

1 A bill to be entitled
2 An act relating to long-term care; amending s.
3 400.0073, F.S.; clarifying duties of the local
4 ombudsman councils with respect to inspections
5 of nursing homes and long-term-care facilities;
6 amending s. 400.021, F.S.; defining the terms
7 "controlling interest" and "voluntary board
8 member" and revising the definition of
9 "resident care plan" for purposes of part II of
10 ch. 400, F.S., relating to the regulation of
11 nursing homes; requiring the Agency for Health
12 Care Administration and the Office of the
13 Attorney General to study the use of electronic
14 monitoring devices in nursing homes; requiring
15 a report; amending s. 400.023, F.S.; providing
16 for election of survival damages, wrongful
17 death damages, or recovery for negligence;
18 providing for attorney's fees for injunctive
19 relief or administrative remedy; providing that
20 ch. 766, F.S., does not apply to actions under
21 this section; providing burden of proof;
22 providing that a violation of a right is not
23 negligence per se; prescribing the duty of
24 care; prescribing a nurse's duty of care;
25 eliminating presuit provisions; eliminating the
26 requirement for presuit mediation; creating s.
27 400.0233, F.S.; providing for presuit notice;
28 prohibiting the filing of suit for a specified
29 time; requiring a response to the notice;
30 tolling the statute of limitations; limiting
31 discovery of presuit investigation documents;

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

1 provisions; creating s. 400.0238, F.S.;

2 prescribing limits on the amount of punitive

3 damages; providing for a criminal investigation

4 with a finding of liability for punitive

5 damages under certain circumstances; providing

6 for the admissibility of findings in subsequent

7 civil and criminal actions; providing for the

8 calculation of attorney's fees; amending s.

9 768.735, F.S.; providing that the section is

10 inapplicable to actions brought under ch. 400,

11 F.S.; amending s. 415.1111, F.S.; limiting

12 actions against nursing homes and assisted

13 living facilities; amending s. 400.0255, F.S.;

14 providing for applicability of provisions

15 relating to transfer or discharge of nursing

16 home residents; amending s. 400.062, F.S.;

17 increasing the bed license fee for nursing home

18 facilities; amending s. 400.071, F.S.; revising

19 license application requirements; requiring

20 certain disclosures; authorizing the Agency for

21 Health Care Administration to issue an inactive

22 license; requiring quality assurance and

23 risk-management plans; amending s. 400.102,

24 F.S.; providing additional grounds for action

25 by the agency against a licensee; amending s.

26 400.111, F.S.; prohibiting renewal of a license

27 if an applicant has failed to pay certain

28 fines; requiring licensees to disclose

29 financial or ownership interests in certain

30 entities; authorizing placing fines in escrow;

31 amending s. 400.118, F.S.; revising duties of

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

1 creating s. 400.147, F.S.; requiring each
2 licensed nursing home facility to establish an
3 internal risk management and quality assurance
4 program; providing requirements of the program;
5 requiring the use of incident reports; defining
6 the term "adverse incident"; requiring that the
7 agency be notified of adverse incidents;
8 requiring reporting of liability claims;
9 specifying duties of the internal risk manager;
10 requiring the reporting of sexual abuse;
11 limiting the liability of a risk manager;
12 requiring that the agency report certain
13 conduct to the appropriate regulatory board;
14 requiring that the agency annually report to
15 the Legislature on the internal risk management
16 of nursing homes; creating s. 400.148, F.S.;
17 providing for a pilot project to coordinate
18 resident quality of care through the use of
19 medical personnel to monitor patients;
20 providing purpose; providing for appointment of
21 guardians; creating s. 400.1755, F.S.;
22 prescribing training standards for employees of
23 nursing homes that provide care for persons
24 with Alzheimer's disease or related disorders;
25 prescribing duties of the Department of Elderly
26 Affairs; amending s. 400.19, F.S.; requiring
27 the agency to conduct surveys of certain
28 facilities cited for deficiencies; providing
29 for a survey fine; providing for inspections;
30 amending s. 400.191, F.S.; requiring the agency
31 to publish a Nursing Home Guide Watch List;

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

1 of incident reports; defining the term "adverse
2 incident"; requiring that the agency be
3 notified of adverse incidents and of liability
4 claims; requiring reporting of liability
5 claims; specifying duties of the internal risk
6 manager; requiring that the agency report
7 certain conduct to the appropriate regulatory
8 board; requiring that the agency annually
9 report to the Legislature on the internal risk
10 management of assisted living facilities;
11 amending s. 400.426, F.S.; requiring that
12 certain residents be examined by a licensed
13 physician; amending s. 400.429, F.S.; providing
14 for election of survival damages, wrongful
15 death damages, or recovery for negligence;
16 providing for attorney's fees for injunctive
17 relief or administrative remedy; providing that
18 ch. 766, F.S., does not apply to actions under
19 this section; prescribing the burden of proof;
20 providing that a violation of a right is not
21 negligence per se; prescribing the duty of
22 care; prescribing a nurse's duty of care;
23 eliminating presuit provisions; eliminating the
24 requirement for presuit mediation; requiring
25 copies of complaints filed in court to be
26 provided to the agency; creating s. 400.4293,
27 F.S.; providing for presuit notice; prohibiting
28 the filing of suit for a specified time;
29 requiring a response to the notice; tolling the
30 statute of limitations; limiting the discovery
31 of presuit investigation documents; limiting

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

1 provisions; creating s. 400.4298, F.S.;

2 providing limits on the amount of punitive

3 damages; providing for a criminal investigation

4 with a finding of liability for punitive

5 damages under certain circumstances; providing

6 for the admissibility of findings in subsequent

7 civil and criminal actions; providing for the

8 calculation of attorney's fees; amending s.

9 400.434, F.S.; authorizing the Agency for

10 Health Care Administration to use information

11 obtained by certain councils; amending s.

12 400.441, F.S.; clarifying facility inspection

13 requirements; creating s. 400.449, F.S.;

14 prohibiting the alteration or falsification of

15 medical or other records of an assisted living

16 facility; providing penalties; amending s.

17 409.908, F.S.; prohibiting nursing home

18 reimbursement rate increases associated with

19 changes in ownership; amending s. 464.203,

20 F.S.; revising certification requirements for

21 nursing assistants; authorizing employment of

22 certain nursing assistants pending

23 certification; requiring continuing education;

24 amending s. 397.405, F.S., relating to service

25 providers; conforming provisions to changes

26 made by the act; prohibiting the issuance of a

27 certificate of need for additional nursing home

28 beds; providing intent for such prohibition;

29 reenacting s. 400.0255(3), (8), F.S., relating

30 to discharge or transfer of residents;

31 reenacting s. 400.23(5), F.S., relating to

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

1 insureds of the association have a
2 risk-management program; providing procedures
3 for offsetting an underwriting deficit;
4 providing for assessments to offset a deficit;
5 providing that a participating insurer has a
6 cause of action against a nonpaying insurer to
7 collect an assessment; requiring the department
8 to review and approve rate filings of the
9 association; amending s. 400.562, F.S.;
10 revising requirements for standards to be
11 included in rules implementing part V of ch.
12 400, F.S.; providing for applicability of
13 specified provisions of the act; providing
14 appropriations; providing for severability;
15 providing effective dates.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (4) of section 400.0073, Florida
20 Statutes, is amended to read:

21 400.0073 State and local ombudsman council
22 investigations.--

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

30 Section 2. Section 400.021, Florida Statutes, is
31 amended to read:

1 400.021 Definitions.--When used in this part, unless
2 the context otherwise requires, the term:

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

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

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

14 (4) "Board" means the Board of Nursing Home
15 Administrators.

16 (5) "Controlling interest" means:

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

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

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

26
27 The term does not include a voluntary board member.

28 ~~(6)~~(5) "Custodial service" means care for a person
29 which entails observation of diet and sleeping habits and
30 maintenance of a watchfulness over the general health, safety,
31 and well-being of the aged or infirm.

1 (7)~~(6)~~ "Department" means the Department of Children
2 and Family Services.

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

17 (9)~~(8)~~ "Geriatric outpatient clinic" means a site for
18 providing outpatient health care to persons 60 years of age or
19 older, which is staffed by a registered nurse or a physician
20 assistant.

21 (10)~~(9)~~ "Geriatric patient" means any patient who is
22 60 years of age or older.

23 (11)~~(10)~~ "Local ombudsman council" means a local
24 long-term care ombudsman council established pursuant to s.
25 400.0069, located within the Older Americans Act planning and
26 service areas.

27 (12)~~(11)~~ "Nursing home bed" means an accommodation
28 which is ready for immediate occupancy, or is capable of being
29 made ready for occupancy within 48 hours, excluding provision
30 of staffing; and which conforms to minimum space requirements,
31 including the availability of appropriate equipment and

1 furnishings within the 48 hours, as specified by rule of the
2 agency, for the provision of services specified in this part
3 to a single resident.

4 (13)~~(12)~~ "Nursing home facility" means any facility
5 which provides nursing services as defined in part I of
6 chapter 464 and which is licensed according to this part.

7 (14)~~(13)~~ "Nursing service" means such services or acts
8 as may be rendered, directly or indirectly, to and in behalf
9 of a person by individuals as defined in s. 464.003.

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

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

19 (17)~~(16)~~ "Resident care plan" means a written plan
20 developed, maintained, and reviewed not less than quarterly by
21 a registered nurse, with participation from other facility
22 staff and the resident or his or her designee or legal
23 representative, which includes a comprehensive assessment of
24 the needs of an individual resident, the type and frequency of
25 services required to provide the necessary care for the
26 resident to attain or maintain the highest practicable
27 physical, mental, and psychosocial well-being, a listing of
28 services provided within or outside the facility to meet those
29 needs, and an explanation of service goals. The resident care
30 plan must be signed by the director of nursing and the
31

1 resident, the resident's designee, or the resident's legal
2 representative.

3 (18)~~(17)~~ "Resident designee" means a person, other
4 than the owner, administrator, or employee of the facility,
5 designated in writing by a resident or a resident's guardian,
6 if the resident is adjudicated incompetent, to be the
7 resident's representative for a specific, limited purpose.

8 (19)~~(18)~~ "State ombudsman council" means the State
9 Long-Term Care Ombudsman Council established pursuant to s.
10 400.0067.

