

1
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; providing for a

9 division of punitive damages; amending s.

10 768.735, F.S.; providing that the section is

11 inapplicable to actions brought under ch. 400,

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

13 actions against nursing homes and assisted

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

15 providing for applicability of provisions

16 relating to transfer or discharge of nursing

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

18 increasing the bed license fee for nursing home

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

20 license application requirements; requiring

21 certain disclosures; authorizing the Agency for

22 Health Care Administration to issue an inactive

23 license; requiring quality assurance and

24 risk-management plans; amending s. 400.102,

25 F.S.; providing additional grounds for action

26 by the agency against a licensee; amending s.

27 400.111, F.S.; prohibiting renewal of a license

28 if an applicant has failed to pay certain

29 fines; requiring licensees to disclose

30 financial or ownership interests in certain

31 entities; authorizing placing fines in escrow;

1 amending s. 400.118, F.S.; revising duties of
2 quality-of-care monitors in nursing facilities;
3 creating s. 400.1183, F.S.; providing for
4 resident grievance procedures; amending s.
5 400.121, F.S.; specifying additional
6 circumstances under which the agency may deny,
7 revoke, or suspend a facility's license or
8 impose a fine; authorizing placing fines in
9 escrow; requiring that the agency revoke or
10 deny a nursing home license under specified
11 circumstances; providing standards for
12 administrative proceedings; providing for the
13 agency to assess the costs of an investigation
14 and prosecution; specifying facts and
15 conditions upon which administrative actions
16 that are challenged must be reviewed; amending
17 s. 400.126, F.S.; requiring an assessment of
18 residents in nursing homes under receivership;
19 providing for alternative care for qualified
20 residents; amending s. 400.141, F.S.; providing
21 additional administrative and management
22 requirements for licensed nursing home
23 facilities; requiring a facility to submit
24 information on staff-to-resident ratios, staff
25 turnover, and staff stability; requiring that
26 certain residents be examined by a licensed
27 physician; providing requirements for dining
28 and hospitality attendants; requiring
29 additional reports to the agency; requiring
30 liability insurance coverage; requiring daily
31 charting of specified certified nursing

1 assistant services; creating s. 400.1413, F.S.;

2 authorizing nursing homes to impose certain

3 requirements on volunteers; creating s.

4 400.147, F.S.; requiring each licensed nursing

5 home facility to establish an internal risk

6 management and quality assurance program;

7 providing requirements of the program;

8 requiring the use of incident reports; defining

9 the term "adverse incident"; requiring that the

10 agency be notified of adverse incidents;

11 requiring reporting of liability claims;

12 specifying duties of the internal risk manager;

13 requiring the reporting of sexual abuse;

14 limiting the liability of a risk manager;

15 requiring that the agency report certain

16 conduct to the appropriate regulatory board;

17 requiring that the agency annually report to

18 the Legislature on the internal risk management

19 of nursing homes; creating s. 400.148, F.S.;

20 providing for a pilot project to coordinate

21 resident quality of care through the use of

22 medical personnel to monitor patients;

23 providing purpose; providing for appointment of

24 guardians; creating s. 400.1755, F.S.;

25 prescribing training standards for employees of

26 nursing homes that provide care for persons

27 with Alzheimer's disease or related disorders;

28 amending s. 400.19, F.S.; requiring the agency

29 to conduct surveys of certain facilities cited

30 for deficiencies; providing for a survey fine;

31 providing for inspections; amending s. 400.191,

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

1 requirements of the program; requiring the use
2 of incident reports; defining the term "adverse
3 incident"; requiring that the agency be
4 notified of adverse incidents and of liability
5 claims; requiring reporting of liability
6 claims; 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. 400.428, F.S.; revising
14 requirement for notice of a resident's
15 relocation or termination from a facility;
16 providing a penalty; amending s. 400.429, F.S.;
17 providing for election of survival damages,
18 wrongful death damages, or recovery for
19 negligence; providing for attorney's fees for
20 injunctive relief or administrative remedy;
21 providing that ch. 766, F.S., does not apply to
22 actions under this section; prescribing the
23 burden of proof; providing that a violation of
24 a right is not negligence per se; prescribing
25 the duty of care; prescribing a nurse's duty of
26 care; eliminating presuit provisions;
27 eliminating the requirement for presuit
28 mediation; requiring copies of complaints filed
29 in court to be provided to the agency; creating
30 s. 400.4293, F.S.; providing for presuit notice;
31 prohibiting the filing of suit for a specified

1 time; requiring a response to the notice;
2 tolling the statute of limitations; limiting
3 the discovery of presuit investigation
4 documents; limiting liability of presuit
5 investigation participants; authorizing the
6 obtaining of opinions from a nurse or doctor;
7 authorizing the obtaining of unsworn
8 statements; authorizing discovery of relevant
9 documents; prescribing a time for acceptance of
10 settlement offers; requiring mediation;
11 prescribing the time to file suit; creating s.
12 400.4294, F.S.; requiring the availability of
13 facility records for presuit investigation;
14 specifying the records to be made available;
15 specifying what constitutes evidence of failure
16 to make records available in good faith;
17 specifying the consequences of such failure;
18 creating s. 400.4295, F.S.; providing that the
19 provisions of s. 768.21(8), F.S., do not apply
20 to actions under part III of ch. 400, F.S.;

