery or  
6 introduction of evidence in any civil or administrative action  
7 provided for herein shall not apply when the quality-of-care  
8 monitor makes a report to the appropriate authorities  
9 regarding a threat to the health or safety of a resident.

10 Section 20. Section 400.121, Florida Statutes, is  
11 amended to read:

12 400.121 Denial, suspension, revocation of license;  
13 moratorium on admissions; administrative fines; procedure;  
14 order to increase staffing.--

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

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

19 (b) A demonstrated pattern of deficient practice;

20 (c) Failure to pay any outstanding fines assessed by  
21 final order of the agency or final order of the Health Care  
22 Financing Administration pursuant to requirements for federal  
23 certification. The agency may renew or approve the license of  
24 an applicant following the assessment of a fine by final order  
25 if such fine has been paid into an escrow account pending an  
26 appeal of a final order;

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

28 or

29 (e) An adverse action against any controlling interest  
30 by a regulatory agency, including the appointment of a  
31 receiver; denial, suspension, or revocation of a license; or

1 the issuance of an injunction by a regulatory agency. If the  
2 adverse action involves solely the management company, the  
3 applicant or licensee shall be given 30 days to remedy before  
4 final action is taken.

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

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

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

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

29 (b) Where the agency has placed a moratorium on  
30 admissions on any facility two times within a 7-year period,  
31 the agency may suspend the license of the nursing home and the

1 facility's management company, if any. The licensee shall be  
2 afforded an administrative hearing within 90 days after the  
3 suspension to determine whether the license should be revoked.  
4 During the suspension, the agency shall take the facility into  
5 receivership and shall operate the facility.

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

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

30 (7) An administrative proceeding challenging an action  
31 by the agency to enforce licensure requirements shall be

1 reviewed on the basis of the facts and conditions that  
2 resulted in the initial agency action.

3 Section 21. Subsection (12) is added to section  
4 400.126, Florida Statutes, to read:

5 400.126 Receivership proceedings.--

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

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

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

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

31

1           (15) Submit semiannually to the agency, or more  
2 frequently if requested by the agency, information regarding  
3 facility staff-to-resident ratios, staff turnover, and staff  
4 stability, including information regarding certified nursing  
5 assistants, licensed nurses, the director of nursing, and the  
6 facility administrator. For purposes of this reporting:

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

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

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

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

30           (17) Notify a licensed physician when a resident  
31 exhibits signs of dementia or cognitive impairment or has a

1 change of condition in order to rule out the presence of an  
2 underlying physiological condition that may be contributing to  
3 such dementia or impairment. The notification must occur  
4 within 30 days after the acknowledgement of such signs by  
5 facility staff. If an underlying condition is determined to  
6 exist, the facility shall arrange, with the appropriate health  
7 care provider, the necessary care and services to treat the  
8 condition.

9 (18) If the facility implements a dining and  
10 hospitality attendant program, ensure that the program is  
11 developed and implemented under the supervision of the  
12 facility director of nursing. A licensed nurse, licensed  
13 speech or occupational therapist, or a registered dietitian  
14 must conduct training of dining and hospitality attendants. A  
15 person employed by a facility as a dining and hospitality  
16 attendant must perform tasks under the direct supervision of a  
17 licensed nurse.

18 (19) Report to the agency any filing for bankruptcy  
19 protection by the facility or its parent corporation,  
20 divestiture or spin-off of its assets, or corporate  
21 reorganization within 30 days after the completion of such  
22 activity.

23 (20) Maintain liability insurance coverage that is in  
24 force at all times.

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

31



1           Section 23. Section 400.1413, Florida Statutes, is  
2 created to read:

3           400.1413 Volunteers in nursing homes.--

4           (1) It is the intent of the Legislature to encourage  
5 the involvement of volunteers in nursing homes in this state.  
6 The Legislature also acknowledges that the licensee is  
7 responsible for all the activities that take place in the  
8 nursing home and recognizes the licensee's need to be aware of  
9 and coordinate volunteer activities in the nursing home.  
10 Therefore, a nursing home may require that volunteers:

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

13           (b) Wear an identification badge while in the  
14 building.

15           (c) Participate in a facility orientation and training  
16 program.

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

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

22           400.147 Internal risk-management and quality-assurance  
23 program.--

24           (1) Every facility shall, as part of its  
25 administrative functions, establish an internal  
26 risk-management and quality-assurance program, the purpose of  
27 which is to assess resident-care practices; review facility  
28 quality indicators, facility incident reports, deficiencies  
29 cited by the agency, and resident grievances; and develop  
30 plans of action to correct and respond quickly to identified  
31 quality deficiencies. The program must include:

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

5       (b) A risk-management and quality-assurance committee  
6 consisting of the facility risk manager, the administrator,  
7 the director of nursing, the medical director, and at least  
8 three other members of the facility staff. The risk-management  
9 and quality-assurance committee shall meet at least monthly.

10       (c) Policies and procedures to implement the internal  
11 risk-management and quality-assurance program, which must  
12 include the investigation and analysis of the frequency and  
13 causes of general categories and specific types of adverse  
14 incidents to residents.

15       (d) The development and implementation of an incident  
16 reporting system based upon the affirmative duty of all health  
17 care providers and all agents and employees of the licensed  
18 health care facility to report adverse incidents to the risk  
19 manager, or to his or her designee, within 3 business days  
20 after their occurrence.

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

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

28           2. At least 1 hour of such education and training must  
29 be provided annually for all nonphysician personnel of the  
30 licensed facility working in clinical areas and providing  
31 resident care.

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

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

5       (3) In addition to the programs mandated by this  
6 section, other innovative approaches intended to reduce the  
7 frequency and severity of adverse incidents to residents and  
8 violations of residents' rights shall be encouraged and their  
9 implementation and operation facilitated.

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

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

27       (a) An event over which facility personnel could  
28 exercise control and which is associated in whole or in part  
29 with the facility's intervention, rather than the condition  
30 for which such intervention occurred, and which results in one  
31 of the following:

- 1           1. Death;  
2           2. Brain or spinal damage;  
3           3. Permanent disfigurement;  
4           4. Fracture or dislocation of bones or joints;  
5           5. A limitation of neurological, physical, or sensory  
6 function;  
7           6. Any condition that required medical attention to  
8 which the resident has not given his or her informed consent,  
9 including failure to honor advanced directives; or  
10           7. Any condition that required the transfer of the  
11 resident, within or outside the facility, to a unit providing  
12 a more acute level of care due to the adverse incident, rather  
13 than the resident's condition prior to the adverse incident;  
14           (b) Abuse, neglect, or exploitation as defined in s.  
15 415.102;  
16           (c) Abuse, neglect and harm as defined in s. 39.01;  
17           (d) Resident elopement; or  
18           (e) An event that is reported to law enforcement.  
19           (6) The internal risk manager of each licensed  
20 facility shall:  
21           (a) Investigate every allegation of sexual misconduct  
22 which is made against a member of the facility's personnel who  
23 has direct patient contact when the allegation is that the  
24 sexual misconduct occurred at the facility or at the grounds  
25 of the facility;  
26           (b) Report every allegation of sexual misconduct to  
27 the administrator of the licensed facility; and  
28           (c) Notify the resident representative or guardian of  
29 the victim that an allegation of sexual misconduct has been  
30 made and that an investigation is being conducted.  
31

1           (7) The facility shall initiate an investigation and  
2 shall notify the agency within 1 business day after the risk  
3 manager or his or her designee has received a report pursuant  
4 to paragraph (1)(d). The notification must be made in writing  
5 and be provided electronically, by facsimile device or  
6 overnight mail delivery. The notification must include  
7 information regarding the identity of the affected resident,  
8 the type of adverse incident, the initiation of an  
9 investigation by the facility, and whether the events causing  
10 or resulting in the adverse incident represent a potential  
11 risk to any other resident. The notification is confidential  
12 as provided by law and is not discoverable or admissible in  
13 any civil or administrative action, except in disciplinary  
14 proceedings by the agency or the appropriate regulatory board.  
15 The agency may investigate, as it deems appropriate, any such  
16 incident and prescribe measures that must or may be taken in  
17 response to the incident. The agency shall review each  
18 incident and determine whether it potentially involved conduct  
19 by the health care professional who is subject to disciplinary  
20 action, in which case the provisions of s. 456.073 shall  
21 apply.