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

23 Section 3. The Agency for Health Care Administration
24 and the Office of the Attorney General shall jointly study the
25 potential use of electronic monitoring devices in nursing home
26 facilities licensed under part II of chapter 400, Florida
27 Statutes. The study shall include, but not be limited to, a
28 review of the current use of electronic monitoring devices by
29 nursing home facilities and their residents and other health
30 care facilities, an analysis of other state laws and proposed
31 legislation related to the mandated use of electronic

1 monitoring devices in nursing home facilities, an analysis of
2 the potential ramifications of requiring facilities to install
3 such devices when requested by or on behalf of a resident, the
4 impact of the devices on the privacy and dignity of both the
5 resident on whose behalf the device is installed and other
6 residents who may be affected by the device, the potential
7 impact on improving the care of residents, the potential
8 impact on the care environment and on staff recruitment and
9 retention, appropriate uses of any tapes if mandated by law,
10 including methods and time frames for reporting any
11 questionable incidents to the facility and appropriate
12 regulatory agencies, appropriate security needed to protect
13 the integrity of tapes for both the protection of the resident
14 and direct care staff, and the potential ramifications on the
15 care environment of allowing the use of recorded tapes in
16 legal proceedings, including any exceptions that should apply
17 if prohibited. The Agency for Health Care Administration shall
18 have the lead on the study and shall submit the findings and
19 recommendations of the study to the Governor, the Speaker of
20 the House of Representatives and the President of the Senate
21 by January 1, 2002.

22 Section 4. Effective May 15, 2001, and applying to
23 causes of action accruing on or after that date, section
24 400.023, Florida Statutes, is amended to read:

25 400.023 Civil enforcement.--

26 (1) Any resident whose rights as specified in this
27 part are violated ~~deprived or infringed upon~~ shall have a
28 cause of action ~~against any licensee responsible for the~~
29 ~~violation~~. The action may be brought by the resident or his or
30 her guardian, by a person or organization acting on behalf of
31 a resident with the consent of the resident or his or her

1 guardian, or by the personal representative of the estate of a
2 deceased resident regardless of the cause of death. If the
3 action alleges a claim for the resident's rights or for
4 negligence that caused the death of the resident, the claimant
5 shall be required to elect either survival damages pursuant to
6 s. 46.021 or wrongful death damages pursuant to s. 768.21 ~~when~~
7 ~~the cause of death resulted from the deprivation or~~
8 ~~infringement of the decedent's rights.~~ If the action alleges a
9 claim for the resident's rights or for negligence that did not
10 cause the death of the resident, the personal representative
11 of the estate may recover damages for the negligence that
12 caused injury to the resident.The action may be brought in
13 any court of competent jurisdiction to enforce such rights and
14 to recover actual and punitive damages for any violation of
15 ~~deprivation or infringement on the rights of a resident or for~~
16 negligence. Any resident who prevails in seeking injunctive
17 relief or a claim for an administrative remedy is entitled to
18 recover the costs of the action, and a reasonable attorney's
19 fee assessed against the defendant not to exceed \$25,000. Fees
20 shall be awarded solely for the injunctive or administrative
21 relief and not for any claim or action for damages whether
22 such claim or action is brought together with a request for an
23 injunction or administrative relief or as a separate action,
24 except as provided under s. 768.79 or the Florida Rules of
25 Civil Procedure. Sections 400.023-400.0238 provide the
26 exclusive remedy for a cause of action for recovery of damages
27 for the personal injury or death of a nursing home resident
28 arising out of negligence or a violation of rights specified
29 in s. 400.022. This section does not preclude theories of
30 recovery not arising out of negligence or s. 400.022 which are
31 available to a resident or to the agency. The provisions of

1 chapter 766 do not apply to any cause of action brought under
2 ss. 400.023-400.0238.~~Any plaintiff who prevails in any such~~
3 ~~action may be entitled to recover reasonable attorney's fees,~~
4 ~~costs of the action, and damages, unless the court finds that~~
5 ~~the plaintiff has acted in bad faith, with malicious purpose,~~
6 ~~and that there was a complete absence of a justiciable issue~~
7 ~~of either law or fact. A prevailing defendant may be entitled~~
8 ~~to recover reasonable attorney's fees pursuant to s. 57.105.~~
9 ~~The remedies provided in this section are in addition to and~~
10 ~~cumulative with other legal and administrative remedies~~
11 ~~available to a resident and to the agency.~~

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

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

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

30 ~~(2) Attorneys' fees shall be based on the following~~
31 ~~criteria:~~

- 1 ~~(a) The time and labor required;~~
2 ~~(b) The novelty and difficulty of the questions;~~
3 ~~(c) The skill requisite to perform the legal service~~
4 ~~properly;~~
5 ~~(d) The preclusion of other employment by the attorney~~
6 ~~due to the acceptance of the case;~~
7 ~~(e) The customary fee;~~
8 ~~(f) Whether the fee is fixed or contingent;~~
9 ~~(g) The amount involved or the results obtained;~~
10 ~~(h) The experience, reputation, and ability of the~~
11 ~~attorneys;~~
12 ~~(i) The costs expended to prosecute the claim;~~
13 ~~(j) The type of fee arrangement between the attorney~~
14 ~~and the client;~~
15 ~~(k) Whether the relevant market requires a contingency~~
16 ~~fee multiplier to obtain competent counsel;~~
17 ~~(l) Whether the attorney was able to mitigate the risk~~
18 ~~of nonpayment in any way.~~
19 (3) In any claim brought pursuant to s. 400.023, a
20 licensee, person or entity shall have a duty to exercise
21 reasonable care. Reasonable care is that degree of care which
22 a reasonably careful licensee, person or entity would use
23 under like circumstances.
24 (4) In any claim for resident's rights violation or
25 negligence by a nurse licensed under Part I of chapter 464,
26 such nurse shall have the duty to exercise care consistent
27 with the prevailing professional standard of care for a nurse.
28 The prevailing professional standard of care for a nurse shall
29 be that level of care, skill, and treatment which, in light of
30 all relevant surrounding circumstances is recognized as
31

1 acceptable and appropriate by reasonably prudent similar
2 nurses.

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

12 (6) The resident or the resident's legal
13 representative shall serve a copy of any complaint alleging in
14 whole or in part a violation of any rights specified in this
15 part to the Agency for Health Care Administration at the time
16 of filing the initial complaint with the clerk of the court
17 for the county in which the action is pursued. The requirement
18 of providing a copy of the complaint to the agency does not
19 impair the resident's legal rights or ability to seek relief
20 for his or her claim.

21 (7) An action under this part for a violation of
22 rights or negligence recognized herein is not a claim for
23 medical malpractice, and the provision of s. 768.21(8) do not
24 apply to a claim alleging death of the resident.

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 May 15, 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 May 15, 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 May 15, 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 May 15, 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 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 primarily 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 (e) In any case in which the findings of fact support
19 an award of punitive damages pursuant to paragraph (b) or
20 paragraph (c), the clerk of the court shall refer the case to
21 the appropriate law enforcement agencies, to the state
22 attorney in the circuit where the long-term care facility that
23 is the subject of the underlying civil cause of action is
24 located, and, for multijurisdictional facility owners, to the
25 Office of the Statewide Prosecutor; and such agencies, state
26 attorney, or Office of the Statewide Prosecutor shall initiate
27 a criminal investigation into the conduct giving rise to the
28 award of punitive damages. All findings by the trier of fact
29 which support an award of punitive damages under this
30 paragraph shall be admissible as evidence in any subsequent
31

1 civil or criminal proceeding relating to the acts giving rise
2 to the award of punitive damages under this paragraph.

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

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

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

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

16 768.735 Punitive damages; exceptions; limitation.--

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

24 (2)(a) In any civil action based upon child abuse,
25 abuse of the elderly under chapter 415, or abuse of the
26 developmentally disabled, ~~or actions arising under chapter 400~~
27 and involving the award of punitive damages, the judgment for
28 the total amount of punitive damages awarded to a claimant may
29 not exceed three times the amount of compensatory damages
30 awarded to each person entitled thereto by the trier of fact,
31

1 except as provided in paragraph (b). This subsection does not
2 apply to any class action.

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

5 Section 12. Effective May 15, 2001, and applying to
6 causes of action accruing on or after that date, section
7 415.1111, Florida Statutes, is amended to read:

8 415.1111 Civil actions.--A vulnerable adult who has
9 been abused, neglected, or exploited as specified in this
10 chapter has a cause of action against any perpetrator and may
11 recover actual and punitive damages for such abuse, neglect,
12 or exploitation. The action may be brought by the vulnerable
13 adult, or that person's guardian, by a person or organization
14 acting on behalf of the vulnerable adult with the consent of
15 that person or that person's guardian, or by the personal
16 representative of the estate of a deceased victim without
17 regard to whether the cause of death resulted from the abuse,
18 neglect, or exploitation. The action may be brought in any
19 court of competent jurisdiction to enforce such action and to
20 recover actual and punitive damages for any deprivation of or
21 infringement on the rights of a vulnerable adult. A party who
22 prevails in any such action may be entitled to recover
23 reasonable attorney's fees, costs of the action, and damages.
24 The remedies provided in this section are in addition to and
25 cumulative with other legal and administrative remedies
26 available to a vulnerable adult. Notwithstanding the
27 foregoing, any civil action for damages against any licensee
28 or entity who establishes, controls, conducts, manages, or
29 operates a facility licensed under part II of chapter 400
30 relating to its operation of the licensed facility shall be
31 brought pursuant to s. 400.023, or against any licensee or

1 entity who establishes, controls, conducts, manages, or
2 operates a facility licensed under part III of chapter 400
3 relating to its operation of the licensed facility shall be
4 brought pursuant to s. 400.429. Such licensee or entity shall
5 not be vicariously liable for the acts or omissions of its
6 employees or agents or any other third party in an action
7 brought under this section.

8 Section 13. Subsection (17) is added to section
9 400.0255, Florida Statutes, to read:

10 400.0255 Resident transfer or discharge; requirements
11 and procedures; hearings.--

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

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

18 400.062 License required; fee; disposition; display;
19 transfer.--

20 (3) The annual license fee required for each license
21 issued under this part shall be comprised of two parts. Part
22 I of the license fee shall be the basic license fee. The rate
23 per bed for the basic license fee shall be established
24 annually and shall be \$50 per bed. The agency may adjust the
25 per bed licensure fees by the Consumer Price Index based on
26 the 12 months immediately preceding the increase ~~must be~~
27 ~~reasonably calculated~~ to cover the cost of regulation under
28 this part, ~~but may not exceed \$35 per bed.~~ Part II of the
29 license fee shall be the resident protection fee, which shall
30 be at the rate of not less than 25 cents per bed. The rate per
31 bed shall be the minimum rate per bed, and such rate shall

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

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

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

1 on a temporary, emergency basis or for the maintenance and
2 care of residents in a nursing home facility pending removal
3 and alternate placement.