21 creating s. 400.4296, F.S.; providing a statute
22 of limitations; providing a statute of
23 limitations when there is fraudulent
24 concealment or intentional misrepresentation of
25 fact; providing for application of the statute
26 of limitation to accrued actions; creating s.
27 400.4297, F.S.; requiring evidence of the basis
28 for punitive damages; prohibiting discovery
29 relating to financial worth; providing for
30 proof of punitive damages; defining the terms
31 "intentional misconduct" and "gross

1 negligence"; prescribing criteria governing
2 employers' liability for punitive damages;
3 providing for the remedial nature of
4 provisions; creating s. 400.4298, F.S.;
5 providing limits on the amount of punitive
6 damages; providing for a criminal investigation
7 with a finding of liability for punitive
8 damages under certain circumstances; providing
9 for the admissibility of findings in subsequent
10 civil and criminal actions; providing for the
11 calculation of attorney's fees; providing for a
12 division of punitive damages; amending s.
13 400.434, F.S.; authorizing the Agency for
14 Health Care Administration to use information
15 obtained by certain councils; amending s.
16 400.441, F.S.; clarifying facility inspection
17 requirements; creating s. 400.449, F.S.;
18 prohibiting the alteration or falsification of
19 medical or other records of an assisted living
20 facility; providing penalties; amending s.
21 409.908, F.S.; prohibiting nursing home
22 reimbursement rate increases associated with
23 changes in ownership; modifying requirements
24 for nursing home cost reporting; requiring a
25 report; authorizing waivers to treat a portion
26 of the Medicaid nursing home per diem as
27 capital for a risk-retention group; amending s.
28 464.203, F.S.; revising certification
29 requirements for nursing assistants;
30 authorizing employment of certain nursing
31 assistants pending certification; requiring

1 continuing education; amending s. 397.405,
2 F.S., relating to service providers; conforming
3 provisions to changes made by the act;
4 prohibiting the issuance of a certificate of
5 need for additional community nursing home
6 beds; providing intent for such prohibition;
7 providing an exemption; reenacting s.
8 400.0255(3) and (8), F.S., relating to
9 discharge or transfer of residents; reenacting
10 s. 400.23(5), F.S., relating to rules for
11 standards of care for persons under a specified
12 age residing in nursing home facilities;
13 reenacting s. 400.191(2) and (6), F.S.,
14 relating to requirements for providing
15 information to consumers; reenacting s.
16 400.0225, F.S., relating to consumer
17 satisfaction surveys for nursing homes;
18 reenacting s. 400.141(4) and (5), F.S.,
19 relating to the repackaging of residents'
20 medication and access to other health-related
21 services; reenacting s. 400.235(3)(a), (4), and
22 (9), F.S., relating to designation under the
23 nursing home Gold Seal Program; reenacting s.
24 400.962(1), F.S., relating to the requirement
25 for licensure under pt. XI of ch. 400, F.S.;
26 reenacting s. 10 of ch. 2000-350, Laws of
27 Florida, relating to requirements for a study
28 of the use of automated medication-dispensing
29 machines in nursing facilities and for
30 demonstration projects and a report; amending
31 s. 400.562, F.S.; revising requirements for

1 standards to be included in rules implementing
2 part V of ch. 400, F.S.; providing for
3 applicability of specified provisions of the
4 act; requiring the Auditor General to develop a
5 standard chart of accounts for Medicaid
6 long-term care provider cost reporting;
7 requiring implementation by the agency by a
8 specified date; requiring the agency to amend
9 the Medicaid Title XIX Long-Term Care
10 Reimbursement Plan to include specified
11 provisions; providing for office space for the
12 Office of State Long-Term Care Ombudsman;
13 prohibiting enforcement of provisions relating
14 to a requirements for liability insurance until
15 a specified date; providing appropriations;
16 providing for severability; providing effective
17 dates.

18

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

20

21 Section 1. Subsection (4) of section 400.0073, Florida
22 Statutes, is amended to read:23 400.0073 State and local ombudsman council
24 investigations.--25 (4) In addition to any specific investigation made
26 pursuant to a complaint, the local ombudsman council shall
27 conduct, at least annually, an investigation, which shall
28 consist, in part, of an onsite administrative inspection, of
29 each nursing home or long-term care facility within its
30 jurisdiction. This inspection shall focus on the rights,
31 health, safety, and welfare of the residents.

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

3 400.021 Definitions.--When used in this part, unless
4 the context otherwise requires, the term:

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

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

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

16 (4) "Board" means the Board of Nursing Home
17 Administrators.

18 (5) "Controlling interest" means:

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

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

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

28
29 The term does not include a voluntary board member.

30 ~~(6)~~(5) "Custodial service" means care for a person
31 which entails observation of diet and sleeping habits and

1 maintenance of a watchfulness over the general health, safety,
2 and well-being of the aged or infirm.

3 (7)~~(6)~~ "Department" means the Department of Children
4 and Family Services.