22           (8)(a) Each facility shall complete the investigation  
23 and submit an adverse-incident report to the agency for each  
24 adverse incident within 15 calendar days after its occurrence.  
25 If after a complete investigation, the risk manager determines  
26 that the incident was not an adverse incident as defined in  
27 subsection (5), the facility shall include this information in  
28 the report. The agency shall develop a form for reporting this  
29 information.

30           (b) The information reported to the agency pursuant to  
31 paragraph (a) which relates to persons licensed under chapter

1 458, chapter 459, chapter 461, or chapter 466 shall be  
2 reviewed by the agency. The agency shall determine whether any  
3 of the incidents potentially involved conduct by a health care  
4 professional who is subject to disciplinary action, in which  
5 case the provisions of s. 456.073 shall apply.

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

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

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

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

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

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

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

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

14 (14) The agency shall annually submit to the  
15 Legislature a report on nursing home adverse incidents. The  
16 report must include the following information arranged by  
17 county:

18 (a) The total number of adverse incidents.

19 (b) A listing, by category, of the types of adverse  
20 incidents, the number of incidents occurring within each  
21 category, and the type of staff involved.

22 (c) A listing, by category, of the types of injury  
23 caused and the number of injuries occurring within each  
24 category.

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

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

29 Section 25. Section 400.148, Florida Statutes, is  
30 created to read:

31

1           400.148 Medicaid "Up-or-Out" Quality of Care Contract  
2 Management Program.--

3           (1) The Legislature finds that the federal Medicare  
4 program has implemented successful models of managing the  
5 medical and supportive-care needs of long-term nursing home  
6 residents. These programs have maintained the highest  
7 practicable level of good health and have the potential to  
8 reduce the incidence of preventable illnesses among long-stay  
9 residents of nursing homes, thereby increasing the quality of  
10 care for residents and reducing the number of lawsuits against  
11 nursing homes. Such models are operated at no cost to the  
12 state. It is the intent of the Legislature that the Agency for  
13 Health Care Administration replicate such oversight for  
14 Medicaid recipients in poor-performing nursing homes and in  
15 assisted living facilities and nursing homes that are  
16 experiencing disproportionate numbers of lawsuits, with the  
17 goal of improving the quality of care in such homes or  
18 facilitating the revocation of licensure.

19           (2) The Agency for Health Care Administration shall  
20 develop a pilot project in selected counties to demonstrate  
21 the effect of assigning skilled and trained medical personnel  
22 to ensure the quality of care, safety, and continuity of care  
23 for long-stay Medicaid recipients in the highest-scoring  
24 nursing homes in the Florida Nursing Home Guide on the date  
25 the project is implemented. The agency is authorized to begin  
26 the pilot project, subject to appropriation, in the  
27 highest-scoring homes in counties where Evercare services are  
28 immediately available. On January 1 of each year of the pilot  
29 project, the agency shall submit to the appropriations and  
30 substantive committees of the Legislature and the Governor an  
31 assessment of the program and a proposal for expansion of the



1 program to additional facilities. The staff of the pilot  
2 project shall assist regulatory staff in imposing regulatory  
3 sanctions, including revocation of licensure, pursuant to s.  
4 400.121 against nursing homes that have quality-of-care  
5 violations.  
6 (3) The pilot project must ensure:  
7 (a) Oversight and coordination of all aspects of a  
8 resident's medical care and stay in a nursing home;  
9 (b) Facilitation of close communication between the  
10 resident, the resident's guardian or legal representative, the  
11 resident's attending physician, the resident's family, and  
12 staff of the nursing facility;  
13 (c) Frequent onsite visits to the resident;  
14 (d) Early detection of medical or quality problems  
15 that have the potential to lead to adverse outcomes and  
16 unnecessary hospitalization;  
17 (e) Close communication with regulatory staff;  
18 (f) Immediate investigation of resident  
19 quality-of-care complaints and communication and cooperation  
20 with the appropriate entity to address those complaints,  
21 including the ombudsman, state agencies, agencies responsible  
22 for Medicaid program integrity, and local law enforcement  
23 agencies;  
24 (g) Assistance to the resident or the resident's  
25 representative to relocate the resident if quality-of-care  
26 issues are not otherwise addressed; and  
27 (h) Use of Medicare and other third-party funds to  
28 support activities of the program, to the extent possible.  
29 (4) The agency shall coordinate the pilot project  
30 activities with providers approved by Medicare to operate  
31 Evercare demonstration projects.

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

4           (6) The agency shall, jointly with the Statewide  
5 Public Guardianship Office, develop a system in the pilot  
6 project areas to identify Medicaid recipients who are  
7 residents of a participating nursing home or assisted living  
8 facility who have diminished ability to make their own  
9 decisions and who do not have relatives or family available to  
10 act as guardians in nursing homes listed on the Nursing Home  
11 Guide Watch List. The agency and the Statewide Public  
12 Guardianship Office shall give such residents priority for  
13 publicly funded guardianship services.

14           Section 26. Section 400.1755, Florida Statutes, is  
15 created to read:

16           400.1755 Care for persons with Alzheimer's disease or  
17 other related disorders.--

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

24           (b) A direct caregiver who is employed by a facility  
25 that provides care for residents with Alzheimer's disease or  
26 other related disorders and who provides direct care to such  
27 residents must complete the required initial training and 4  
28 additional hours of training developed or approved by the  
29 Department of Elderly Affairs. The training must be completed  
30 within 9 months after beginning employment.

31

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

6           (3) Upon completing any training listed in subsection  
7 (1), the employee or direct caregiver shall be issued a  
8 certificate that includes the name of the training provider,  
9 the topic covered, and the date and signature of the training  
10 provider. The certificate is evidence of completion of  
11 training in the identified topic, and the employee or direct  
12 caregiver is not required to repeat training in that topic if  
13 the employee or direct caregiver changes employment to a  
14 different facility. The direct caregiver must comply with  
15 other applicable continuing education requirements.

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

19           (5) The Department of Elderly Affairs shall keep a  
20 current list of providers who are approved to provide initial  
21 and continuing education for staff of facilities that provide  
22 care for persons with Alzheimer's disease or other related  
23 disorders.

24           (6) The Department of Elderly Affairs shall adopt  
25 rules to establish standards for trainers and training  
26 necessary to administer this section.

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

29           400.19 Right of entry and inspection.--

30           (4) The agency shall conduct unannounced onsite  
31 facility reviews following written verification of licensee

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

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

19 400.191 Availability, distribution, and posting of  
20 reports and records.--

21 (3) Each nursing home facility licensee shall maintain  
22 as public information, available upon request, records of all  
23 cost and inspection reports pertaining to that facility that  
24 have been filed with, or issued by, any governmental agency.  
25 Copies of such reports shall be retained in such records for  
26 not less than 5 years from the date the reports are filed or  
27 issued.

28 (a) The agency shall quarterly publish a "Nursing Home  
29 Guide Watch List" to assist consumers in evaluating the  
30 quality of nursing home care in Florida. The watch list must  
31 identify each facility that met the criteria for a conditional

1 licensure status on any day within the quarter covered by the  
2 list and each facility that was operating under bankruptcy  
3 protection on any day within the quarter. The watch list must  
4 include, but is not limited to, the facility's name, address,  
5 and ownership; the county in which the facility operates; the  
6 license expiration date; the number of licensed beds; a  
7 description of the deficiency causing the facility to be  
8 placed on the list; any corrective action taken; and the  
9 cumulative number of times the facility has been on a watch  
10 list. The watch list must include a brief description  
11 regarding how to choose a nursing home, the categories of  
12 licensure, the agency's inspection process, an explanation of  
13 terms used in the watch list, and the addresses and phone  
14 numbers of the agency's managed care and health quality area  
15 offices.

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

20 (5) Every nursing home facility licensee shall:

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

24 1. A concise summary of the last inspection report  
25 pertaining to the nursing home and issued by the agency, with  
26 references to the page numbers of the full reports, noting any  
27 deficiencies found by the agency and the actions taken by the  
28 licensee to rectify such deficiencies and indicating in such  
29 summaries where the full reports may be inspected in the  
30 nursing home.