4 Section 15. Subsections (2) and (5) of section
5 400.071, Florida Statutes, are amended, and subsections (11)
6 and (12) are added to that section, to read:

7 400.071 Application for license.--

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

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

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

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

31

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

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

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

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

31

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

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

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

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

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

6 Section 16. Subsection (1) of section 400.102, Florida
7 Statutes, is amended to read:

8 400.102 Action by agency against licensee; grounds.--

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

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

13 (b) Misappropriation or conversion of the property of
14 a resident of the facility;

15 (c) Failure to follow the criteria and procedures
16 provided under part I of chapter 394 relating to the
17 transportation, voluntary admission, and involuntary
18 examination of a nursing home resident;

19 (d) Violation of provisions of this part or rules
20 adopted under this part; ~~or~~

21 (e) Fraudulent altering, defacing, or falsifying any
22 medical or nursing home records, or causing or procuring any
23 of these offenses to be committed; or

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

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

28 400.111 Expiration of license; renewal.--

29 (3) The agency may not renew a license if the
30 applicant has failed to pay any fines assessed by final order
31 of the agency or final order of the Health Care Financing

1 Administration under requirements for federal certification.
2 The agency may renew the license of an applicant following the
3 assessment of a fine by final order if such fine has been paid
4 into an escrow account pending an appeal of a final order.

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

15 Section 18. Subsection (2) of section 400.118, Florida
16 Statutes, is amended to read:

17 400.118 Quality assurance; early warning system;
18 monitoring; rapid response teams.--

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

1 agency as a part of the district survey team in the conduct of
2 routine, scheduled surveys, but shall function solely and
3 independently as quality-of-care monitors. Quality-of-care
4 monitors shall assess the overall quality of life in the
5 nursing facility and shall assess specific conditions in the
6 facility directly related to resident ~~patient~~ care, including
7 the operations of internal quality-improvement and
8 risk-management programs and adverse-incident reports. The
9 quality-of-care monitor shall include in an assessment visit
10 observation of the care and services rendered to residents and
11 formal and informal interviews with residents, family members,
12 facility staff, resident guests, volunteers, other regulatory
13 staff, and representatives of a long-term care ombudsman
14 council or Florida advocacy council.

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

28 (c) Any record, whether written or oral, or any
29 written or oral communication generated pursuant to paragraph
30 (a) or paragraph (b) shall not be subject to discovery or
31 introduction into evidence in any civil or administrative

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

20 Section 19. Section 400.121, Florida Statutes, is
21 amended to read:

22 400.121 Denial, suspension, revocation of license;
23 moratorium on admissions; administrative fines; procedure;
24 order to increase staffing.--

25 (1) The agency may deny an application, revoke, or
26 suspend a license, or impose an administrative fine, not to
27 exceed \$500 per violation per day, against any applicant or
28 licensee for the following violations by the applicant,
29 licensee, or other controlling interest:~~for~~

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

31 (b) A demonstrated pattern of deficient practice;

1 (c) Failure to pay any outstanding fines assessed by
2 final order of the agency or final order of the Health Care
3 Financing Administration pursuant to requirements for federal
4 certification. The agency may renew or approve the license of
5 an applicant following the assessment of a fine by final order
6 if such fine has been paid into an escrow account pending an
7 appeal of a final order;

8 (d) Exclusion from the Medicare or Medicaid program;
9 or

10 (e) An adverse action by a regulatory agency against
11 any other licensed facility that has a common controlling
12 interest with the licensee or applicant against whom the
13 action under this section is being brought. If the adverse
14 action involves solely the management company, the applicant
15 or licensee shall be given 30 days to remedy before final
16 action is taken. If the adverse action is based solely upon
17 actions by a controlling interest, the applicant or licensee
18 may present factors in mitigation of any proposed penalty
19 based upon a showing that such penalty is inappropriate under
20 the circumstances.

21
22 All hearings shall be held within the county in which the
23 licensee or applicant operates or applies for a license to
24 operate a facility as defined herein.

25 (2) Except as provided in s. 400.23(8), a \$500 fine
26 shall be imposed ~~The agency, as a part of any final order~~
27 ~~issued by it under this part, may impose such fine as it deems~~
28 ~~proper, except that such fine may not exceed \$500 for each~~
29 ~~violation. Each day a violation of this part occurs~~
30 ~~constitutes a separate violation and is subject to a separate~~
31 ~~fine, but in no event may any fine aggregate more than \$5,000.~~

1 A fine may be levied pursuant to this section in lieu of and
2 notwithstanding the provisions of s. 400.23. Fines paid ~~by any~~
3 ~~nursing home facility licensee under this subsection~~ shall be
4 deposited in the Resident Protection Trust Fund and expended
5 as provided in s. 400.063.

6 (3) The agency shall revoke or deny a nursing home
7 license if the licensee or controlling interest operates a
8 facility in this state that:

9 (a) Has had two moratoria imposed by final order for
10 substandard quality of care, as defined by Title 42, C.F.R.
11 part 483, within any 30-month period;

12 (b) Is conditionally licensed for 180 or more
13 continuous days;

14 (c) Is cited for two class I deficiencies arising from
15 unrelated circumstances during the same survey or
16 investigation; or

17 (d) Is cited for two class I deficiencies arising from
18 separate surveys or investigations within a 30-month period.

19
20 The licensee may present factors in mitigation of revocation,
21 and the agency may make a determination not to revoke a
22 license based upon a showing that revocation is inappropriate
23 under the circumstances.

24 ~~(4)(3)~~ The agency may issue an order immediately
25 suspending or revoking a license when it determines that any
26 condition in the facility presents a danger to the health,
27 safety, or welfare of the residents in the facility.

28 ~~(5)(4)~~(a) The agency may impose an immediate
29 moratorium on admissions to any facility when the agency
30 determines that any condition in the facility presents a
31

1 threat to the health, safety, or welfare of the residents in
2 the facility.

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

11 (6)~~(5)~~ An action taken by the agency to deny, suspend,
12 or revoke a facility's license under this part, ~~in which the~~
13 ~~agency claims that the facility owner or an employee of the~~
14 ~~facility has threatened the health, safety, or welfare of a~~
15 ~~resident of the facility,~~ shall be heard by the Division of
16 Administrative Hearings of the Department of Management
17 Services within 60 ~~120~~ days after the assignment of an
18 administrative law judge ~~receipt of the facility's request for~~
19 ~~a hearing~~, unless the time limitation is waived by both
20 parties. The administrative law judge must render a decision
21 within 30 days after receipt of a proposed recommended order.
22 ~~This subsection does not modify the requirement that an~~
23 ~~administrative hearing be held within 90 days after a license~~
24 ~~is suspended under paragraph (4)(b).~~

25 (7)~~(6)~~ The agency is authorized to require a facility
26 to increase staffing beyond the minimum required by law, if
27 the agency has taken administrative action against the
28 facility for care-related deficiencies directly attributable
29 to insufficient staff. Under such circumstances, the facility
30 may request an expedited interim rate increase. The agency
31 shall process the request within 10 days after receipt of all

1 required documentation from the facility. A facility that
2 fails to maintain the required increased staffing is subject
3 to a fine of \$500 per day for each day the staffing is below
4 the level required by the agency.

5 (8) An administrative proceeding challenging an action
6 taken by the agency pursuant to this section shall be reviewed
7 on the basis of the facts and conditions that resulted in such
8 agency action.

9 (9) Notwithstanding any other provision of law to the
10 contrary, agency action in an administrative proceeding under
11 this section may be overcome by the licensee upon a showing by
12 a preponderance of the evidence to the contrary.

13 (10) In addition to any other sanction imposed under
14 this part, in any final order that imposes sanctions, the
15 agency may assess costs related to the investigation and
16 prosecution of the case. Payment of agency costs shall be
17 deposited into the Health Care Trust Fund.

18 Section 20. Subsection (12) is added to section
19 400.126, Florida Statutes, to read:

20 400.126 Receivership proceedings.--

21 (12) Concurrently with the appointment of a receiver,
22 the agency and the Department of Elderly Affairs shall
23 coordinate an assessment of each resident in the facility by
24 the Comprehensive Assessment and Review for Long-Term-Care
25 (CARES) Program for the purpose of evaluating each resident's
26 need for the level of care provided in a nursing facility and
27 the potential for providing such care in alternative settings.
28 If the CARES assessment determines that a resident could be
29 cared for in a less restrictive setting or does not meet the
30 criteria for skilled or intermediate care in a nursing home,
31 the department and agency shall refer the resident for such

1 care, as is appropriate for the resident. Residents referred
2 pursuant to this subsection shall be given primary
3 consideration for receiving services under the Community Care
4 for the Elderly program in the same manner as persons
5 classified to receive such services pursuant to s. 430.205.

6 Section 21. Subsections (14), (15), (16), (17), (18),
7 (19), and (20) are added to section 400.141, Florida Statutes,
8 to read:

9 400.141 Administration and management of nursing home
10 facilities.--Every licensed facility shall comply with all
11 applicable standards and rules of the agency and shall:

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

15 (15) Submit semiannually to the agency, or more
16 frequently if requested by the agency, information regarding
17 facility staff-to-resident ratios, staff turnover, and staff
18 stability, including information regarding certified nursing
19 assistants, licensed nurses, the director of nursing, and the
20 facility administrator. For purposes of this reporting:

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

25 (b) Staff turnover must be reported for the most
26 recent 12-month period ending on the last workday of the most
27 recent calendar quarter prior to the date the information is
28 submitted. The turnover rate must be computed quarterly, with
29 the annual rate being the cumulative sum of the quarterly
30 rates. the turnover rate is the total number of terminations
31 or separations experienced during the quarter, excluding any

1 employee terminated during a probationary period of 3 months
2 or less, divided by the total number of staff employed at the
3 end of the period for which the rate is computed, and
4 expressed as a percentage.

5 (c) The formula for determining staff stability is the
6 total number of employees that have been employed for more
7 than 12 months, divided by the total number of employees
8 employed at the end of the most recent calendar quarter, and
9 expressed as a percentage.

10 (d) A licensed facility shall impose a moratorium on
11 new admissions to the facility during any period that the
12 staff-to-resident ratio falls below the minimum required by
13 the agency.

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

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

27 (18) If the facility implements a dining and
28 hospitality attendant program, ensure that the program is
29 developed and implemented under the supervision of the
30 facility director of nursing. A licensed nurse, licensed
31 speech or occupational therapist, or a registered dietitian

1 must conduct training of dining and hospitality attendants. A
2 person employed by a facility as a dining and hospitality
3 attendant must perform tasks under the direct supervision of a
4 licensed nurse.

5 (19) Report to the agency any filing for bankruptcy
6 protection by the facility or its parent corporation,
7 divestiture or spin-off of its assets, or corporate
8 reorganization within 30 days after the completion of such
9 activity.