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

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

23 (10)~~(9)~~ "Geriatric patient" means any patient who is
24 60 years of age or older.

25 (11)~~(10)~~ "Local ombudsman council" means a local
26 long-term care ombudsman council established pursuant to s.
27 400.0069, located within the Older Americans Act planning and
28 service areas.

29 (12)~~(11)~~ "Nursing home bed" means an accommodation
30 which is ready for immediate occupancy, or is capable of being
31 made ready for occupancy within 48 hours, excluding provision

1 of staffing; and which conforms to minimum space requirements,
2 including the availability of appropriate equipment and
3 furnishings within the 48 hours, as specified by rule of the
4 agency, for the provision of services specified in this part
5 to a single resident.

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

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

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

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

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

1 plan must be signed by the director of nursing and the
2 resident, the resident's designee, or the resident's legal
3 representative.

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

9 (19)~~(18)~~ "State ombudsman council" means the State
10 Long-Term Care Ombudsman Council established pursuant to s.
11 400.0067.

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

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

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

23 Section 4. Effective May 15, 2001, and applying to
24 causes of action accruing on or after that date, section
25 400.023, Florida Statutes, is amended to read:

26 400.023 Civil enforcement.--

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

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

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

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

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

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

31

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

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

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

5 ~~(c) The skill requisite to perform the legal service~~
6 ~~properly;~~

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

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

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

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

12 ~~(h) The experience, reputation, and ability of the~~
13 ~~attorneys;~~

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

15 ~~(j) The type of fee arrangement between the attorney~~
16 ~~and the client;~~

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

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

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

26 (4) In any claim for resident's rights violation or
27 negligence by a nurse licensed under part I of chapter 464,
28 such nurse shall have the duty to exercise care consistent
29 with the prevailing professional standard of care for a nurse.
30 The prevailing professional standard of care for a nurse shall
31 be that level of care, skill, and treatment which, in light of

1 all relevant surrounding circumstances is recognized as
2 acceptable and appropriate by reasonably prudent similar
3 nurses.

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

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

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

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

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

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

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

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

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

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

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

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

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 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; or

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
9 and the resident's chart, within the control or possession of
10 the 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) Notwithstanding any other law to the contrary, the
12 amount of punitive damages awarded pursuant to this section
13 shall be equally divided between the claimant and the Quality
14 of Long-Term Care Facility Improvement Trust Fund, in
15 accordance with the following provisions:

16 (a) The clerk of the court shall transmit a copy of
17 the jury verdict to the State Treasurer by certified mail. In
18 the final judgment the court shall order the percentages of
19 the award, payable as provided herein.

20 (b) A settlement agreement entered into between the
21 original parties to the action after a verdict has been
22 returned must provide a proportionate share payable to the
23 Quality of Long-Term Care Facility Improvement Trust Fund
24 specified herein. For purposes of this paragraph, a
25 proportionate share is a 50-percent share of that percentage
26 of the settlement amount which the punitive damages portion of
27 the verdict bore to the total of the compensatory and punitive
28 damages in the verdict.

29 (c) The Department of Banking and Finance shall
30 collect or cause to be collected all payments due the state
31 under this section. Such payments are made to the Comptroller

1 and deposited in the appropriate fund specified in this
2 subsection.

3 (d) If the full amount of punitive damages awarded
4 cannot be collected, the claimant and the other recipient
5 designated pursuant to this subsection are each entitled to a
6 proportionate share of the punitive damages collected.

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

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

12 768.735 Punitive damages; exceptions; limitation.--

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

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

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

31

1 Section 12. Effective May 15, 2001, and applying to
2 causes of action accruing on or after that date, section
3 415.1111, Florida Statutes, is amended to read:

4 415.1111 Civil actions.--A vulnerable adult who has
5 been abused, neglected, or exploited as specified in this
6 chapter has a cause of action against any perpetrator and may
7 recover actual and punitive damages for such abuse, neglect,
8 or exploitation. The action may be brought by the vulnerable
9 adult, or that person's guardian, by a person or organization
10 acting on behalf of the vulnerable adult with the consent of
11 that person or that person's guardian, or by the personal
12 representative of the estate of a deceased victim without
13 regard to whether the cause of death resulted from the abuse,
14 neglect, or exploitation. The action may be brought in any
15 court of competent jurisdiction to enforce such action and to
16 recover actual and punitive damages for any deprivation of or
17 infringement on the rights of a vulnerable adult. A party who
18 prevails in any such action may be entitled to recover
19 reasonable attorney's fees, costs of the action, and damages.
20 The remedies provided in this section are in addition to and
21 cumulative with other legal and administrative remedies
22 available to a vulnerable adult. Notwithstanding the
23 foregoing, any civil action for damages against any licensee
24 or entity who establishes, controls, conducts, manages, or
25 operates a facility licensed under part II of chapter 400
26 relating to its operation of the licensed facility shall be
27 brought pursuant to s. 400.023, or against any licensee or
28 entity who establishes, controls, conducts, manages, or
29 operates a facility licensed under part III of chapter 400
30 relating to its operation of the licensed facility shall be
31 brought pursuant to s. 400.429. Such licensee or entity shall

1 not be vicariously liable for the acts or omissions of its
2 employees or agents or any other third party in an action
3 brought under this section.