31

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

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

6           400.211 Persons employed as nursing assistants;  
7 certification requirement.--

8           (2) The following categories of persons who are not  
9 certified as nursing assistants under part II of chapter 464  
10 may be employed by a nursing facility for a period of 4  
11 months:

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

14           (b) Persons who have been positively verified as  
15 actively certified and on the registry in another state with  
16 no findings of abuse, neglect, or exploitation in that state;  
17 or

18           (c) Persons who have preliminarily passed the state's  
19 certification exam.

20  
21 The certification requirement must be met within 4 months  
22 after initial employment as a nursing assistant in a licensed  
23 nursing facility.

24           (4) When employed by a nursing home facility for a  
25 12-month period or longer, a nursing assistant, to maintain  
26 certification, shall submit to a performance review every 12  
27 months and must receive regular in-service education based on  
28 the outcome of such reviews. The in-service training must:

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

- 1           (b) Include, at a minimum:  
2           1. Techniques for assisting with eating and proper  
3 feeding;  
4           2. Principles of adequate nutrition and hydration;  
5           3. Techniques for assisting and responding to the  
6 cognitively impaired resident or the resident with difficult  
7 behaviors;  
8           4. Techniques for caring for the resident at the  
9 end-of-life; and  
10          5. Recognizing changes that place a resident at risk  
11 for pressure ulcers and falls; and  
12          (c) Address areas of weakness as determined in nursing  
13 assistant performance reviews and may address the special  
14 needs of residents as determined by the nursing home facility  
15 staff.

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

18           400.23 Rules; evaluation and deficiencies; licensure  
19 status.--

20           (2) Pursuant to the intention of the Legislature, the  
21 agency, in consultation with the Department of Health and the  
22 Department of Elderly Affairs, shall adopt and enforce rules  
23 to implement this part, which shall include reasonable and  
24 fair criteria in relation to:

25           (a) The location and construction of the facility;  
26 including fire and life safety, plumbing, heating, cooling,  
27 lighting, ventilation, and other housing conditions which will  
28 ensure the health, safety, and comfort of residents, including  
29 an adequate call system. The agency shall establish standards  
30 for facilities and equipment to increase the extent to which  
31 new facilities and a new wing or floor added to an existing

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

23 (b) The number and qualifications of all personnel,  
24 including management, medical, nursing, and other professional  
25 personnel, and nursing assistants, orderlies, and support  
26 personnel, having responsibility for any part of the care  
27 given residents.

28 (c) All sanitary conditions within the facility and  
29 its surroundings, including water supply, sewage disposal,  
30 food handling, and general hygiene which will ensure the  
31 health and comfort of residents.



1 (d) The equipment essential to the health and welfare  
2 of the residents.

3 (e) A uniform accounting system.

4 (f) The care, treatment, and maintenance of residents  
5 and measurement of the quality and adequacy thereof, based on  
6 rules developed under this chapter and the Omnibus Budget  
7 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,  
8 1987), Title IV (Medicare, Medicaid, and Other Health-Related  
9 Programs), Subtitle C (Nursing Home Reform), as amended.

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

1           (h) The implementation of the consumer-satisfaction  
2 survey pursuant to s. 400.0225; the availability,  
3 distribution, and posting of reports and records pursuant to  
4 s. 400.191; and the Gold Seal Program pursuant to s. 400.235.

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

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

17 (b) The agency shall adopt rules to allow properly  
18 trained staff of a nursing facility, in addition to certified  
19 nursing assistants and licensed nurses, to assist residents  
20 with eating. The rules shall specify the minimum training  
21 requirements and shall specify the physiological conditions or  
22 disorders of residents which would necessitate that the eating  
23 assistance be provided by nursing personnel of the facility.  
24 Nonnursing staff providing eating assistance to residents  
25 under the provisions of this subsection shall not count  
26 towards compliance with minimum staffing standards.

27 (c) Licensed practical nurses licensed under chapter  
28 464 who are providing nursing services in nursing home  
29 facilities under this part may supervise the activities of  
30 other licensed practical nurses, certified nursing assistants,  
31 and other unlicensed personnel providing services in such

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

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

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

23 (b) A conditional licensure status means that a  
24 facility, due to the presence of one or more class I or class  
25 II deficiencies, or class III deficiencies not corrected  
26 within the time established by the agency, is not in  
27 substantial compliance at the time of the survey with criteria  
28 established under this part or, with rules adopted by the  
29 agency, ~~or, if applicable, with rules adopted under the~~  
30 ~~Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.~~  
31 ~~100-203) (December 22, 1987), Title IV (Medicare, Medicaid,~~

1 ~~and Other Health-Related Programs), Subtitle C (Nursing Home~~  
2 ~~Reform), as amended.~~ If the facility has no class I, class  
3 II, or class III deficiencies ~~comes into substantial~~  
4 ~~compliance~~ at the time of the followup survey, a standard  
5 licensure status may be assigned.

6 (c) In evaluating the overall quality of care and  
7 services and determining whether the facility will receive a  
8 conditional or standard license, the agency shall consider the  
9 needs and limitations of residents in the facility and the  
10 results of interviews and surveys of a representative sampling  
11 of residents, families of residents, ombudsman council members  
12 in the planning and service area in which the facility is  
13 located, guardians of residents, and staff of the nursing home  
14 facility.

15 (d) The current licensure status of each facility must  
16 be indicated in bold print on the face of the license. A list  
17 of the deficiencies of the facility shall be posted in a  
18 prominent place that is in clear and unobstructed public view  
19 at or near the place where residents are being admitted to  
20 that facility. Licensees receiving a conditional licensure  
21 status for a facility shall prepare, within 10 working days  
22 after receiving notice of deficiencies, a plan for correction  
23 of all deficiencies and shall submit the plan to the agency  
24 for approval. ~~Correction of all deficiencies, within the~~  
25 ~~period approved by the agency, shall result in termination of~~  
26 ~~the conditional licensure status. Failure to correct the~~  
27 ~~deficiencies within a reasonable period approved by the agency~~  
28 ~~shall be grounds for the imposition of sanctions pursuant to~~  
29 ~~this part.~~

30 (e) Each licensee shall post its license in a  
31 prominent place that is in clear and unobstructed public view

1 at or near the place where residents are being admitted to the  
2 facility.

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

5 1. Establish uniform procedures for the evaluation of  
6 facilities.

7 2. Provide criteria in the areas referenced in  
8 paragraph (c).

9 3. Address other areas necessary for carrying out the  
10 intent of this section.

11 (8) The agency shall adopt rules to provide that, when  
12 the criteria established under subsection (2) are not met,  
13 such deficiencies shall be classified according to the nature  
14 and the scope of the deficiency. The scope shall be cited as  
15 isolated, patterned, or widespread. An isolated deficiency is  
16 a deficiency affecting one or a very limited number of  
17 residents, or involving one or a very limited number of staff,  
18 or a situation that occurred only occasionally or in a very  
19 limited number of locations. A patterned deficiency is a  
20 deficiency where more than a very limited number of residents  
21 are affected, or more than a very limited number of staff are  
22 involved, or the situation has occurred in several locations,  
23 or the same resident or residents have been affected by  
24 repeated occurrences of the same deficient practice but the  
25 effect of the deficient practice is not found to be pervasive  
26 throughout the facility. A widespread deficiency is a  
27 deficiency in which the problems causing the deficiency are  
28 pervasive in the facility or represent systemic failure that  
29 has affected or has the potential to affect a large portion of  
30 the facility's residents.The agency shall indicate the

31

1 classification on the face of the notice of deficiencies as  
2 follows:

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

25 (b) A class II deficiency is a deficiency that  
26 ~~deficiencies are those which~~ the agency determines has  
27 compromised the resident's ability to maintain or reach his or  
28 her highest practicable physical, mental, and psychosocial  
29 well-being, as defined by an accurate and comprehensive  
30 resident assessment, plan of care, and provision of services  
31 ~~have a direct or immediate relationship to the health, safety,~~

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



1 one or more class I or class II deficiencies during the last  
2 annual inspection or any inspection or complaint investigation  
3 since the last annual inspection.A citation for a class III  
4 deficiency must ~~shall~~ specify the time within which the  
5 deficiency is required to be corrected. If a class III  
6 deficiency is corrected within the time specified, no civil  
7 penalty shall be imposed, ~~unless it is a repeated offense.~~

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

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

14 400.235 Nursing home quality and licensure status;  
15 Gold Seal Program.--

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

18 (a) Had no class I or class II deficiencies within the  
19 30 months preceding application for the program.