10 (20) Maintain liability insurance coverage that is in
11 force at all times.

12 (21) Maintain in the medical record for each resident
13 a daily chart of certified nursing assistant services provided
14 to the resident. The certified nursing assistant who is caring
15 for the resident must complete this record by the end of his
16 or her shift. This record must indicate assistance with
17 activities of daily living, assistance with eating, and
18 assistance with drinking, and must record each offering of
19 nutrition and hydration for those residents whose plan of care
20 or assessment indicates a risk for malnutrition or
21 dehydration.

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

28 Section 22. Section 400.1413, Florida Statutes, is
29 created to read:

30 400.1413 Volunteers in nursing homes.--
31

1 (1) It is the intent of the Legislature to encourage
2 the involvement of volunteers in nursing homes in this state.
3 The Legislature also acknowledges that the licensee is
4 responsible for all the activities that take place in the
5 nursing home and recognizes the licensee's need to be aware of
6 and coordinate volunteer activities in the nursing home.

7 Therefore, a nursing home may require that volunteers:

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

10 (b) Wear an identification badge while in the
11 building.

12 (c) Participate in a facility orientation and training
13 program.

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

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

19 400.147 Internal risk-management and quality-assurance
20 program.--

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

29 (a) A designated person to serve as risk manager, who
30 is responsible for implementation and oversight of the
31

1 facility's risk-management and quality-assurance program as
2 required by this section.

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

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

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

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

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

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

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

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

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

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

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

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

30 1. Death;

31 2. Brain or spinal damage;

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

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

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

27 (b) The information reported to the agency pursuant to
28 paragraph (a) which relates to persons licensed under chapter
29 458, chapter 459, chapter 461, or chapter 466 shall be
30 reviewed by the agency. The agency shall determine whether any
31 of the incidents potentially involved conduct by a health care

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

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

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

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

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

25 (11) There is no monetary liability on the part of,
26 and a cause of action for damages may not arise against, any
27 risk manager for the implementation and oversight of the
28 internal risk-management and quality-assurance program in a
29 facility licensed under this part as required by this section,
30 or for any act or proceeding undertaken or performed within
31 the scope of the functions of such internal risk-management

1 and quality-assurance program if the risk manager acts without
2 intentional fraud.

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

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

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

15 (a) The total number of adverse incidents.

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

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

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

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

26 (15) Information gathered by a credentialing
27 organization under a quality-assurance program is not
28 discoverable from the credentialing organization. This
29 subsection does not limit discovery of, access to, or use of
30 facility records, including those records from which the
31 credentialing organization gathered its information.

1 Section 24. Section 400.148, Florida Statutes, is
2 created to read:

3 400.148 Medicaid "Up-or-Out" Quality of Care Contract
4 Management Program.--

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

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

1 substantive committees of the Legislature and the Governor an
2 assessment of the program and a proposal for expansion of the
3 program to additional facilities. The staff of the pilot
4 project shall assist regulatory staff in imposing regulatory
5 sanctions, including revocation of licensure, pursuant to s.
6 400.121 against nursing homes that have quality-of-care
7 violations.

8 (3) The pilot project must ensure:

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

11 (b) Facilitation of close communication between the
12 resident, the resident's guardian or legal representative, the
13 resident's attending physician, the resident's family, and
14 staff of the nursing facility;

15 (c) Frequent onsite visits to the resident;

16 (d) Early detection of medical or quality problems
17 that have the potential to lead to adverse outcomes and
18 unnecessary hospitalization;

19 (e) Close communication with regulatory staff;

20 (f) Immediate investigation of resident
21 quality-of-care complaints and communication and cooperation
22 with the appropriate entity to address those complaints,
23 including the ombudsman, state agencies, agencies responsible
24 for Medicaid program integrity, and local law enforcement
25 agencies;

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

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

31

1 (4) The agency shall coordinate the pilot project
2 activities with providers approved by Medicare to operate
3 Evercare demonstration projects.

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

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

17 Section 25. Section 400.1755, Florida Statutes, is
18 created to read:

19 400.1755 Care for persons with Alzheimer's disease or
20 other related disorders.--

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

27 (b) A direct caregiver who is employed by a facility
28 that provides care for residents with Alzheimer's disease or
29 other related disorders and who provides direct care to such
30 residents must complete the required initial training and 4
31 additional hours of training developed or approved by the

1 Department of Elderly Affairs. The training must be completed
2 within 9 months after beginning employment.

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

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

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

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

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

29 Section 26. Subsections (3) and (4) of section 400.19,
30 Florida Statutes, are amended to read:

31 400.19 Right of entry and inspection.--

1 (3) The agency shall every 15 months conduct at least
2 one unannounced inspection to determine compliance by the
3 licensee with statutes, and with rules promulgated under the
4 provisions of those statutes, governing minimum standards of
5 construction, quality and adequacy of care, and rights of
6 residents. The survey shall be conducted every 6 months for
7 the next 2-year period if the facility has been cited for a
8 class I deficiency, has been cited for two or more class II
9 deficiencies arising from separate surveys or investigations
10 within a 60-day period, or has had three or more substantiated
11 complaints within a 6-month period, each resulting in at least
12 one class I or class II deficiency. In addition to any other
13 fees or fines in this part, the agency shall assess a fine for
14 each facility that is subject to the 6-month survey cycle. The
15 fine for the 2-year period shall be \$6,000, one-half to be
16 paid at the completion of each survey. The agency may adjust
17 this fine by the change in the Consumer Price Index, based on
18 the 12 months immediately preceding the increase, to cover the
19 cost of the additional surveys.The agency shall verify
20 through subsequent inspection that any deficiency identified
21 during the annual inspection is corrected. However, the
22 agency may verify the correction of a class III or class IV
23 deficiency unrelated to resident rights or resident care
24 without reinspecting the facility if adequate written
25 documentation has been received from the facility, which
26 provides assurance that the deficiency has been corrected.
27 The giving or causing to be given of advance notice of such
28 unannounced inspections by an employee of the agency to any
29 unauthorized person shall constitute cause for suspension of
30 not fewer than 5 working days according to the provisions of
31 chapter 110.

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

18 Section 27. Subsection (3) and paragraph (a) of
19 subsection (5) of section 400.191, Florida Statutes, are
20 amended to read:

21 400.191 Availability, distribution, and posting of
22 reports and records.--

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

30 (a) The agency shall quarterly publish a "Nursing Home
31 Guide Watch List" to assist consumers in evaluating the

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

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

22 (5) Every nursing home facility licensee shall:

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

26 1. A concise summary of the last inspection report
27 pertaining to the nursing home and issued by the agency, with
28 references to the page numbers of the full reports, noting any
29 deficiencies found by the agency and the actions taken by the
30 licensee to rectify such deficiencies and indicating in such
31

1 summaries where the full reports may be inspected in the
2 nursing home.

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

5 Section 28. Subsection (2) of section 400.211, Florida
6 Statutes, is amended, and subsection (4) is added to that
7 section, to read:

8 400.211 Persons employed as nursing assistants;
9 certification requirement.--

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

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

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

20 (c) Persons who have preliminarily passed the state's
21 certification exam.

22

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

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

31

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

4 (b) Include, at a minimum:

5 1. Techniques for assisting with eating and proper
6 feeding;

7 2. Principles of adequate nutrition and hydration;

8 3. Techniques for assisting and responding to the
9 cognitively impaired resident or the resident with difficult
10 behaviors;

11 4. Techniques for caring for the resident at the
12 end-of-life; and

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

15 (c) Address areas of weakness as determined in nursing
16 assistant performance reviews and may address the special
17 needs of residents as determined by the nursing home facility
18 staff.

19 Section 29. Subsections (2), (3), (7), and (8) of
20 section 400.23, Florida Statutes, are amended to read:

21 400.23 Rules; evaluation and deficiencies; licensure
22 status.--

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

28 (a) The location and construction of the facility;
29 including fire and life safety, plumbing, heating, cooling,
30 lighting, ventilation, and other housing conditions which will
31 ensure the health, safety, and comfort of residents, including

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

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

31

1 (c) All sanitary conditions within the facility and
2 its surroundings, including water supply, sewage disposal,
3 food handling, and general hygiene which will ensure the
4 health and comfort of residents.

5 (d) The equipment essential to the health and welfare
6 of the residents.

7 (e) A uniform accounting system.

8 (f) The care, treatment, and maintenance of residents
9 and measurement of the quality and adequacy thereof, based on
10 rules developed under this chapter and the Omnibus Budget
11 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,
12 1987), Title IV (Medicare, Medicaid, and Other Health-Related
13 Programs), Subtitle C (Nursing Home Reform), as amended.

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

1 organizations must be given the opportunity to review the
2 plan. The local emergency management agency shall complete
3 its review within 60 days and either approve the plan or
4 advise the facility of necessary revisions.

5 (h) The implementation of the consumer-satisfaction
6 survey pursuant to s. 400.0225; the availability,
7 distribution, and posting of reports and records pursuant to
8 s. 400.191; and the Gold Seal Program pursuant to s. 400.235.

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

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

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

31

1 (c) Licensed practical nurses licensed under chapter
2 464 who are providing nursing services in nursing home
3 facilities under this part may supervise the activities of
4 other licensed practical nurses, certified nursing assistants,
5 and other unlicensed personnel providing services in such
6 facilities in accordance with rules adopted by the Board of
7 Nursing.

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

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

28 (b) A conditional licensure status means that a
29 facility, due to the presence of one or more class I or class
30 II deficiencies, or class III deficiencies not corrected
31 within the time established by the agency, is not in

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

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

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

1 ~~deficiencies within a reasonable period approved by the agency~~
2 ~~shall be grounds for the imposition of sanctions pursuant to~~
3 ~~this part.~~

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

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

10 1. Establish uniform procedures for the evaluation of
11 facilities.

12 2. Provide criteria in the areas referenced in
13 paragraph (c).

14 3. Address other areas necessary for carrying out the
15 intent of this section.