4 Section 13. Subsection (17) is added to section
5 400.0255, Florida Statutes, to read:

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

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

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

14 400.062 License required; fee; disposition; display;
15 transfer.--

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

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

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

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

31

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

4 400.071 Application for license.--

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

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

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

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

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

31

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

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

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

28 ~~(h)(g)~~ Copies of any civil verdict or judgment
29 involving the applicant rendered within the 10 years preceding
30 the application, relating to medical negligence, violation of
31 residents' rights, or wrongful death. As a condition of

1 licensure, the licensee agrees to provide to the agency copies
2 of any new verdict or judgment involving the applicant,
3 relating to such matters, within 30 days after filing with the
4 clerk of the court. The information required in this
5 paragraph shall be maintained in the facility's licensure file
6 and in an agency database which is available as a public
7 record.

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

19 (11) The agency may issue an inactive license to a
20 nursing home that will be temporarily unable to provide
21 services but that is reasonably expected to resume services.
22 Such designation may be made for a period not to exceed 12
23 months but may be renewed by the agency for up to 6 additional
24 months. Any request by a licensee that a nursing home become
25 inactive must be submitted to the agency and approved by the
26 agency prior to initiating any suspension of service or
27 notifying residents. Upon agency approval, the nursing home
28 shall notify residents of any necessary discharge or transfer
29 as provided in s. 400.0255.
30
31

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

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

6 400.102 Action by agency against licensee; grounds.--

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

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

11 (b) Misappropriation or conversion of the property of
12 a resident of the facility;

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

17 (d) Violation of provisions of this part or rules
18 adopted under this part; ~~or~~

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

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

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

26 400.111 Expiration of license; renewal.--

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

1 assessment of a fine by final order if such fine has been paid
2 into an escrow account pending an appeal of a final order.

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

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

15 400.118 Quality assurance; early warning system;
16 monitoring; rapid response teams.--

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

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

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

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

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

18 Section 19. Section 400.1183, Florida Statutes, is
19 created to read:

20 400.1183 Resident grievance procedures.--

21 (1) Every nursing home must have a grievance procedure
22 available to its residents and their families. The grievance
23 procedure must include:

24 (a) An explanation of how to pursue redress of a
25 grievance.

26 (b) The names, job titles, and telephone numbers of
27 the employees responsible for implementing the facility's
28 grievance procedure. The list must include the address and the
29 toll-free telephone numbers of the ombudsman and the agency.

30 (c) A simple description of the process through which
31 a resident may, at any time, contact the toll-free telephone

1 hotline of the ombudsman or the agency to report the
2 unresolved grievance.

3 (d) A procedure for providing assistance to residents
4 who cannot prepare a written grievance without help.

5 (2) Each facility shall maintain records of all
6 grievances and shall report annually to the agency the total
7 number of grievances handled, a categorization of the cases
8 underlying the grievances, and the final disposition of the
9 grievances.

10 (3) Each facility must respond to the grievance within
11 a reasonable time after its submission.

12 (4) The agency may investigate any grievance at any
13 time.

14 (5) The agency may impose an administrative fine, in
15 accordance with s. 400.121, against a nursing home facility
16 for noncompliance with this section.

17 Section 20. Section 400.121, Florida Statutes, is
18 amended to read:

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

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

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

28 (b) A demonstrated pattern of deficient practice;

29 (c) Failure to pay any outstanding fines assessed by
30 final order of the agency or final order of the Health Care
31 Financing Administration pursuant to requirements for federal

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

5 (d) Exclusion from the Medicare or Medicaid program;
6 or

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

18

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

22 (2) Except as provided in s. 400.23(8), a \$500 fine
23 shall be imposed ~~The agency, as a part of any final order~~
24 ~~issued by it under this part, may impose such fine as it deems~~
25 ~~proper, except that such fine may not exceed \$500 for each~~
26 ~~violation. Each day a violation of this part occurs~~
27 ~~constitutes a separate violation and is subject to a separate~~
28 ~~fine, but in no event may any fine aggregate more than \$5,000.~~
29 A fine may be levied pursuant to this section in lieu of and
30 notwithstanding the provisions of s. 400.23. Fines paid ~~by any~~
31 ~~nursing home facility licensee under this subsection~~ shall be

1 deposited in the Resident Protection Trust Fund and expended
2 as provided in s. 400.063.

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

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

9 (b) Is conditionally licensed for 180 or more
10 continuous days;

11 (c) Is cited for two class I deficiencies arising from
12 unrelated circumstances during the same survey or
13 investigation; or

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

16
17 The licensee may present factors in mitigation of revocation,
18 and the agency may make a determination not to revoke a
19 license based upon a showing that revocation is inappropriate
20 under the circumstances.

21 (4)(3) The agency may issue an order immediately
22 suspending or revoking a license when it determines that any
23 condition in the facility presents a danger to the health,
24 safety, or welfare of the residents in the facility.