20 (b) Evidence financial soundness and stability  
21 according to standards adopted by the agency in administrative  
22 rule.

23 (c) Participate consistently in the required consumer  
24 satisfaction process as prescribed by the agency, and  
25 demonstrate that information is elicited from residents,  
26 family members, and guardians about satisfaction with the  
27 nursing facility, its environment, the services and care  
28 provided, the staff's skills and interactions with residents,  
29 attention to resident's needs, and the facility's efforts to  
30 act on information gathered from the consumer satisfaction  
31 measures.

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

3 (e) Have a stable workforce, as described in s.  
4 400.141, as evidenced by a relatively low rate of turnover  
5 among certified nursing assistants and licensed nurses within  
6 the 30 months preceding application for the Gold Seal Program,  
7 and demonstrate a continuing effort to maintain a stable  
8 workforce and to reduce turnover of licensed nurses and  
9 certified nursing assistants.

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

14 (g) Provide targeted inservice training provided to  
15 meet training needs identified by internal or external quality  
16 assurance efforts.

17  
18 A facility assigned a conditional licensure status may not  
19 qualify for consideration for the Gold Seal Program until  
20 after it has operated for 30 months with no class I or class  
21 II deficiencies and has completed a regularly scheduled  
22 relicensure survey.

23 Section 32. Section 400.275, Florida Statutes, is  
24 created to read:

25 400.275 Agency duties.--

26 (1) The agency shall ensure that each newly hired  
27 nursing home surveyor, as a part of basic training, is  
28 assigned full-time to a licensed nursing home for at least 2  
29 days within a 7-day period to observe facility operations  
30 outside of the survey process before the surveyor begins  
31 survey responsibilities. Such observations may not be the sole

1 basis of a deficiency citation against the facility. The  
2 agency may not assign an individual to be a member of a survey  
3 team for purposes of a survey, evaluation, or consultation  
4 visit at a nursing home facility in which the surveyor was an  
5 employee within the preceding 5 years.

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

11 (3) Each member of a nursing home survey team who is a  
12 health professional licensed under part I of chapter 464, part  
13 X of chapter 468, or chapter 491, shall earn not less than 50  
14 percent of required continuing education credits in geriatric  
15 care. Each member of a nursing home survey team who is a  
16 health professional licensed under chapter 465 shall earn not  
17 less than 30 percent of required continuing education credits  
18 in geriatric care.

19 (4) The agency must ensure that when a deficiency is  
20 related to substandard quality of care, a physician with  
21 geriatric experience licensed under chapter 458 or chapter 459  
22 or a registered nurse with geriatric experience licensed under  
23 chapter 464 participates in the agency's informal  
24 dispute-resolution process.

25 Section 33. Subsections (3) and (4) of section  
26 400.407, Florida Statutes, are amended to read:

27 400.407 License required; fee, display.--

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

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

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

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

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

1 previous 2 years, or since initial licensure if the facility  
2 has been licensed for less than 2 years, for any of the  
3 following reasons:  
4       a. A class I or class II violation;  
5       b. Three or more repeat or recurring class III  
6 violations of identical or similar resident care standards as  
7 specified in rule from which a pattern of noncompliance is  
8 found by the agency;  
9       c. Three or more class III violations that were not  
10 corrected in accordance with the corrective action plan  
11 approved by the agency;  
12       d. Violation of resident care standards resulting in a  
13 requirement to employ the services of a consultant pharmacist  
14 or consultant dietitian;  
15       e. Denial, suspension, or revocation of a license for  
16 another facility under this part in which the applicant for an  
17 extended congregate care license has at least 25 percent  
18 ownership interest; or  
19       f. Imposition of a moratorium on admissions or  
20 initiation of injunctive proceedings.  
21       2. Facilities that are licensed to provide extended  
22 congregate care services shall maintain a written progress  
23 report on each person who receives such services, which report  
24 describes the type, amount, duration, scope, and outcome of  
25 services that are rendered and the general status of the  
26 resident's health. A registered nurse, or appropriate  
27 designee, representing the agency shall visit such facilities  
28 at least quarterly ~~two times a year~~ to monitor residents who  
29 are receiving extended congregate care services and to  
30 determine if the facility is in compliance with this part and  
31 with rules that relate to extended congregate care. One of

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

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

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

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

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

31

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

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

11           f. Implement the concept of managed risk.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

8           f. Recommendations for statutory or regulatory  
9 changes.

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

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

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

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

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

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

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

27           (4)(a) The biennial standard license fee required of a  
28 facility is \$50 per bed based on the total licensed residence  
29 capacity of the facility, except that no additional fee will  
30 be assessed for beds designated for recipients of optional  
31 state supplementation payments provided for in s. 409.212. The

1 total fee as described in this part shall be a minimum of \$261  
2 and may not exceed \$10,000.

3 (b) In addition to the total fee assessed under  
4 paragraph (a), the agency shall require facilities that are  
5 licensed to provide extended congregate care services under  
6 this part to pay an additional fee per licensed extended  
7 congregate care bed. The amount of the biennial fee shall be  
8 \$100 per bed based on the total number of extended congregate  
9 care licensed beds.

10 (c) In addition to the total fee assessed under  
11 paragraph (a), the agency shall require facilities that are  
12 licensed to provide limited nursing services under this part  
13 to pay an additional fee per licensed limited nursing services  
14 licensed bed. The amount of this biennial fee shall be \$75 per  
15 bed based on the total number of limited nursing services  
16 licensed beds.

17 (d) The agency shall annually adjust each per bed  
18 licensure fee and the minimum and maximum limits by the  
19 Consumer Price Index based on the 12 months immediately  
20 preceding the increase.~~\$240 per license, with an additional~~  
21 ~~fee of \$30 per resident based on the total licensed resident~~  
22 ~~capacity of the facility, except that no additional fee will~~  
23 ~~be assessed for beds designated for recipients of optional~~  
24 ~~state supplementation payments provided for in s. 409.212. The~~  
25 ~~total fee may not exceed \$10,000, no part of which shall be~~  
26 ~~returned to the facility. The agency shall adjust the per bed~~  
27 ~~license fee and the total licensure fee annually by not more~~  
28 ~~than the change in the consumer price index based on the 12~~  
29 ~~months immediately preceding the increase.~~

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

1 licensed to provide extended congregate care services under  
2 this part to pay an additional fee per licensed facility. The  
3 amount of the biennial fee shall be \$400 per license, no part  
4 of which shall be returned to the facility. The agency may  
5 adjust the annual license fee once each year by not more than  
6 the average rate of inflation for the 12 months immediately  
7 preceding the increase.

8 (f)~~(c)~~ In addition to the total fee assessed under  
9 paragraph (a), the agency shall require facilities that are  
10 licensed to provide limited nursing services under this part  
11 to pay an additional fee per licensed facility. The amount of  
12 the biennial fee shall be \$200 per license, with an additional  
13 fee of \$10 per resident based on the total licensed resident  
14 capacity of the facility. The total biennial fee may not  
15 exceed \$2,000, no part of which shall be returned to the  
16 facility. The agency may adjust the \$200 biennial license fee  
17 and the maximum total license fee once each year by not more  
18 than the average rate of inflation for the 12 months  
19 immediately preceding the increase.

20 Section 34. Paragraph (n) is added to subsection (1)  
21 of section 400.414, Florida Statutes, and subsection (8) is  
22 added to that section, to read:

23 400.414 Denial, revocation, or suspension of license;  
24 imposition of administrative fine; grounds.--

25 (1) The agency may deny, revoke, or suspend any  
26 license issued under this part, or impose an administrative  
27 fine in the manner provided in chapter 120, for any of the  
28 following actions by an assisted living facility, any person  
29 subject to level 2 background screening under s. 400.4174, or  
30 any facility employee:

31

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

3  
4 Administrative proceedings challenging agency action under  
5 this subsection shall be reviewed on the basis of the facts  
6 and conditions that resulted in the agency action.