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

1 deficiency in which the problems causing the deficiency are
2 pervasive in the facility or represent systemic failure that
3 has affected or has the potential to affect a large portion of
4 the facility's residents.The agency shall indicate the
5 classification on the face of the notice of deficiencies as
6 follows:

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

29 (b) A class II deficiency is a deficiency that
30 ~~deficiencies are those which~~ the agency determines has
31 compromised the resident's ability to maintain or reach his or

1 her highest practicable physical, mental, and psychosocial
2 well-being, as defined by an accurate and comprehensive
3 resident assessment, plan of care, and provision of services
4 ~~have a direct or immediate relationship to the health, safety,~~
5 ~~or security of the nursing home facility residents, other than~~
6 ~~class I deficiencies.~~ A class II deficiency is subject to a
7 civil penalty of \$2,500 for an isolated deficiency, \$5,000 for
8 a patterned deficiency, and \$7,500 for a widespread ~~in an~~
9 ~~amount not less than \$1,000 and not exceeding \$10,000 for each~~
10 ~~and every~~ deficiency. The fine amount shall be doubled for
11 each deficiency if the facility was previously cited for one
12 or more class I or class II deficiencies during the last
13 annual inspection or any inspection or complaint investigation
14 since the last annual inspection. A fine shall be levied
15 notwithstanding the correction of the deficiency. ~~A citation~~
16 ~~for a class II deficiency shall specify the time within which~~
17 ~~the deficiency is required to be corrected. If a class II~~
18 ~~deficiency is corrected within the time specified, no civil~~
19 ~~penalty shall be imposed, unless it is a repeated offense.~~

20 (c) A class III deficiency is a deficiency that
21 ~~deficiencies are those which~~ the agency determines will result
22 in no more than minimal physical, mental, or psychosocial
23 discomfort to the resident or has the potential to compromise
24 the resident's ability to maintain or reach his or her highest
25 practical physical, mental, or psychosocial well-being, as
26 defined by an accurate and comprehensive resident assessment,
27 plan of care, and provision of services ~~to have an indirect or~~
28 ~~potential relationship to the health, safety, or security of~~
29 ~~the nursing home facility residents, other than class I or~~
30 ~~class II deficiencies.~~ A class III deficiency is ~~shall be~~
31 subject to a civil penalty of \$1,000 for an isolated

1 deficiency, \$2,000 for a patterned deficiency, and \$3,000 for
2 a widespread not less than \$500 and not exceeding \$2,500 for
3 each and every deficiency. The fine amount shall be doubled
4 for each deficiency if the facility was previously cited for
5 one or more class I or class II deficiencies during the last
6 annual inspection or any inspection or complaint investigation
7 since the last annual inspection.A citation for a class III
8 deficiency must ~~shall~~ specify the time within which the
9 deficiency is required to be corrected. If a class III
10 deficiency is corrected within the time specified, no civil
11 penalty shall be imposed, ~~unless it is a repeated offense.~~

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

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

18 400.235 Nursing home quality and licensure status;
19 Gold Seal Program.--

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

22 (a) Had no class I or class II deficiencies within the
23 30 months preceding application for the program.

24 (b) Evidence financial soundness and stability
25 according to standards adopted by the agency in administrative
26 rule.

27 (c) Participate consistently in the required consumer
28 satisfaction process as prescribed by the agency, and
29 demonstrate that information is elicited from residents,
30 family members, and guardians about satisfaction with the
31 nursing facility, its environment, the services and care

1 provided, the staff's skills and interactions with residents,
2 attention to resident's needs, and the facility's efforts to
3 act on information gathered from the consumer satisfaction
4 measures.

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

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

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

18 (g) Provide targeted inservice training provided to
19 meet training needs identified by internal or external quality
20 assurance efforts.

21

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

27 Section 31. Section 400.275, Florida Statutes, is
28 created to read:

29 400.275 Agency duties.--

30 (1) The agency shall ensure that each newly hired
31 nursing home surveyor, as a part of basic training, is

1 assigned full-time to a licensed nursing home for at least 2
2 days within a 7-day period to observe facility operations
3 outside of the survey process before the surveyor begins
4 survey responsibilities. Such observations may not be the sole
5 basis of a deficiency citation against the facility. The
6 agency may not assign an individual to be a member of a survey
7 team for purposes of a survey, evaluation, or consultation
8 visit at a nursing home facility in which the surveyor was an
9 employee within the preceding 5 years.

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

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

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

29 Section 32. Subsections (3) and (4) of section
30 400.407, Florida Statutes, are amended to read:

31 400.407 License required; fee, display.--

1 (3) Any license granted by the agency must state the
2 maximum resident capacity of the facility, the type of care
3 for which the license is granted, the date the license is
4 issued, the expiration date of the license, and any other
5 information deemed necessary by the agency. Licenses shall be
6 issued for one or more of the following categories of care:
7 standard, extended congregate care, limited nursing services,
8 or limited mental health.

9 (a) A standard license shall be issued to facilities
10 providing one or more of the personal services identified in
11 s. 400.402. Such facilities may also employ or contract with a
12 person licensed under part I of chapter 464 to administer
13 medications and perform other tasks as specified in s.
14 400.4255.

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

22 1. In order for extended congregate care services to
23 be provided in a facility licensed under this part, the agency
24 must first determine that all requirements established in law
25 and rule are met and must specifically designate, on the
26 facility's license, that such services may be provided and
27 whether the designation applies to all or part of a facility.
28 Such designation may be made at the time of initial licensure
29 or ~~biennial~~ relicensure, or upon request in writing by a
30 licensee under this part. Notification of approval or denial
31 of such request shall be made within 90 days after receipt of

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

- 8 a. A class I or class II violation;
- 9 b. Three or more repeat or recurring class III
10 violations of identical or similar resident care standards as
11 specified in rule from which a pattern of noncompliance is
12 found by the agency;
- 13 c. Three or more class III violations that were not
14 corrected in accordance with the corrective action plan
15 approved by the agency;
- 16 d. Violation of resident care standards resulting in a
17 requirement to employ the services of a consultant pharmacist
18 or consultant dietitian;
- 19 e. Denial, suspension, or revocation of a license for
20 another facility under this part in which the applicant for an
21 extended congregate care license has at least 25 percent
22 ownership interest; or
- 23 f. Imposition of a moratorium on admissions or
24 initiation of injunctive proceedings.

25 2. Facilities that are licensed to provide extended
26 congregate care services shall maintain a written progress
27 report on each person who receives such services, which report
28 describes the type, amount, duration, scope, and outcome of
29 services that are rendered and the general status of the
30 resident's health. A registered nurse, or appropriate
31 designee, representing the agency shall visit such facilities

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

23 3. Facilities that are licensed to provide extended
24 congregate care services shall:

25 a. Demonstrate the capability to meet unanticipated
26 resident service needs.

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

31

1 c. Have sufficient staff available, taking into
2 account the physical plant and firesafety features of the
3 building, to assist with the evacuation of residents in an
4 emergency, as necessary.

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

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

15 f. Implement the concept of managed risk.

16 g. Provide, either directly or through contract, the
17 services of a person licensed pursuant to part I of chapter
18 464.

19 h. In addition to the training mandated in s. 400.452,
20 provide specialized training as defined by rule for facility
21 staff.

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

1 5. The primary purpose of extended congregate care
2 services is to allow residents, as they become more impaired,
3 the option of remaining in a familiar setting from which they
4 would otherwise be disqualified for continued residency. A
5 facility licensed to provide extended congregate care services
6 may also admit an individual who exceeds the admission
7 criteria for a facility with a standard license, if the
8 individual is determined appropriate for admission to the
9 extended congregate care facility.

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

15 7. When a facility can no longer provide or arrange
16 for services in accordance with the resident's service plan
17 and needs and the facility's policy, the facility shall make
18 arrangements for relocating the person in accordance with s.
19 400.428(1)(k).

20 8. Failure to provide extended congregate care
21 services may result in denial of extended congregate care
22 license renewal.

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

31

1 a. A description of the facilities licensed to provide
2 such services, including total number of beds licensed under
3 this part.

4 b. The number and characteristics of residents
5 receiving such services.

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

8 d. An analysis of deficiencies cited during licensure
9 ~~biennial~~ inspections.

10 e. The number of residents who required extended
11 congregate care services at admission and the source of
12 admission.

13 f. Recommendations for statutory or regulatory
14 changes.

15 g. The availability of extended congregate care to
16 state clients residing in facilities licensed under this part
17 and in need of additional services, and recommendations for
18 appropriations to subsidize extended congregate care services
19 for such persons.

20 h. Such other information as the department considers
21 appropriate.

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

25 1. In order for limited nursing services to be
26 provided in a facility licensed under this part, the agency
27 must first determine that all requirements established in law
28 and rule are met and must specifically designate, on the
29 facility's license, that such services may be provided. Such
30 designation may be made at the time of initial licensure or
31 ~~biennial~~ relicensure, or upon request in writing by a licensee

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

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

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

1 (4)(a) The biennial license fee required of a facility
2 is ~~\$300~~~~\$240~~ per license, with an additional fee of ~~\$50~~~~\$30~~
3 per resident based on the total licensed resident capacity of
4 the facility, except that no additional fee will be assessed
5 for beds designated for recipients of optional state
6 supplementation payments provided for in s. 409.212. The total
7 fee may not exceed \$10,000, no part of which shall be returned
8 to the facility. The agency shall adjust the per bed license
9 fee and the total licensure fee annually by not more than the
10 change in the consumer price index based on the 12 months
11 immediately preceding the increase.

12 (b) In addition to the total fee assessed under
13 paragraph (a), the agency shall require facilities that are
14 licensed to provide extended congregate care services under
15 this part to pay an additional fee per licensed facility. The
16 amount of the biennial fee shall be \$400 per license, with an
17 additional fee of \$10 per resident based on the total licensed
18 resident capacity of the facility. ~~No part of this fee which~~
19 shall be returned to the facility. The agency may adjust the
20 per-bed license fee and the annual license fee once each year
21 by not more than the average rate of inflation for the 12
22 months immediately preceding the increase.

23 (c) In addition to the total fee assessed under
24 paragraph (a), the agency shall require facilities that are
25 licensed to provide limited nursing services under this part
26 to pay an additional fee per licensed facility. The amount of
27 the biennial fee shall be ~~\$250~~~~\$200~~ per license, with an
28 additional fee of \$10 per resident based on the total licensed
29 resident capacity of the facility. ~~The total biennial fee may~~
30 ~~not exceed \$2,000,~~ No part of this fee which shall be returned
31 to the facility. The agency may adjust the per-bed license

1 ~~fee and the \$200~~ biennial license fee ~~and the maximum total~~
2 ~~license fee~~ once each year by not more than the average rate
3 of inflation for the 12 months immediately preceding the
4 increase.

5 Section 33. Paragraph (n) is added to subsection (1)
6 of section 400.414, Florida Statutes, and subsection (8) is
7 added to that section, to read:

8 400.414 Denial, revocation, or suspension of license;
9 imposition of administrative fine; grounds.--

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

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

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

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

25 Section 34. Section 400.419, Florida Statutes, is
26 amended to read:

27 400.419 Violations; administrative fines.--

28 (1) Each violation of this part and adopted rules
29 shall be classified according to the nature of the violation
30 and the gravity of its probable effect on facility residents.