25 (5)(4)(a) The agency may impose an immediate
26 moratorium on admissions to any facility when the agency
27 determines that any condition in the facility presents a
28 threat to the health, safety, or welfare of the residents in
29 the facility.

30 (b) Where the agency has placed a moratorium on
31 admissions on any facility two times within a 7-year period,

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

7 (6)~~(5)~~ An action taken by the agency to deny, suspend,
8 or revoke a facility's license under this part, ~~in which the~~
9 ~~agency claims that the facility owner or an employee of the~~
10 ~~facility has threatened the health, safety, or welfare of a~~
11 ~~resident of the facility,~~ shall be heard by the Division of
12 Administrative Hearings of the Department of Management
13 Services within 60 ~~120~~ days after the assignment of an
14 administrative law judge receipt of the facility's request for
15 ~~a hearing~~, unless the time limitation is waived by both
16 parties. The administrative law judge must render a decision
17 within 30 days after receipt of a proposed recommended order.
18 ~~This subsection does not modify the requirement that an~~
19 ~~administrative hearing be held within 90 days after a license~~
20 ~~is suspended under paragraph (4)(b).~~

21 (7)~~(6)~~ The agency is authorized to require a facility
22 to increase staffing beyond the minimum required by law, if
23 the agency has taken administrative action against the
24 facility for care-related deficiencies directly attributable
25 to insufficient staff. Under such circumstances, the facility
26 may request an expedited interim rate increase. The agency
27 shall process the request within 10 days after receipt of all
28 required documentation from the facility. A facility that
29 fails to maintain the required increased staffing is subject
30 to a fine of \$500 per day for each day the staffing is below
31 the level required by the agency.

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

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

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

14 Section 21. Subsection (12) is added to section
15 400.126, Florida Statutes, to read:

16 400.126 Receivership proceedings.--

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

1 for the Elderly program in the same manner as persons
2 classified to receive such services pursuant to s. 430.205.

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

6 400.141 Administration and management of nursing home
7 facilities.--Every licensed facility shall comply with all
8 applicable standards and rules of the agency and shall:

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

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

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

22 (b) Staff turnover must be reported for the most
23 recent 12-month period ending on the last workday of the most
24 recent calendar quarter prior to the date the information is
25 submitted. The turnover rate must be computed quarterly, with
26 the annual rate being the cumulative sum of the quarterly
27 rates. the turnover rate is the total number of terminations
28 or separations experienced during the quarter, excluding any
29 employee terminated during a probationary period of 3 months
30 or less, divided by the total number of staff employed at the

31

1 end of the period for which the rate is computed, and
2 expressed as a percentage.

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

8 (d) A nursing facility that has failed to comply with
9 state minimum-staffing requirements for 2 consecutive days is
10 prohibited from accepting new admissions until the facility
11 has achieved the minimum-staffing requirements for a period of
12 6 consecutive days. For the purposes of this paragraph, any
13 person who was a resident of the facility and was absent from
14 the facility for the purpose of receiving medical care at a
15 separate location or was on a leave of absence is not
16 considered a new admission. Failure to impose such an
17 admissions moratorium constitutes a class II deficiency.

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

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

31

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

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

15 (20) Maintain liability insurance coverage that is in
16 force at all times.

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

27
28 Facilities that have been awarded a Gold Seal under the
29 program established in s. 400.235 may develop a plan to
30 provide certified nursing assistant training as prescribed by
31

1 federal regulations and state rules and may apply to the
2 agency for approval of its program.

3 Section 23. Section 400.1413, Florida Statutes, is
4 created to read:

5 400.1413 Volunteers in nursing homes.--

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

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

15 (b) Wear an identification badge while in the
16 building.

17 (c) Participate in a facility orientation and training
18 program.

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

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

24 400.147 Internal risk management and quality assurance
25 program.--

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

1 action to correct and respond quickly to identified quality
2 deficiencies. The program must include:

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

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

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

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

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

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

30 2. At least 1 hour of such education and training must
31 be provided annually for all nonphysician personnel of the

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

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

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

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

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

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

28 (a) An event over which facility personnel could
29 exercise control and which is associated in whole or in part
30 with the facility's intervention, rather than the condition
31

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

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

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

25 (8)(a) Each facility shall complete the investigation
26 and submit an adverse incident report to the agency for each
27 adverse incident within 15 calendar days after its occurrence.
28 If after a complete investigation, the risk manager determines
29 that the incident was not an adverse incident as defined in
30 subsection (5), the facility shall include this information in
31

1 the report. The agency shall develop a form for reporting this
2 information.

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

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

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

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

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

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

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

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

18 (14) The agency shall annually submit to the
19 Legislature a report on nursing home adverse incidents. The
20 report must include the following information arranged by
21 county:

22 (a) The total number of adverse incidents.

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

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

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

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

3 (15) Information gathered by a credentialing
4 organization under a quality assurance program is not
5 discoverable from the credentialing organization. This
6 subsection does not limit discovery of, access to, or use of
7 facility records, including those records from which the
8 credentialing organization gathered its information.