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

10           Section 35. Subsection (1) of section 400.417, Florida  
11 Statutes, is amended to read:

12           400.417 Expiration of license; renewal; conditional  
13 license.--

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

27           Section 36. Section 400.419, Florida Statutes, is  
28 amended to read:

29           400.419 Violations; administrative fines.--

30           (1) Each violation of this part and adopted rules  
31 shall be classified according to the nature of the violation

1 and the gravity of its probable effect on facility residents.  
2 The agency shall indicate the classification on the written  
3 notice of the violation as follows:

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

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

29 (c) Class "III" violations are those conditions or  
30 occurrences related to the operation and maintenance of a  
31 facility or to the personal care of residents which the agency

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

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

23 ~~(2) The agency may set and levy a fine not to exceed~~  
24 ~~\$1,000 for each violation which cannot be classified according~~  
25 ~~to subsection (1). Such fines in the aggregate may not exceed~~  
26 ~~\$10,000 per survey.~~

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

30 (a) The gravity of the violation, including the  
31 probability that death or serious physical or emotional harm

1 to a resident will result or has resulted, the severity of the  
2 action or potential harm, and the extent to which the  
3 provisions of the applicable laws or rules were violated.

4 (b) Actions taken by the owner or administrator to  
5 correct violations.

6 (c) Any previous violations.

7 (d) The financial benefit to the facility of  
8 committing or continuing the violation.

9 (e) The licensed capacity of the facility.

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

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

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

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

31



1           (7)~~(8)~~ Any licensed facility whose owner or  
2 administrator concurrently operates an unlicensed facility  
3 shall be subject to an administrative fine of \$5,000 per day.  
4 ~~Each day that the unlicensed facility continues to operate~~  
5 ~~beyond 5 working days after agency notification constitutes a~~  
6 ~~separate violation, and the licensed facility shall be subject~~  
7 ~~to a fine of \$500 per day retroactive to the date of agency~~  
8 ~~notification.~~

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

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

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

1           ~~(11)(12)~~ Administrative fines paid by any facility  
2 under this section shall be deposited into the Health Care  
3 Trust Fund and expended as provided in s. 400.418.

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

19           Section 37. Section 400.423, Florida Statutes, is  
20 created to read:

21           400.423 Internal risk-management and quality-assurance  
22 program; adverse incidents and reporting requirements.--

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

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

1 report to the agency on all adverse incidents specified in  
2 this section. The report must include the results of the  
3 facility's investigation into the adverse incident.

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

8 (a) A total number of adverse incidents;

9 (b) A listing, by category, of the type of adverse  
10 incidents occurring within each category and the type of staff  
11 involved;

12 (c) A listing, by category, of the types of injuries,  
13 if any, and the number of injuries occurring within each  
14 category;

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

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

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

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

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

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

15           Section 38. Present subsections (7), (8), (9), (10),  
16 and (11) of section 400.426, Florida Statutes, are  
17 redesignated as subsections (8), (9), (10), (11), and (12),  
18 respectively, and a new subsection (7) is added to that  
19 section, to read:

20           400.426 Appropriateness of placements; examinations of  
21 residents.--

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

1           Section 39. Subsection (3) of section 400.4275,  
2 Florida Statutes, is amended to read:

3           400.4275 Business practice; personnel records;  
4 liability insurance.--The assisted living facility shall be  
5 administered on a sound financial basis that is consistent  
6 with good business practices.

7           (3) The administrator or owner of a facility shall  
8 maintain liability insurance coverage of at least \$250,000 per  
9 claim and an annual aggregate of \$500,000 which ~~that~~ is in  
10 force at all times.

11           Section 40. Subsection (3) of section 400.428, Florida  
12 Statutes, is amended to read:

13           400.428 Resident bill of rights.--

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

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

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

30           (d) The agency may conduct periodic followup  
31 inspections as necessary to monitor the compliance of

1 facilities with a history of any class I, class II, or class  
2 III violations that threaten the health, safety, or security  
3 of residents.

4 (e) The agency may conduct complaint investigations as  
5 warranted to investigate any allegations of noncompliance with  
6 requirements required under this part or rules adopted under  
7 this part.

8 Section 41. Effective July 1, 2001, and applying to  
9 causes of action accruing on or after that date, section  
10 400.429, Florida Statutes, is amended to read:

11 400.429 Civil actions to enforce rights.--

12 (1) Any person or resident whose rights as specified  
13 in this part are violated shall have a cause of action ~~against~~  
14 ~~any facility owner, administrator, or staff responsible for~~  
15 ~~the violation.~~ The action may be brought by the resident or  
16 his or her guardian, or by a person or organization acting on  
17 behalf of a resident with the consent of the resident or his  
18 or her guardian, or by the personal representative of the  
19 estate of a deceased resident regardless of the cause of death  
20 ~~when the cause of death resulted from a violation of the~~  
21 ~~decedent's rights, to enforce such rights. If the action~~  
22 alleges a claim for the resident's rights or for negligence  
23 that caused the death of the resident, the claimant shall be  
24 required to elect either survival damages pursuant to s.  
25 46.021 or wrongful death damages pursuant to s. 768.21. If the  
26 action alleges a claim for the resident's rights or for  
27 negligence that did not cause the death of the resident, the  
28 personal representative of the estate may recover damages for  
29 the negligence that caused injury to the resident.The action  
30 may be brought in any court of competent jurisdiction to  
31 enforce such rights and to recover actual damages, and

1 punitive damages for violation of the rights of a resident or  
2 negligence when malicious, wanton, or willful disregard of the  
3 rights of others can be shown. Any resident who prevails in  
4 seeking injunctive relief or a claim for an administrative  
5 remedy is entitled to recover the costs of the action and a  
6 reasonable attorney's fee assessed against the defendant not  
7 to exceed \$25,000. Fees shall be awarded solely for the  
8 injunctive or administrative relief and not for any claim or  
9 action for damages whether such claim or action is brought  
10 together with a request for an injunction or administrative  
11 relief or as a separate action, except as provided under s.  
12 768.79 or the Florida Rules of Civil Procedure.~~Any plaintiff~~  
13 ~~who prevails in any such action may be entitled to recover~~  
14 ~~reasonable attorney's fees, costs of the action, and damages,~~  
15 ~~unless the court finds that the plaintiff has acted in bad~~  
16 ~~faith, with malicious purpose, and that there was a complete~~  
17 ~~absence of a justiciable issue of either law or fact. A~~  
18 ~~prevailing defendant may be entitled to recover reasonable~~  
19 ~~attorney's fees pursuant to s. 57.105. The theories of~~  
20 recovery remedies provided in this section are in addition to  
21 and cumulative with other legal and administrative actions  
22 remedies available to a resident or to the agency, and the  
23 provisions of chapter 766 do not apply.

24 (2) In any claim brought pursuant to this part  
25 alleging a violation of resident's rights or negligence  
26 causing injury to or the death of a resident, the claimant  
27 shall have the burden of proving, by a preponderance of the  
28 evidence, that:

- 29 (a) The defendant owed a duty to the resident;  
30 (b) The defendant breached the duty to the resident;

31



1           (c) The breach of the duty is a legal cause of loss,  
2 injury, death or damage to the resident; and

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

5  
6 Nothing in this part shall be interpreted to create strict  
7 liability. A violation of the rights set forth in s. 400.428  
8 or in any other standard or guidelines specified in this part  
9 or in any applicable administrative standard or guidelines of  
10 this state or a federal regulatory agency shall be evidence of  
11 negligence but shall not be considered negligence per se.

12           (3) In any claim brought pursuant to s. 400.429, a  
13 licensee, person or entity shall have a duty to exercise  
14 reasonable care. Reasonable care is that degree of care which  
15 a reasonably careful licensee, person or entity would use  
16 under like circumstances.