31

1 The agency shall indicate the classification on the written
2 notice of the violation as follows:

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

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

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

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

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

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

26 ~~(2)~~(3) In determining if a penalty is to be imposed
27 and in fixing the amount of the fine, the agency shall
28 consider the following factors:

29 (a) The gravity of the violation, including the
30 probability that death or serious physical or emotional harm
31 to a resident will result or has resulted, the severity of the

1 action or potential harm, and the extent to which the
2 provisions of the applicable laws or rules were violated.

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

5 (c) Any previous violations.

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

8 (e) The licensed capacity of the facility.

9 (3)~~(4)~~ Each day of continuing violation after the date
10 fixed for termination of the violation, as ordered by the
11 agency, constitutes an additional, separate, and distinct
12 violation.

13 (4)~~(5)~~ Any action taken to correct a violation shall
14 be documented in writing by the owner or administrator of the
15 facility and verified through followup visits by agency
16 personnel. The agency may impose a fine and, in the case of an
17 owner-operated facility, revoke or deny a facility's license
18 when a facility administrator fraudulently misrepresents
19 action taken to correct a violation.

20 (5)~~(6)~~ For fines that are upheld following
21 administrative or judicial review, the violator shall pay the
22 fine, plus interest at the rate as specified in s. 55.03, for
23 each day beyond the date set by the agency for payment of the
24 fine.

25 (6)~~(7)~~ Any unlicensed facility that continues to
26 operate after agency notification is subject to a \$1,000 fine
27 per day. ~~Each day beyond 5 working days after agency~~
28 ~~notification constitutes a separate violation, and the~~
29 ~~facility is subject to a fine of \$500 per day.~~

30 (7)~~(8)~~ Any licensed facility whose owner or
31 administrator concurrently operates an unlicensed facility

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

7 (8)~~(9)~~ Any facility whose owner fails to apply for a
8 change-of-ownership license in accordance with s. 400.412 and
9 operates the facility under the new ownership is subject to a
10 fine of not to exceed \$5,000.

11 (9)~~(10)~~ In addition to any administrative fines
12 imposed, the agency may assess a survey fee, equal to the
13 lesser of one half of the facility's biennial license and bed
14 fee or \$500, to cover the cost of conducting initial complaint
15 investigations that result in the finding of a violation that
16 was the subject of the complaint or monitoring visits
17 conducted under s. 400.428(3)(c) to verify the correction of
18 the violations.

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

30
31

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 35. 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.

31

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

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

16 (a) A total number of adverse incidents;

17 (b) A listing, by category, of the type of adverse
18 incidents occurring within each category and the type of staff
19 involved;

20 (c) A listing, by category, of the types of injuries,
21 if any, and the number of injuries occurring within each
22 category;

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

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

27 (7) The information reported to the agency pursuant to
28 subsection (3) which relates to persons licensed under chapter
29 458, chapter 459, chapter 461, chapter 464, or chapter 465
30 shall be reviewed by the agency. The agency shall determine
31 whether any of the incidents potentially involved conduct by a

1 health care professional who is subject to disciplinary
2 action, in which case the provisions of s. 456.073 apply. The
3 agency may investigate, as it deems appropriate, any such
4 incident and prescribe measures that must or may be taken in
5 response to the incident. The agency shall review each
6 incident and determine whether it potentially involved conduct
7 by a health care professional who is subject to disciplinary
8 action, in which case the provisions of s. 456.073 apply.

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

15 (9) The adverse incident reports and preliminary
16 adverse incident reports required under this section are
17 confidential as provided by law and are not discoverable or
18 admissible in any civil or administrative action, except in
19 disciplinary proceedings by the agency or appropriate
20 regulatory board.

21 (10) The Department of Elderly Affairs may adopt rules
22 necessary to administer this section.

23 Section 36. Present subsections (7), (8), (9), (10),
24 and (11) of section 400.426, Florida Statutes, are
25 redesignated as subsections (8), (9), (10), (11), and (12),
26 respectively, and a new subsection (7) is added to that
27 section, to read:

28 400.426 Appropriateness of placements; examinations of
29 residents.--

30 (7) The facility must notify a licensed physician when
31 a resident exhibits signs of dementia or cognitive impairment

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

9 Section 37. Effective May 15, 2001, and applying to
10 causes of action accruing on or after that date, section
11 400.429, Florida Statutes, is amended to read:

12 400.429 Civil actions to enforce rights.--

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

1 enforce such rights and to recover actual damages, and
2 punitive damages for violation of the rights of a resident or
3 negligence when malicious, wanton, or willful disregard of the
4 rights of others can be shown. Any resident who prevails in
5 seeking injunctive relief or a claim for an administrative
6 remedy is entitled to recover the costs of the action and a
7 reasonable attorney's fee assessed against the defendant not
8 to exceed \$25,000. Fees shall be awarded solely for the
9 injunctive or administrative relief and not for any claim or
10 action for damages whether such claim or action is brought
11 together with a request for an injunction or administrative
12 relief or as a separate action, except as provided under s.
13 768.79 or the Florida Rules of Civil Procedure. Sections
14 400.429-400.4303 provide the exclusive remedy for a cause of
15 action for recovery of damages for the personal injury or
16 death of a resident arising out of negligence or a violation
17 of rights specified in s. 400.428. This section does not
18 preclude theories of recovery not arising out of negligence or
19 s. 400.428 which are available to a resident or to the agency.
20 The provisions of chapter 766 do not apply to any cause of
21 action brought under ss. 400.429-400.4303.~~Any plaintiff who~~
22 ~~prevails in any such action may be entitled to recover~~
23 ~~reasonable attorney's fees, costs of the action, and damages,~~
24 ~~unless the court finds that the plaintiff has acted in bad~~
25 ~~faith, with malicious purpose, and that there was a complete~~
26 ~~absence of a justiciable issue of either law or fact. A~~
27 ~~prevailing defendant may be entitled to recover reasonable~~
28 ~~attorney's fees pursuant to s. 57.105. The remedies provided~~
29 ~~in this section are in addition to and cumulative with other~~
30 ~~legal and administrative remedies available to a resident or~~
31 ~~to the agency.~~

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

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

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

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

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

12
13 Nothing in this part shall be interpreted to create strict
14 liability. A violation of the rights set forth in s. 400.428
15 or in any other standard or guidelines specified in this part
16 or in any applicable administrative standard or guidelines of
17 this state or a federal regulatory agency shall be evidence of
18 negligence but shall not be considered negligence per se.

19 (3) In any claim brought pursuant to s. 400.429, a
20 licensee, person or entity shall have a duty to exercise
21 reasonable care. Reasonable care is that degree of care which
22 a reasonably careful licensee, person or entity would use
23 under like circumstances.

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

1 nurses. ~~To recover attorney's fees under this section, the~~
2 ~~following conditions precedent must be met:~~

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

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

11 ~~a. Agree on a mediator. If the parties cannot agree on~~
12 ~~a mediator, the defendant shall immediately notify the court,~~
13 ~~which shall appoint a mediator within 10 days after such~~
14 ~~notice.~~

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

16 ~~c. Prepare an order for the court that identifies the~~
17 ~~mediator, the scheduled date of the mediation, and other terms~~
18 ~~of the mediation. Absent any disagreement between the parties,~~
19 ~~the court may issue the order for the mediation submitted by~~
20 ~~the parties without a hearing.~~

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

25 ~~3. The mediation shall be conducted in the following~~
26 ~~manner:~~

27 ~~a. Each party shall ensure that all persons necessary~~
28 ~~for complete settlement authority are present at the~~
29 ~~mediation.~~

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

31

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

5 ~~(b) If the parties do not settle the case pursuant to~~
6 ~~mediation, the last offer of the defendant made at mediation~~
7 ~~shall be recorded by the mediator in a written report that~~
8 ~~states the amount of the offer, the date the offer was made in~~
9 ~~writing, and the date the offer was rejected. If the matter~~
10 ~~subsequently proceeds to trial under this section and the~~
11 ~~plaintiff prevails but is awarded an amount in damages,~~
12 ~~exclusive of attorney's fees, which is equal to or less than~~
13 ~~the last offer made by the defendant at mediation, the~~
14 ~~plaintiff is not entitled to recover any attorney's fees.~~

15 ~~(c) This subsection applies only to claims for~~
16 ~~liability and damages and does not apply to actions for~~
17 ~~injunctive relief.~~

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

20 ~~(5)(3)~~ Discovery of financial information for the
21 purpose of determining the value of punitive damages may not
22 be had unless the plaintiff shows the court by proffer or
23 evidence in the record that a reasonable basis exists to
24 support a claim for punitive damages.

25 ~~(6)(4)~~ In addition to any other standards for punitive
26 damages, any award of punitive damages must be reasonable in
27 light of the actual harm suffered by the resident and the
28 egregiousness of the conduct that caused the actual harm to
29 the resident.

30 (7) The resident or the resident's legal
31 representative shall serve a copy of any complaint alleging in

1 whole or in part a violation of any rights specified in this
2 part to the Agency for Health Care Administration at the time
3 of filing the initial complaint with the clerk of the court
4 for the county in which the action is pursued. The requirement
5 of providing a copy of the complaint to the agency does not
6 impair the resident's legal rights or ability to seek relief
7 for his or her claim.

8 Section 38. Effective May 15, 2001, and applying to
9 causes of action accruing on or after that date, section
10 400.4293, Florida Statutes, is created to read:

11 400.4293 Presuit notice; investigation; notification
12 of violation of residents' rights or alleged negligence;
13 claims evaluation procedure; informal discovery; review.--

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

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

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

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

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

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

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

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

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

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

24
25 Each defendant or insurer of the defendant shall evaluate the
26 claim in good faith.

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

30 1. Rejecting the claim; or

31 2. Making a settlement offer.

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

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

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

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

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

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

24 (b) Documents or things.--Any party may request
25 discovery of relevant documents or things. The documents or
26 things must be produced, at the expense of the requesting
27 party, within 20 days after the date of receipt of the
28 request. A party is required to produce relevant and
29 discoverable documents or things within that party's
30 possession or control, if in good faith it can reasonably be
31 done within the timeframe of the claims evaluation process.

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

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

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

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

27 Section 39. Effective May 15, 2001, and applying to
28 causes of action accruing on or after that date, section
29 400.4294, Florida Statutes, is created to read:

30
31

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

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

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

14 Section 40. Effective May 15, 2001, and applying to
15 causes of action accruing on or after that date, section
16 400.4295, Florida Statutes, is created to read:

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

22 Section 41. Effective May 15, 2001, section 400.4296,
23 Florida Statutes, is created to read:

24 400.4296 Statute of limitations.--

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

1 the date of the incident or occurrence out of which the cause
2 of action accrued.