9 Section 25. Section 400.148, Florida Statutes, is
10 created to read:

11 400.148 Medicaid "Up-or-Out" Quality of Care Contract
12 Management Program.--

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

29 (2) The Agency for Health Care Administration shall
30 develop a pilot project in selected counties to demonstrate
31 the effect of assigning skilled and trained medical personnel

1 to ensure the quality of care, safety, and continuity of care
2 for long-stay Medicaid recipients in the highest-scoring
3 nursing homes in the Florida Nursing Home Guide on the date
4 the project is implemented. The agency is authorized to begin
5 the pilot project, subject to appropriation, in the
6 highest-scoring homes in counties where such services are
7 immediately available. On January 1 of each year of the pilot
8 project, the agency shall submit to the appropriations and
9 substantive committees of the Legislature and the Governor an
10 assessment of the program and a proposal for expansion of the
11 program to additional facilities. The staff of the pilot
12 project shall assist regulatory staff in imposing regulatory
13 sanctions, including revocation of licensure, pursuant to s.
14 400.121 against nursing homes that have quality-of-care
15 violations.

16 (3) The pilot project must ensure:

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

19 (b) Facilitation of close communication between the
20 resident, the resident's guardian or legal representative, the
21 resident's attending physician, the resident's family, and
22 staff of the nursing facility;

23 (c) Frequent onsite visits to the resident;

24 (d) Early detection of medical or quality problems
25 that have the potential to lead to adverse outcomes and
26 unnecessary hospitalization;

27 (e) Close communication with regulatory staff;

28 (f) Immediate investigation of resident
29 quality-of-care complaints and communication and cooperation
30 with the appropriate entity to address those complaints,
31 including the ombudsman, state agencies, agencies responsible

1 for Medicaid program integrity, and local law enforcement
2 agencies;

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

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

8 (4) The agency shall model the pilot project
9 activities after such Medicare-approved demonstration
10 projects.

11 (5) The agency may contract to provide similar
12 oversight services to Medicaid recipients.

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

23 Section 26. Section 400.1755, Florida Statutes, is
24 created to read:

25 400.1755 Care for persons with Alzheimer's disease or
26 related disorders.--

27 (1) As a condition of licensure, facilities licensed
28 under this part must provide to each of their employees, upon
29 beginning employment, basic written information about
30 interacting with persons with Alzheimer's disease or a related
31 disorder.

1 (2) All employees who are expected to, or whose
2 responsibilities require them to, have direct contact with
3 residents with Alzheimer's disease or a related disorder must,
4 in addition to being provided the information required in
5 subsection (1), also have an initial training of at least 1
6 hour completed in the first 3 months after beginning
7 employment. This training must include, but is not limited to,
8 an overview of dementias and must provide basic skills in
9 communicating with persons with dementia.

10 (3) An individual who provides direct care shall be
11 considered a direct caregiver and must complete the required
12 initial training and an additional 3 hours of training within
13 9 months after beginning employment. This training shall
14 include, but is not limited to, managing problem behaviors,
15 promoting the resident's independence in activities of daily
16 living, and skills in working with families and caregivers.

17 (a) The required 4 hours of training for certified
18 nursing assistants are part of the total hours of training
19 required annually.

20 (b) For a health care practitioner as defined in s.
21 456.001, continuing-education hours taken as required by that
22 practitioner's licensing board shall be counted toward this
23 total of 4 hours.

24 (4) For an employee who is a licensed health care
25 practitioner as defined in s. 456.001, training that is
26 sanctioned by that practitioner's licensing board shall be
27 considered to be approved by the Department of Elderly
28 Affairs.

29 (5) The Department of Elderly Affairs or its designee
30 must approve the initial and continuing training provided in
31 the facilities. The department must approve training offered

1 in a variety of formats, including, but not limited to,
2 internet-based training, videos, teleconferencing, and
3 classroom instruction. The department shall keep a list of
4 current providers who are approved to provide initial and
5 continuing training. The department shall adopt rules to
6 establish standards for the trainers and the training required
7 in this section.

8 (6) Upon completing any training listed in this
9 section, 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 or to an assisted living facility, home
17 health agency, adult day care center, or adult family-care
18 home. The direct caregiver must comply with other applicable
19 continuing education requirements.

20
21 An employee hired on or after July 1, 2001, need not comply
22 with the guidelines created in this section before July 1,
23 2002.

24 Section 27. Subsections (3) and (4) of section 400.19,
25 Florida Statutes, are amended to read:

26 400.19 Right of entry and inspection.--

27 (3) The agency shall every 15 months conduct at least
28 one unannounced inspection to determine compliance by the
29 licensee with statutes, and with rules promulgated under the
30 provisions of those statutes, governing minimum standards of
31 construction, quality and adequacy of care, and rights of

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

27 (4) The agency shall conduct unannounced onsite
28 facility reviews following written verification of licensee
29 noncompliance in instances in which a long-term care ombudsman
30 council, pursuant to ss. 400.0071 and 400.0075, has received a
31 complaint and has documented deficiencies in resident care or

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

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

16 400.191 Availability, distribution, and posting of
17 reports and records.--

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

25 (a) The agency shall quarterly publish a "Nursing Home
26 Guide Watch List" to assist consumers in evaluating the
27 quality of nursing home care in Florida. The watch list must
28 identify each facility that met the criteria for a conditional
29 licensure status on any day within the quarter covered by the
30 list and each facility that was operating under bankruptcy
31 protection on any day within the quarter. The watch list must

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

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

17 (5) Every nursing home facility licensee shall:

18 (a) Post, in a sufficient number of prominent
19 positions in the nursing home so as to be accessible to all
20 residents and to the general public;

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

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

30
31

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

4 400.211 Persons employed as nursing assistants;
5 certification requirement.--

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

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

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

16 (c) Persons who have preliminarily passed the state's
17 certification exam.