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

27           ~~(a) Within 120 days after the filing of a responsive~~  
28 ~~pleading or defensive motion to a complaint brought under this~~  
29 ~~section and before trial, the parties or their designated~~  
30 ~~representatives shall meet in mediation to discuss the issues~~  
31

1 ~~of liability and damages in accordance with this paragraph for~~  
2 ~~the purpose of an early resolution of the matter.~~

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

5 ~~a. Agree on a mediator. If the parties cannot agree on~~  
6 ~~a mediator, the defendant shall immediately notify the court,~~  
7 ~~which shall appoint a mediator within 10 days after such~~  
8 ~~notice.~~

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

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

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

19 ~~3. The mediation shall be conducted in the following~~  
20 ~~manner:~~

21 ~~a. Each party shall ensure that all persons necessary~~  
22 ~~for complete settlement authority are present at the~~  
23 ~~mediation.~~

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

25 ~~4. All aspects of the mediation which are not~~  
26 ~~specifically established by this subsection must be conducted~~  
27 ~~according to the rules of practice and procedure adopted by~~  
28 ~~the Supreme Court of this state.~~

29 ~~(b) If the parties do not settle the case pursuant to~~  
30 ~~mediation, the last offer of the defendant made at mediation~~  
31 ~~shall be recorded by the mediator in a written report that~~

1 ~~states the amount of the offer, the date the offer was made in~~  
2 ~~writing, and the date the offer was rejected. If the matter~~  
3 ~~subsequently proceeds to trial under this section and the~~  
4 ~~plaintiff prevails but is awarded an amount in damages,~~  
5 ~~exclusive of attorney's fees, which is equal to or less than~~  
6 ~~the last offer made by the defendant at mediation, the~~  
7 ~~plaintiff is not entitled to recover any attorney's fees.~~

8 ~~(c) This subsection applies only to claims for~~  
9 ~~liability and damages and does not apply to actions for~~  
10 ~~injunctive relief.~~

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

13 ~~(5)(3)~~ Discovery of financial information for the  
14 purpose of determining the value of punitive damages may not  
15 be had unless the plaintiff shows the court by proffer or  
16 evidence in the record that a reasonable basis exists to  
17 support a claim for punitive damages.

18 ~~(6)(4)~~ In addition to any other standards for punitive  
19 damages, any award of punitive damages must be reasonable in  
20 light of the actual harm suffered by the resident and the  
21 egregiousness of the conduct that caused the actual harm to  
22 the resident.

23 Section 42. Effective July 1, 2001, and applying to  
24 causes of action accruing on or after that date, section  
25 400.4293, Florida Statutes, is created to read:

26 400.4293 Presuit notice; investigation; notification  
27 of violation of residents' rights or alleged negligence;  
28 claims evaluation procedure; informal discovery; review.--

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

30 (a) "Claim for residents' rights violation or  
31 negligence" means a negligence claim alleging injury to or the

1 death of a resident arising out of an asserted violation of  
2 the rights of a resident under s. 400.428 or an asserted  
3 deviation from the applicable standard of care.

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

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

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

31

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

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

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

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

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

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

15           1. Rejecting the claim; or

16           2. Making a settlement offer.

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

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

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

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

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

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

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

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

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

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

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

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

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

12           Section 43. Effective July 1, 2001, and applying to  
13 causes of action accruing on or after that date, section  
14 400.4294, Florida Statutes, is created to read:

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

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

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

28           Section 44. Effective July 1, 2001, section 400.4295,  
29 Florida Statutes, is created to read:

30           400.4295 Certain provisions not applicable to actions  
31 under this part.--An action under this part for a violation of



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

4 Section 45. Effective July 1, 2001, section 400.4296,  
5 Florida Statutes, is created to read:

6 400.4296 Statute of limitations.--

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

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

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

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

4 Section 46. Section 400.4297, Florida Statutes, is  
5 created to read:

6 400.4297 Punitive damages; pleading; burden of  
7 proof.--

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

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

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

31

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

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

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

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

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

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

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

26           Section 47. Section 400.4298, Florida Statutes, is  
27 created to read:

28           400.4298 Punitive damages; limitation.--

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

31

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

4           2. The sum of \$1 million.

5           (b) Where the fact finder determines that the wrongful  
6 conduct proven under this section was motivated solely by  
7 unreasonable financial gain and determines that the  
8 unreasonably dangerous nature of the conduct, together with  
9 the high likelihood of injury resulting from the conduct, was  
10 actually known by the managing agent, director, officer, or  
11 other person responsible for making policy decisions on behalf  
12 of the defendant, it may award an amount of punitive damages  
13 not to exceed the greater of:

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

17           2. The sum of \$4 million.

18           (c) Where the fact finder determines that at the time  
19 of injury the defendant had a specific intent to harm the  
20 claimant and determines that the defendant's conduct did in  
21 fact harm the claimant, there shall be no cap on punitive  
22 damages.

23           (d) This subsection is not intended to prohibit an  
24 appropriate court from exercising its jurisdiction under s.  
25 768.74 in determining the reasonableness of an award of  
26 punitive damages that is less than three times the amount of  
27 compensatory damages.

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

1 payment of attorney's fees based upon an award of damages  
2 other than punitive damages.

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

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

7 Section 48. Effective October 1, 2001, and applicable  
8 to causes of action accruing on or after that date, section  
9 400.4303, Florida Statutes, is created to read:

10 400.4303 Copies forwarded to state attorney.--In any  
11 action in which punitive damages are awarded, notwithstanding  
12 any appeals, the Clerk of the Court shall forward to the state  
13 attorney of that circuit a copy of the complaint, any amended  
14 complaints, the verdict form, and the final judgment.

15 Section 49. Section 400.434, Florida Statutes, is  
16 amended to read:

17 400.434 Right of entry and inspection.--Any duly  
18 designated officer or employee of the department, the  
19 Department of Children and Family Services, the agency, the  
20 state or local fire marshal, or a member of the state or local  
21 long-term care ombudsman council shall have the right to enter  
22 unannounced upon and into the premises of any facility  
23 licensed pursuant to this part in order to determine the state  
24 of compliance with the provisions of this part and of rules or  
25 standards in force pursuant thereto. The right of entry and  
26 inspection shall also extend to any premises which the agency  
27 has reason to believe is being operated or maintained as a  
28 facility without a license; but no such entry or inspection of  
29 any premises may be made without the permission of the owner  
30 or person in charge thereof, unless a warrant is first  
31 obtained from the circuit court authorizing such entry. The

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

28 Section 50. Subsection (2) of section 400.435, Florida  
29 Statutes, is amended to read:

30 400.435 Maintenance of records; reports.--  
31

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

11           Section 51. Paragraph (h) of subsection (1) and  
12 subsection (4) of section 400.441, Florida Statutes, are  
13 amended to read:

14           400.441 Rules establishing standards.--

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

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

- 3 1. The supervision of residents;
- 4 2. The provision of personal services;
- 5 3. The provision of, or arrangement for, social and  
6 leisure activities;
- 7 4. The arrangement for appointments and transportation  
8 to appropriate medical, dental, nursing, or mental health  
9 services, as needed by residents;
- 10 5. The management of medication;
- 11 6. The nutritional needs of residents; ~~and~~
- 12 7. Resident records; and-
- 13 8. Internal risk management and quality assurance.

14 (4) The agency may use an abbreviated biennial  
15 standard licensure inspection that ~~which~~ consists of a review  
16 of key quality-of-care standards in lieu of a full inspection  
17 in facilities which have a good record of past performance.  
18 However, a full inspection shall be conducted in facilities  
19 which have had a history of class I or class II violations,  
20 uncorrected class III violations, confirmed ombudsman council  
21 complaints, or confirmed licensure complaints, within the  
22 previous licensure period immediately preceding the inspection  
23 or when a potentially serious problem is identified during the  
24 abbreviated inspection. The agency, in consultation with the  
25 department, shall develop the key quality-of-care standards  
26 with input from the State Long-Term Care Ombudsman Council and  
27 representatives of provider groups for incorporation into its  
28 rules. ~~Beginning on or before March 1, 1991,~~The department,  
29 in consultation with the agency, shall report annually to the  
30 Legislature concerning its implementation of this subsection.  
31 The report shall include, at a minimum, the key



1 quality-of-care standards which have been developed; the  
2 number of facilities identified as being eligible for the  
3 abbreviated inspection; the number of facilities which have  
4 received the abbreviated inspection and, of those, the number  
5 that were converted to full inspection; the number and type of  
6 subsequent complaints received by the agency or department on  
7 facilities which have had abbreviated inspections; any  
8 recommendations for modification to this subsection; any plans  
9 by the agency to modify its implementation of this subsection;  
10 and any other information which the department believes should  
11 be reported.