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

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

23 Section 42. Section 400.4297, Florida Statutes, is
24 created to read:

25 400.4297 Punitive damages; pleading; burden of
26 proof.--

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

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

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

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

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

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

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

31

1 (b) The officers, directors, or managers of the
2 employer, principal, corporation, or other legal entity
3 condoned, ratified, or consented to such conduct; or

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

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

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

14 Section 43. Section 400.4298, Florida Statutes, is
15 created to read:

16 400.4298 Punitive damages; limitation.--

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

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

22 2. The sum of \$1 million.

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

1 1. Four 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 \$4 million.

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

10 (d) This subsection is not intended to prohibit an
11 appropriate court from exercising its jurisdiction under s.
12 768.74 in determining the reasonableness of an award of
13 punitive damages that is less than three times the amount of
14 compensatory damages.

15 (e) In any case in which the findings of fact support
16 an award of punitive damages pursuant to paragraph (b) or
17 paragraph (c), the clerk of the court shall refer the case to
18 the appropriate law enforcement agencies, to the state
19 attorney in the circuit where the long-term care facility that
20 is the subject of the underlying civil cause of action is
21 located, and, for multijurisdictional facility owners, to the
22 Office of the Statewide Prosecutor; and such agencies, state
23 attorney, or Office of the Statewide Prosecutor shall initiate
24 a criminal investigation into the conduct giving rise to the
25 award of punitive damages. All findings by the trier of fact
26 which support an award of punitive damages under this
27 paragraph shall be admissible as evidence in any subsequent
28 civil or criminal proceeding relating to the acts giving rise
29 to the award of punitive damages under this paragraph.

30 (2) The claimant's attorney's fees, if payable from
31 the judgment, are, to the extent that the fees are based on

1 the punitive damages, calculated based on the final judgment
2 for punitive damages. This subsection does not limit the
3 payment of attorney's fees based upon an award of damages
4 other than punitive damages.

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

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

9 Section 44. Section 400.434, Florida Statutes, is
10 amended to read:

11 400.434 Right of entry and inspection.--Any duly
12 designated officer or employee of the department, the
13 Department of Children and Family Services, the agency, the
14 state or local fire marshal, or a member of the state or local
15 long-term care ombudsman council shall have the right to enter
16 unannounced upon and into the premises of any facility
17 licensed pursuant to this part in order to determine the state
18 of compliance with the provisions of this part and of rules or
19 standards in force pursuant thereto. The right of entry and
20 inspection shall also extend to any premises which the agency
21 has reason to believe is being operated or maintained as a
22 facility without a license; but no such entry or inspection of
23 any premises may be made without the permission of the owner
24 or person in charge thereof, unless a warrant is first
25 obtained from the circuit court authorizing such entry. The
26 warrant requirement shall extend only to a facility which the
27 agency has reason to believe is being operated or maintained
28 as a facility without a license. Any application for a
29 license or renewal thereof made pursuant to this part shall
30 constitute permission for, and complete acquiescence in, any
31 entry or inspection of the premises for which the license is

1 sought, in order to facilitate verification of the information
2 submitted on or in connection with the application; to
3 discover, investigate, and determine the existence of abuse or
4 neglect; or to elicit, receive, respond to, and resolve
5 complaints. Any current valid license shall constitute
6 unconditional permission for, and complete acquiescence in,
7 any entry or inspection of the premises by authorized
8 personnel. The agency shall retain the right of entry and
9 inspection of facilities that have had a license revoked or
10 suspended within the previous 24 months, to ensure that the
11 facility is not operating unlawfully. However, before entering
12 the facility, a statement of probable cause must be filed with
13 the director of the agency, who must approve or disapprove the
14 action within 48 hours. Probable cause shall include, but is
15 not limited to, evidence that the facility holds itself out to
16 the public as a provider of personal care services or the
17 receipt of a complaint by the long-term care ombudsman council
18 about the facility. Data collected by the state or local
19 long-term care ombudsman councils or the state or local
20 advocacy councils may be used by the agency in investigations
21 involving violations of regulatory standards.

22 Section 45. Paragraph (h) of subsection (1) and
23 subsection (4) of section 400.441, Florida Statutes, are
24 amended to read:

25 400.441 Rules establishing standards.--

26 (1) It is the intent of the Legislature that rules
27 published and enforced pursuant to this section shall include
28 criteria by which a reasonable and consistent quality of
29 resident care and quality of life may be ensured and the
30 results of such resident care may be demonstrated. Such rules
31 shall also ensure a safe and sanitary environment that is

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

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

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

25 (4) The agency may use an abbreviated biennial
26 standard licensure inspection that ~~which~~ consists of a review
27 of key quality-of-care standards in lieu of a full inspection
28 in facilities which have a good record of past performance.
29 However, a full inspection shall be conducted in facilities
30 which have had a history of class I or class II violations,
31 uncorrected class III violations, confirmed ombudsman council

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

23 Section 46. Section 400.449, Florida Statutes, is
24 created to read:

25 400.449 Resident records; penalties for alteration.--

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

31

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

4 Section 47. Paragraph (b) of subsection (2) of section
5 409.908, Florida Statutes, is amended to read:

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

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

1 applicable state and federal laws, rules, regulations, and
2 quality and safety standards and to ensure that individuals
3 eligible for medical assistance have reasonable geographic
4 access to such care. Changes of ownership between related
5 parties do not qualify for increases in reimbursement rates
6 associated with the change of ownership. The agency shall
7 amend the Title XIX Long Term Care Reimbursement Plan to
8 provide that the initial nursing home reimbursement rates, for
9 the operating, patient care, and MAR components, associated
10 with changes of ownership filed on or after October 1, 2001,
11 are equivalent to the previous owner's reimbursement rate.
12 Under the plan, interim rate adjustments shall not be granted
13 to reflect increases in the cost of general or professional
14 liability insurance for nursing homes unless the following
15 criteria are met: have at least a 65 percent Medicaid
16 utilization in the most recent cost report submitted to the
17 agency, and the increase in general or professional liability
18 costs to the facility for the most recent policy period
19 affects the total Medicaid per diem by at least 5 percent.
20 This rate adjustment shall not result in the per diem
21 exceeding the class ceiling. This provision shall ~~apply only~~
22 ~~to fiscal year 2000-2001 and shall~~ be implemented to the
23 extent existing appropriations are available. The agency shall
24 report to the Governor, the Speaker of the House of
25 Representatives, and the President of the Senate by December
26 31, 2000, on the cost of liability insurance for Florida
27 nursing homes for fiscal years 1999 and 2000 and the extent to
28 which these costs are not being compensated by the Medicaid
29 program. Medicaid-participating nursing homes shall be
30 required to report to the agency information necessary to
31 compile this report. Effective no earlier than the

1 rate-setting period beginning April 1, 1999, the agency shall
2 establish a case-mix reimbursement methodology for the rate of
3 payment for long-term care services for nursing home
4 residents. The agency shall compute a per diem rate for
5 Medicaid residents, adjusted for case mix, which is based on a
6 resident classification system that accounts for the relative
7 resource utilization by different types of residents and which
8 is based on level-of-care data and other appropriate data. The
9 case-mix methodology developed by the agency shall take into
10 account the medical, behavioral, and cognitive deficits of
11 residents. In developing the reimbursement methodology, the
12 agency shall evaluate and modify other aspects of the
13 reimbursement plan as necessary to improve the overall
14 effectiveness of the plan with respect to the costs of patient
15 care, operating costs, and property costs. In the event
16 adequate data are not available, the agency is authorized to
17 adjust the patient's care component or the per diem rate to
18 more adequately cover the cost of services provided in the
19 patient's care component. The agency shall work with the
20 Department of Elderly Affairs, the Florida Health Care
21 Association, and the Florida Association of Homes for the
22 Aging in developing the methodology. It is the intent of the
23 Legislature that the reimbursement plan achieve the goal of
24 providing access to health care for nursing home residents who
25 require large amounts of care while encouraging diversion
26 services as an alternative to nursing home care for residents
27 who can be served within the community. The agency shall base
28 the establishment of any maximum rate of payment, whether
29 overall or component, on the available moneys as provided for
30 in the General Appropriations Act. The agency may base the
31 maximum rate of payment on the results of scientifically valid

1 analysis and conclusions derived from objective statistical
2 data pertinent to the particular maximum rate of payment.

3 Section 48. Section 464.203, Florida Statutes, is
4 amended to read:

5 464.203 Certified nursing assistants; certification
6 requirement.--

7 (1) The board shall issue a certificate to practice as
8 a certified nursing assistant to any person who demonstrates a
9 minimum competency to read and write and successfully passes
10 the required Level I or Level II screening pursuant to s.
11 400.215 and meets one of the following requirements:

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

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

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

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

29 (d) Has completed the curriculum developed under the
30 Enterprise Florida Jobs and Education Partnership Grant and
31 achieved a minimum score, established by rule of the board, on

1 the nursing assistant competency examination, which consists
2 of a written portion and skills-demonstration portion,
3 approved by the board and administered at a site and by
4 personnel approved by the department.

5 (2) If an applicant fails to pass the nursing
6 assistant competency examination in three attempts, the
7 applicant is not eligible for reexamination unless the
8 applicant completes an approved training program.

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

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

15 (5) Certification as a nursing assistant, in
16 accordance with this part, continues in effect until such time
17 as the nursing assistant allows a period of 24 consecutive
18 months to pass during which period the nursing assistant fails
19 to perform any nursing-related services for monetary
20 compensation. When a nursing assistant fails to perform any
21 nursing-related services for monetary compensation for a
22 period of 24 consecutive months, the nursing assistant must
23 complete a new training and competency evaluation program or a
24 new competency evaluation program.

25 ~~(6)(5)~~ A certified nursing assistant shall maintain a
26 current address with the board in accordance with s. 456.035.

27 (7) A certified nursing assistant shall complete 18
28 hours of in-service training during each calendar year. The
29 certified nursing assistant shall be responsible for
30 maintaining documentation demonstrating compliance with these
31 provisions. The Council on Certified Nursing Assistants, in

1 accordance with s. 464.0285(2)(b), shall propose rules to
2 implement this subsection.

3 Section 49. Subsection (2) of section 397.405, Florida
4 Statutes, is amended to read:

5 397.405 Exemptions from licensure.--The following are
6 exempt from the licensing provisions of this chapter:

7 (2) A nursing home facility as defined in s. 400.021
8 ~~s. 400.021(12)~~.