18
19 The certification requirement must be met within 4 months
20 after initial employment as a nursing assistant in a licensed
21 nursing facility.

22 (4) When employed by a nursing home facility for a
23 12-month period or longer, a nursing assistant, to maintain
24 certification, shall submit to a performance review every 12
25 months and must receive regular inservice education based on
26 the outcome of such reviews. The inservice training must:

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

30 (b) Include, at a minimum:
31

1 1. Techniques for assisting with eating and proper
2 feeding;

3 2. Principles of adequate nutrition and hydration;

4 3. Techniques for assisting and responding to the
5 cognitively impaired resident or the resident with difficult
6 behaviors;

7 4. Techniques for caring for the resident at the
8 end-of-life; and

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

11 (c) Address areas of weakness as determined in nursing
12 assistant performance reviews and may address the special
13 needs of residents as determined by the nursing home facility
14 staff.

15
16 Costs associated with this training may not be reimbursed from
17 additional Medicaid funding through interim rate adjustments.

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

20 400.23 Rules; evaluation and deficiencies; licensure
21 status.--

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

27 (a) The location and construction of the facility;
28 including fire and life safety, plumbing, heating, cooling,
29 lighting, ventilation, and other housing conditions which will
30 ensure the health, safety, and comfort of residents, including
31 an adequate call system. The agency shall establish standards

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

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

30 (c) All sanitary conditions within the facility and
31 its surroundings, including water supply, sewage disposal,

1 food handling, and general hygiene which will ensure the
2 health and comfort of residents.

3 (d) The equipment essential to the health and welfare
4 of the residents.

5 (e) A uniform accounting system.

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

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

1 its review within 60 days and either approve the plan or
2 advise the facility of necessary revisions.

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

7 (3)(a) The agency shall adopt rules providing for the
8 minimum staffing requirements for nursing homes. These
9 requirements shall include, for each nursing home facility, a
10 minimum certified nursing assistant staffing of 2.3 hours of
11 direct care per resident per day beginning January 1, 2002,
12 increasing to 2.6 hours of direct care per resident per day
13 beginning January 1, 2003, and increasing to 2.9 hours of
14 direct care per resident per day beginning January 1, 2004.
15 Beginning January 1, 2002 no facility shall staff below one
16 certified nursing assistant per 20 residents, and a minimum
17 licensed nursing staffing of 1.0 hour of direct resident care
18 per resident per day but never below one licensed nurse per 40
19 residents., including evening and night shifts and weekends.
20 Nursing assistants employed under s. 400.211(2) may be
21 included in computing the staffing ratio for certified nursing
22 assistants only if they provide nursing assistance services to
23 residents on a full-time basis. Each nursing home must
24 document compliance with staffing standards as required under
25 this paragraph and post daily Agency rules shall specify
26 requirements for documentation of compliance with staffing
27 standards, sanctions for violation of such standards, and
28 requirements for daily posting of the names of staff on duty
29 for the benefit of facility residents and the public. The
30 agency shall recognize the use of licensed nurses for
31 compliance with minimum staffing requirements for certified

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

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

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

1 and other unlicensed personnel providing services in such
2 facilities in accordance with rules adopted by the Board of
3 Nursing.

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

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

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

1 ~~100-203) (December 22, 1987), Title IV (Medicare, Medicaid,~~
2 ~~and Other Health-Related Programs), Subtitle C (Nursing Home~~
3 ~~Reform), as amended. If the facility has no class I, class~~
4 ~~II, or class III deficiencies comes into substantial~~
5 ~~compliance~~ at the time of the followup survey, a standard
6 licensure status may be assigned.

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

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

31

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

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

7 1. Establish uniform procedures for the evaluation of
8 facilities.

9 2. Provide criteria in the areas referenced in
10 paragraph (c).

11 3. Address other areas necessary for carrying out the
12 intent of this section.

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

1 the facility's residents.The agency shall indicate the
2 classification on the face of the notice of deficiencies as
3 follows:

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

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

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

17 (c) A class III deficiency is a deficiency that
18 deficiencies are those which the agency determines will result
19 in no more than minimal physical, mental, or psychosocial
20 discomfort to the resident or has the potential to compromise
21 the resident's ability to maintain or reach his or her highest
22 practical physical, mental, or psychosocial well-being, as
23 defined by an accurate and comprehensive resident assessment,
24 plan of care, and provision of services to have an indirect or
25 potential relationship to the health, safety, or security of
26 the nursing home facility residents, other than class I or
27 class II deficiencies. A class III deficiency is ~~shall be~~
28 subject to a civil penalty of \$1,000 for an isolated
29 deficiency, \$2,000 for a patterned deficiency, and \$3,000 for
30 a widespread not less than \$500 and not exceeding \$2,500 for
31 each and every deficiency. The fine amount shall be doubled

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

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

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

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

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

19 (a) Had no class I or class II deficiencies within the
20 30 months preceding application for the program.