12 Section 52. Section 400.442, Florida Statutes, is  
13 amended to read:

14 400.442 Pharmacy and dietary services.--

15 (1) Any assisted living facility in which the agency  
16 has documented a class I or class II deficiency or uncorrected  
17 class III deficiencies regarding medicinal drugs or  
18 over-the-counter preparations, including their storage, use,  
19 delivery, or administration, or dietary services, or both,  
20 during a licensure ~~biennial~~ survey or a monitoring visit or an  
21 investigation in response to a complaint, shall, in addition  
22 to or as an alternative to any penalties imposed under s.  
23 400.419, be required to employ the consultant services of a  
24 licensed pharmacist, a licensed registered nurse, or a  
25 registered or licensed dietitian, as applicable. The  
26 consultant shall, at a minimum, provide onsite quarterly  
27 consultation until the inspection team from the agency  
28 determines that such consultation services are no longer  
29 required.

30 (2) A corrective action plan for deficiencies related  
31 to assistance with the self-administration of medication or

1 the administration of medication must be developed and  
2 implemented by the facility within 48 hours after notification  
3 of such deficiency, or sooner if the deficiency is determined  
4 by the agency to be life-threatening.

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

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

14 Section 53. Section 400.449, Florida Statutes, is  
15 created to read:

16 400.449 Resident records; penalties for alteration.--

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

22 (2) A conviction under subsection (1) is also grounds  
23 for restriction, suspension, or termination of license  
24 privileges.

25 Section 54. Section 464.203, Florida Statutes, is  
26 amended to read:

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

26           Section 55. Subsection (2) of section 397.405, Florida  
27 Statutes, is amended to read:

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

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

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

18       Section 56. Notwithstanding the establishment of need  
19 as provided for in chapter 408, no certificate of need for  
20 additional nursing home beds shall be approved by the agency  
21 until July 1, 2006. The Legislature finds that the continued  
22 growth in the Medicaid budget for nursing home care has  
23 constrained the ability of the state to meet the needs of its  
24 elderly residents through the use of less restrictive and less  
25 institutional methods of long-term care. It is therefore the  
26 intent of the Legislature to limit the increase in Medicaid  
27 nursing home expenditures in order to provide funds to invest  
28 in long-term care that is community-based and provides  
29 supportive services in a manner that is both more  
30 cost-effective and more in keeping with the wishes of the  
31 elderly residents of this state.

1           Section 57. Subsections (3) and (8) of section  
2 400.0255, Florida Statutes, as amended by section 138 of  
3 chapter 2000-349, section 3 of chapter 2000-350, and section  
4 58 of chapter 2000-367, Laws of Florida, are reenacted to  
5 read:

6           400.0255 Resident transfer or discharge; requirements  
7 and procedures; hearings.--

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

21           (8) The notice required by subsection (7) must be in  
22 writing and must contain all information required by state and  
23 federal law, rules, or regulations applicable to Medicaid or  
24 Medicare cases. The agency shall develop a standard document  
25 to be used by all facilities licensed under this part for  
26 purposes of notifying residents of a discharge or transfer.  
27 Such document must include a means for a resident to request  
28 the local long-term care ombudsman council to review the  
29 notice and request information about or assistance with  
30 initiating a fair hearing with the department's Office of  
31 Appeals Hearings. In addition to any other pertinent

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

15 Section 58. Subsection (5) of section 400.23, Florida  
16 Statutes, as amended by section 6 of chapter 2000-350, Laws of  
17 Florida, is reenacted to read:

18 400.23 Rules; evaluation and deficiencies; licensure  
19 status.--

20 (5) The agency, in collaboration with the Division of  
21 Children's Medical Services of the Department of Health, must,  
22 no later than December 31, 1993, adopt rules for minimum  
23 standards of care for persons under 21 years of age who reside  
24 in nursing home facilities. The rules must include a  
25 methodology for reviewing a nursing home facility under ss.  
26 408.031-408.045 which serves only persons under 21 years of  
27 age. A facility may be exempt from these standards for  
28 specific persons between 18 and 21 years of age, if the  
29 person's physician agrees that minimum standards of care based  
30 on age are not necessary.

31

1           Section 59. Subsection (2) of section 400.191, Florida  
2 Statutes, as amended by section 5 of chapter 2000-350, Laws of  
3 Florida, and subsection (6) of that section, as created by  
4 section 5 of chapter 2000-350, Laws of Florida, are reenacted  
5 to read:

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

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

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

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

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

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

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

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

27           6. The number of private and semiprivate rooms in each  
28 facility.

29           7. The religious affiliation, if any, of each  
30 facility.

31



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

- 29           1. The licensure status history of each facility.
- 30           2. The rating history of each facility.

31

1           3. The regulatory history of each facility, which may  
2 include federal sanctions, state sanctions, federal fines,  
3 state fines, and other actions.

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

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

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

10           Section 60. Section 400.0225, Florida Statutes, as  
11 amended by section 2 of chapter 2000-350, Laws of Florida, is  
12 reenacted to read:

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

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

8 Section 61. Subsections (4) and (5) of section  
9 400.141, Florida Statutes, as renumbered and amended by  
10 section 4 of chapter 2000-350, Laws of Florida, are reenacted  
11 to read:

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

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

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

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

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

31

1           Section 62. Paragraph (a) of subsection (3) and  
2 subsection (4) of section 400.235, Florida Statutes, as  
3 amended by section 12 of chapter 2000-305 and section 7 of  
4 chapter 2000-350, Laws of Florida, and subsection (9) of  
5 section 400.235, Florida Statutes, as created by section 7 of  
6 chapter 2000-350, Laws of Florida, are reenacted to read:

7           400.235 Nursing home quality and licensure status;  
8 Gold Seal Program.--

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

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

1           (9) The agency may adopt rules as necessary to  
2 administer this section.

3           Section 63. Subsection (1) of section 400.962, Florida  
4 Statutes, as amended by section 8 of chapter 2000-350, Laws of  
5 Florida, is reenacted to read:

6           400.962 License required; license application.--

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

9           Section 64. Section 10 of chapter 2000-350, Laws of  
10 Florida, is reenacted to read:

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

27          Section 65. Present subsection (7) of section 627.351,  
28 Florida Statutes, is redesignated as subsection (8), and a new  
29 subsection (7) is added to that section, to read:

30          627.351 Insurance risk apportionment plans.--

31



1           (7) SENIOR-CARE-FACILITY JOINT UNDERWRITING  
2 ASSOCIATION.--  
3           (a) There is created a joint underwriting association  
4 for senior-care facilities that are in good faith entitled,  
5 but are unable, to procure liability insurance coverage  
6 through the voluntary market, which is designated as the  
7 Senior-Care-Facility Joint Underwriting Association. As used  
8 in this subsection, the term "senior-care facility" means a  
9 long-term-care facility as defined in s. 400.0060(2), a  
10 nursing home facility as defined in s. 400.021(12), a  
11 continuing care facility as licensed under s. 651.021, or an  
12 assisted living facility as licensed under s. 400.407. A  
13 senior-care facility any part of which is licensed under part  
14 II or part III of chapter 400 is eligible to participate in a  
15 joint underwriting association if it meets criteria in the  
16 plan developed pursuant to paragraph (b).  
17           (b) The association shall operate pursuant to a plan  
18 of operation approved by order of the department. The plan is  
19 subject to continuous review by the department. The department  
20 may, by order, withdraw approval of all or part of the plan if  
21 the department determines that conditions have changed since  
22 approval was granted and the purposes of the plan require  
23 changes in the plan.  
24           (c) All insurers authorized to write one or more  
25 subject lines of business in this state must participate in  
26 the association. An authorized insurer's participation begins  
27 on the first day of the calendar year in which the insurer was  
28 issued a certificate of authority to transact insurance for  
29 one or more subject lines of business in this state and  
30 terminates 1 year after the end of the first calendar year  
31 during which the member no longer holds a certificate of

1 authority to transact insurance for subject lines of business  
2 in this state. All such insurers shall be referred to in this  
3 subsection as "participating insurers." As used in this  
4 subsection, the term "subject lines of business" means  
5 liability insurance as defined in s. 624.605(1)(b) which is  
6 written in this state and does not include other casualty  
7 insurance lines defined in s. 624.605 or homeowners liability  
8 insurance which is reported as property insurance on financial  
9 statements submitted to the department.

10 (d) The association shall operate subject to the  
11 supervision and approval of a board of governors consisting of  
12 seven individuals appointed by the Insurance Commissioner. The  
13 Insurance Commissioner shall designate one of the appointees  
14 as chair. All board members shall serve at the pleasure of the  
15 Insurance Commissioner. All board members, including the  
16 chair, shall be appointed to 3-year terms, beginning annually  
17 on the date designated by the plan.