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

26 Section 50. Notwithstanding the establishment of need
27 as provided for in chapter 408, Florida Statutes, no
28 certificate of need for additional nursing home beds shall be
29 approved by the agency until July 1, 2006. The Legislature
30 finds that the continued growth in the Medicaid budget for
31 nursing home care has constrained the ability of the state to

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

9 Section 51. Subsections (3) and (8) of section
10 400.0255, Florida Statutes, as amended by section 138 of
11 chapter 2000-349, section 3 of chapter 2000-350, and section
12 58 of chapter 2000-367, Laws of Florida, are reenacted to
13 read:

14 400.0255 Resident transfer or discharge; requirements
15 and procedures; hearings.--

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

29 (8) The notice required by subsection (7) must be in
30 writing and must contain all information required by state and
31 federal law, rules, or regulations applicable to Medicaid or

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

23 Section 52. Subsection (5) of section 400.23, Florida
24 Statutes, as amended by section 6 of chapter 2000-350, Laws of
25 Florida, is reenacted to read:

26 400.23 Rules; evaluation and deficiencies; licensure
27 status.--

28 (5) The agency, in collaboration with the Division of
29 Children's Medical Services of the Department of Health, must,
30 no later than December 31, 1993, adopt rules for minimum
31 standards of care for persons under 21 years of age who reside

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

8 Section 53. Subsection (2) of section 400.191, Florida
9 Statutes, as amended by section 5 of chapter 2000-350, Laws of
10 Florida, and subsection (6) of that section, as created by
11 section 5 of chapter 2000-350, Laws of Florida, are reenacted
12 to read:

13 400.191 Availability, distribution, and posting of
14 reports and records.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Section 54. Section 400.0225, Florida Statutes, as
16 amended by section 2 of chapter 2000-350, Laws of Florida, is
17 reenacted to read:

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

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

13 Section 55. Subsections (4) and (5) of section
14 400.141, Florida Statutes, as renumbered and amended by
15 section 4 of chapter 2000-350, Laws of Florida, are reenacted
16 to read:

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

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

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

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

30
31

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

6 Section 56. Paragraph (a) of subsection (3) and
7 subsection (4) of section 400.235, Florida Statutes, as
8 amended by section 12 of chapter 2000-305 and section 7 of
9 chapter 2000-350, Laws of Florida, and subsection (9) of
10 section 400.235, Florida Statutes, as created by section 7 of
11 chapter 2000-350, Laws of Florida, are reenacted to read:

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

14 (3)(a) The Gold Seal Program shall be developed and
15 implemented by the Governor's Panel on Excellence in Long-Term
16 Care which shall operate under the authority of the Executive
17 Office of the Governor. The panel shall be composed of three
18 persons appointed by the Governor, to include a consumer
19 advocate for senior citizens and two persons with expertise in
20 the fields of quality management, service delivery excellence,
21 or public sector accountability; three persons appointed by
22 the Secretary of Elderly Affairs, to include an active member
23 of a nursing facility family and resident care council and a
24 member of the University Consortium on Aging; the State
25 Long-Term Care Ombudsman; one person appointed by the Florida
26 Life Care Residents Association; one person appointed by the
27 Secretary of Health; two persons appointed by the Secretary of
28 Health Care Administration; one person appointed by the
29 Florida Association of Homes for the Aging; and one person
30 appointed by the Florida Health Care Association. Vacancies on
31

1 the panel shall be filled in the same manner as the original
2 appointments.

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

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

9 Section 57. Subsection (1) of section 400.962, Florida
10 Statutes, as amended by section 8 of chapter 2000-350, Laws of
11 Florida, is reenacted to read:

12 400.962 License required; license application.--

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

15 Section 58. Section 10 of chapter 2000-350, Laws of
16 Florida, is reenacted to read:

17 Section 10. The Board of Pharmacy, in cooperation with
18 the Agency for Health Care Administration, shall undertake a
19 study of the feasibility, efficiency, cost-effectiveness, and
20 safety of using automated medication dispensing machines in
21 nursing facilities. The board and the agency may authorize the
22 establishment of demonstration projects in up to five nursing
23 facilities with a class I institutional pharmacy as part of
24 the study. Demonstration projects may be allowed to continue
25 for up to 12 months. A report summarizing the results of the
26 study shall be submitted by the board and the agency to the
27 Speaker of the House of Representatives and the President of
28 the Senate by January 1, 2001. If the study determines that
29 such dispensing machines would benefit residents of nursing
30 facilities and should be allowed, the report shall identify
31

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

3 Section 59. Present subsection (7) of section 627.351,
4 Florida Statutes, is redesignated as subsection (8), and a new
5 subsection (7) is added to that section, to read:

6 627.351 Insurance risk apportionment plans.--

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

9 (a) There is created a joint underwriting association
10 for senior-care facilities that are in good faith entitled,
11 but are unable, to procure liability insurance coverage
12 through the voluntary market, which is designated as the
13 Senior-Care-Facility Joint Underwriting Association. As used
14 in this subsection, the term "senior-care facility" means a
15 long-term-care facility as defined in s. 400.0060(2), a
16 nursing home facility as defined in s. 400.021(12), a
17 continuing care facility as licensed under s. 651.021, or an
18 assisted living facility as licensed under s. 400.407. A
19 senior-care facility any part of which is licensed under part
20 II or part III of chapter 400 is eligible to participate in a
21 joint underwriting association if it meets criteria in the
22 plan developed pursuant to paragraph (b). The association will
23 be activated when the Insurance Commissioner determines that
24 primary coverage is not generally available from authorized
25 insurers for any one of the following categories of
26 facilities: long-term care facilities defined in s.
27 400.0060(2); nursing home facilities defined in s.
28 400.021(12); continuing care facilities licensed under s.
29 651.021; or assisted living facilities licensed under s.
30 400.407. The association will be activated solely for the
31 category of facilities for which insurance is no longer

1 available. The determination is exempt from any challenges
2 under chapter 120.

3 (b) The association shall operate pursuant to a plan
4 of operation approved by order of the department. The plan is
5 subject to continuous review by the department. The department
6 may, by order, withdraw approval of all or part of the plan if
7 the department determines that conditions have changed since
8 approval was granted and the purposes of the plan require
9 changes in the plan.

10 (c) All insurers authorized to write one or more
11 subject lines of business in this state must participate in
12 the association. An authorized insurer's participation begins
13 on the first day of the calendar year in which the insurer was
14 issued a certificate of authority to transact insurance for
15 one or more subject lines of business in this state and
16 terminates 1 year after the end of the first calendar year
17 during which the member no longer holds a certificate of
18 authority to transact insurance for subject lines of business
19 in this state. All such insurers shall be referred to in this
20 subsection as "participating insurers." As used in this
21 subsection, the term "subject lines of business" means
22 liability insurance as defined in s. 624.605(1)(b), written in
23 this state which is designated as "Commercial Multi-peril
24 (liability portion)" or "Other liability" on the forms for
25 financial statements approved by the National Associations of
26 Insurance Commissioners, and does not include other casualty
27 insurance lines defined in s. 624.605 or homeowners liability
28 insurance which is reported as property insurance on financial
29 statements submitted to the department.

30 (d) The association shall operate subject to the
31 supervision and approval of a board of governors consisting of

1 seven individuals appointed by the Insurance Commissioner. The
2 Insurance Commissioner shall designate one of the appointees
3 as chair. All board members shall serve at the pleasure of the
4 Insurance Commissioner. All board members, including the
5 chair, shall be appointed to 3-year terms, beginning annually
6 on the date designated by the plan.

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

9 1. Standards for establishing eligibility of a risk
10 for obtaining liability insurance through the association,
11 including underwriting standards.

12 2. Rules for classifying risks and rates which
13 correspond to past and prospective loss experience. Such rules
14 may reflect whether the facility operates on a for-profit or
15 not-for-profit basis.

16 3. A rating plan that corresponds to the prior claims
17 experience of the insureds.

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

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

28 a. Investigation and analysis of the frequency,
29 severity, and causes of claims.

30 b. Developmental measures to avoid and control claims.

31

1 c. Systematic reporting of accidents or injuries to
2 facility residents.

3 d. Investigation and analysis of resident complaints.

4 e. Auditing of association members to ensure
5 implementation of this program.

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

8 7. A requirement that coverage by the association does
9 not include coverage for the professional liability of persons
10 or entities providing professional services, pursuant to
11 professional licensure, through or on behalf of the facility.

12 8. A requirement that coverage be limited to claims
13 made.

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

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

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

1 contingency assessment from the policyholder's return premium
2 if any.

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

1 calendar year in which the deficit was incurred and the
2 unextinguished deficit shall be assessed as a deficit of that
3 calendar year in the manner described in this section until
4 the deficit is completely extinguished.

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

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

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

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

22 Section 60. Paragraph (g) is added to subsection (1)
23 of section 400.562, Florida Statutes, to read:

24 400.562 Rules establishing standards.--

25 (1) The Department of Elderly Affairs, in conjunction
26 with the agency, shall adopt rules to implement the provisions
27 of this part. The rules must include reasonable and fair
28 standards. Any conflict between these standards and those that
29 may be set forth in local, county, or municipal ordinances
30 shall be resolved in favor of those having statewide effect.
31 Such standards must relate to:

1 (g) Components of a comprehensive emergency management
2 plan, developed in consultation with the Department of Health,
3 the Agency for Health Care Administration, and the Department
4 of Community Affairs.

5 Section 61. Notwithstanding any other provision of
6 this act to the contrary, sections 400.0237, 400.0238,
7 400.4297, 400.4298, Florida Statutes, as created by this act,
8 and section 768.735, Florida Statutes, as amended by this act,
9 shall become effective May 15, 2001; shall apply to causes of
10 action accruing on or after May 15, 2001; and shall be applied
11 retroactively to causes of action accruing before May 15,
12 2001, for which no case has been filed prior to October 5,
13 2001.

14 Section 62. The sum of \$500,000 is appropriated from
15 the General Revenue Fund for the Senior-Care-Facility Joint
16 Underwriting Association.

17 Section 63. The sum of \$4,206,549 is appropriated from
18 the Health Care Trust Fund to the Agency for Health Care
19 Administration and 58.0 positions are authorized for the
20 purpose of implementing the provisions of this act during the
21 2001-2002 fiscal year.

22 Section 64. The sum of \$948,782 is appropriated from
23 the General Revenue Fund to the Department of Elderly Affairs
24 for the purpose of paying the salaries and other
25 administrative expenses of the Office of State Long-Term Care
26 Ombudsman to carry out the provisions of this act during the
27 2001-2002 fiscal year.

28 Section 65. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 invalidity does not affect other provisions or applications of
31 the act which can be given effect without the invalid

1 provision or application, and to this end the provisions of
2 this act are severable.

3 Section 66. Except as otherwise expressly provided in
4 this act, this act shall take effect upon becoming a law.

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