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

20 1. Standards for establishing eligibility of a risk  
21 for obtaining liability insurance through the association,  
22 including underwriting standards.

23 2. Rules for classifying risks and rates which  
24 correspond to past and prospective loss experience. Such rules  
25 may reflect whether the facility operates on a for-profit or  
26 not-for-profit basis.

27 3. A rating plan that corresponds to the prior claims  
28 experience of the insureds.

29 4. The association may offer primary coverage not to  
30 exceed \$250,000 per claim and a maximum annual aggregate of  
31 \$500,000. However, such limits may not be less than the

1 amounts of insurance required of eligible risks by state law.  
2 Any offer of primary coverage by the private market to an  
3 insured would make that insured ineligible for underwriting by  
4 the association.

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

8 a. Investigation and analysis of the frequency,  
9 severity, and causes of claims.

10 b. Developmental measures to avoid and control claims.

11 c. Systematic reporting of accidents or injuries to  
12 facility residents.

13 d. Investigation and analysis of resident complaints.

14 e. Auditing of association members to ensure  
15 implementation of this program.

16 6. A requirement that coverage by the association  
17 exclude coverage for punitive damages.

18 7. A requirement that coverage by the association does  
19 not include coverage for the professional liability of persons  
20 or entities providing professional services, pursuant to  
21 professional licensure, through or on behalf of the facility.

22 8. A requirement that coverage be limited to claims  
23 made.

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

27 (g) If an operating deficit, determined on the basis  
28 of generally accepted accounting principles, exists for any  
29 calendar year the plan is in effect, any surplus that has  
30 accrued from previous years and is not projected within  
31 reasonable actuarial certainty to be needed for payment of

1 claims in the year the surplus arose shall be used to offset  
2 the deficit to the extent available.

3 1. If an operating deficit remains, each policyholder  
4 who had an in-force policy at any time during the calendar  
5 year with an operating deficit shall pay to the association a  
6 premium contingency assessment that may not exceed one-third  
7 of the annual premium payment paid by the policyholder to the  
8 association for that in-force policy. The association shall  
9 cancel any policy for a policyholder who fails to pay the  
10 premium contingency assessment and shall deduct the premium  
11 contingency assessment from the policyholder's return premium  
12 if any.

13 2. If there is any remaining operating deficit under  
14 the plan after maximum billing of the premium contingency  
15 assessment, the association shall levy and collect assessments  
16 from participating insurers in an amount sufficient to offset  
17 such deficit. Such assessments must first be levied against  
18 the insurers participating in the plan during the year giving  
19 rise to the assessment. Any assessments against the  
20 participating insurers must be in the proportion that the net  
21 direct written premium of each insurer for the subject lines  
22 of business during the preceding calendar year bears to the  
23 aggregate net direct premium written for the subject lines of  
24 business by all participating insurers. The assessment levied  
25 against any insurer for any calendar year deficit may not  
26 exceed 1 percent of that insurer's net direct written premium  
27 for the subject lines of business during the calendar year  
28 preceding the deficit. If additional assessments are required  
29 to extinguish the deficit incurred by the association for a  
30 calendar year, additional assessments shall be made in  
31 immediately following calendar years against those

1 participating insurers who were initially assessed for the  
2 deficit. These additional assessments may not exceed a total  
3 of 5 percent of the insurer's net direct written premium for  
4 the subject lines of business during the calendar year  
5 immediately preceding the calendar year in which the deficit  
6 was incurred. If these assessments are insufficient to  
7 completely extinguish the deficit that the association  
8 incurred in any calendar year, the amount of the  
9 unextinguished deficit incurred shall be carried forward as a  
10 deficit of the calendar year immediately following the  
11 calendar year in which the deficit was incurred and the  
12 unextinguished deficit shall be assessed as a deficit of that  
13 calendar year in the manner described in this section until  
14 the deficit is completely extinguished.

15 3. The board shall take all reasonable and prudent  
16 steps necessary to collect the amount of the assessment due  
17 from each participating insurer, including, if prudent, filing  
18 suit to collect such assessment. If the board is unable to  
19 collect an assessment from any insurer, the uncollected  
20 assessments shall be levied as an additional assessment  
21 against the participating insurers. Any participating insurer  
22 required to pay an additional assessment as the result of such  
23 failure to pay shall have a cause of action against the  
24 nonpaying insurer.

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

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

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

1           Section 66. The sum of \$500,000 is appropriated from  
2 the General Revenue Fund for the Senior-Care-Facility Joint  
3 Underwriting Association.

4           Section 67. The sum of \$5,251,821 is appropriated from  
5 the Health Care Trust Fund to the Agency for Health Care  
6 Administration and 76.5 positions are authorized for the  
7 purpose of implementing the provisions of this act during the  
8 2001-2002 fiscal year.

9           Section 68. The sum of \$100,000 is appropriated from  
10 the General Revenue Fund to the Department of Elderly Affairs  
11 for the purpose of paying the salaries and other  
12 administrative expenses of the Office of State Long-Term Care  
13 Ombudsman to carry out the provisions of this act during the  
14 2001-2002 fiscal year.

15           Section 69. If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 invalidity does not affect other provisions or applications of  
18 the act which can be given effect without the invalid  
19 provision or application, and to this end the provisions of  
20 this act are severable.

21           Section 70. Except as otherwise expressly provided in  
22 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 for CS for SB 1202

4 Removes language that prohibits the concealment of information  
5 relating to the settlement or resolution of a claim or action  
6 and the requirement to submit certain documents to the agency  
7 related to settlements or resolution of claims for nursing  
8 homes and assisted living facilities.

9 Provides that nursing home rates are set annually and shall be  
10 \$50 per bed. Provides that the agency may adjust the per bed  
11 licensure fee by the CPI based on the 12 months preceding the  
12 increase. Revises the minimum deposit threshold in the  
13 Resident Protection Trust Fund from \$500,000 to \$1,000,000 and  
14 allows rate adjustments to maintain the balance. Increases the  
15 available balance in the trust fund from \$800,000 to  
16 \$2,000,000 before reversion of excess funds to the Health Care  
17 Trust Fund are required.

18 Requires licensee disclosures of bankruptcy, licensed denials,  
19 suspensions, revocations or injunctions.

20 Adds "licensed speech or occupational therapist" in addition  
21 to a licensed nurse or a registered dietitian who must conduct  
22 training of dining and hospitality attendants.

23 Requires nursing homes to maintain liability insurance  
24 coverage which is in force at all times and removes the  
25 requirement for nursing homes to maintain minimum liability  
26 insurance coverage of \$250,000 per claim with an annual  
27 aggregate amount of \$500,000.

28 Revises the Medicaid "Up-or-Out" Quality of Care Contract  
29 Management Program pilot project from implementing in the 100  
30 highest-scoring nursing homes to implementing in the highest  
31 scoring homes in counties where Evercare services are  
immediately available, subject to an appropriation.

Reinstates current law related to the definition of "managed  
risk" for assisted living facilities.

Provides for a minimum standard licensure fee of \$261 for  
assisted living facilities, provides that the agency may  
adjust the per bed assisted living facility licensure fees by  
the CPI based on the 12 months immediately preceding the  
increase, removes language that modified the licensure fee for  
extended congregate care services and limited nursing services  
in assisted living facilities and reinstates current law.

Reinstates current law related to not imposing a fine on an  
ALF if a class III violation is corrected within the specified  
time period, unless it is a repeated offense.

Provides that adverse incident reports and preliminary adverse  
incident reports are confidential and not discoverable or  
admissible in any civil or administrative action except in  
disciplinary proceedings.

Removes the requirements to amend the Medicaid long-term-care

1 reimbursement plan to create direct-care and indirect-care  
2 subcomponents of the patient-care component of the per-diem  
3 rate.  
4 Removes surplus lines insurers from participating insurers.  
5 Provides for an appropriation of \$5,251,821 from the Health  
6 Care Trust Fund and 76.5 FTE to the Agency for Health Care  
7 Administration to implement the provisions of the act in FY  
8 2001-02.  
9 Reduces the appropriation to the State Long-Term Care  
10 Ombudsman from \$948,782 to \$100,000 from the General Revenue  
11 Fund in FY 2001-02.  
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