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

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

1 act on information gathered from the consumer satisfaction
2 measures.

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

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

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

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

19

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

25 Section 32. Section 400.275, Florida Statutes, is
26 created to read:

27 400.275 Agency duties.--

28 (1) The agency shall ensure that each newly hired
29 nursing home surveyor, as a part of basic training, is
30 assigned full-time to a licensed nursing home for at least 2
31 days within a 7-day period to observe facility operations

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

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

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

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

27 Section 33. Subsections (3) and (4) of section
28 400.407, Florida Statutes, are amended to read:

29 400.407 License required; fee, display.--

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

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

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

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

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

1 services must have maintained a standard license and may not
2 have been subject to administrative sanctions during the
3 previous 2 years, or since initial licensure if the facility
4 has been licensed for less than 2 years, for any of the
5 following reasons:

6 a. A class I or class II violation;

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

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

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

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

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

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

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

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

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

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

29 c. Have sufficient staff available, taking into
30 account the physical plant and firesafety features of the
31

1 building, to assist with the evacuation of residents in an
2 emergency, as necessary.

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

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

13 f. Implement the concept of managed risk.

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

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

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

30 5. The primary purpose of extended congregate care
31 services is to allow residents, as they become more impaired,

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

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

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

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

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

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

- 1 b. The number and characteristics of residents
2 receiving such services.
- 3 c. The types of services rendered that could not be
4 provided through a standard license.
- 5 d. An analysis of deficiencies cited during licensure
6 ~~biennial~~ inspections.
- 7 e. The number of residents who required extended
8 congregate care services at admission and the source of
9 admission.
- 10 f. Recommendations for statutory or regulatory
11 changes.
- 12 g. The availability of extended congregate care to
13 state clients residing in facilities licensed under this part
14 and in need of additional services, and recommendations for
15 appropriations to subsidize extended congregate care services
16 for such persons.
- 17 h. Such other information as the department considers
18 appropriate.
- 19 (c) A limited nursing services license shall be issued
20 to a facility that provides services beyond those authorized
21 in paragraph (a) and as specified in this paragraph.
- 22 1. In order for limited nursing services to be
23 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. Such
27 designation may be made at the time of initial licensure or
28 ~~biennial~~ relicensure, or upon request in writing by a licensee
29 under this part. Notification of approval or denial of such
30 request shall be made within 90 days after receipt of such
31 request and all necessary documentation. Existing facilities

1 qualifying to provide limited nursing services shall have
2 maintained a standard license and may not have been subject to
3 administrative sanctions that affect the health, safety, and
4 welfare of residents for the previous 2 years or since initial
5 licensure if the facility has been licensed for less than 2
6 years.

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

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

29 (4)(a) The biennial license fee required of a facility
30 is ~~\$300~~\$240 per license, with an additional fee of ~~\$50~~\$30
31 per resident based on the total licensed resident capacity of

1 the facility, except that no additional fee will be assessed
2 for beds designated for recipients of optional state
3 supplementation payments provided for in s. 409.212. The total
4 fee may not exceed \$10,000, no part of which shall be returned
5 to the facility. The agency shall adjust the per bed license
6 fee and the total licensure fee annually by not more than the
7 change in the consumer price index based on the 12 months
8 immediately preceding the increase.

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

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

1 of inflation for the 12 months immediately preceding the
2 increase.

3 Section 34. Paragraph (n) is added to subsection (1)
4 of section 400.414, Florida Statutes, and subsection (8) is
5 added to that section, to read:

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

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

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

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

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

23 Section 35. Section 400.419, Florida Statutes, is
24 amended to read:

25 400.419 Violations; administrative fines.--

26 (1) Each violation of this part and adopted rules
27 shall be classified according to the nature of the violation
28 and the gravity of its probable effect on facility residents.
29 The agency shall indicate the classification on the written
30 notice of the violation as follows:

31

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

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

26 (c) Class "III" violations are those conditions or
27 occurrences related to the operation and maintenance of a
28 facility or to the personal care of residents which the agency
29 determines indirectly or potentially threaten the physical or
30 emotional health, safety, or security of facility residents,
31 other than class I or class II violations. A class III

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

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

20 ~~(2) The agency may set and levy a fine not to exceed~~
21 ~~\$1,000 for each violation which cannot be classified according~~
22 ~~to subsection (1). Such fines in the aggregate may not exceed~~
23 ~~\$10,000 per survey.~~

24 ~~(2)~~(3) In determining if a penalty is to be imposed
25 and in fixing the amount of the fine, the agency shall
26 consider the following factors:

27 (a) The gravity of the violation, including the
28 probability that death or serious physical or emotional harm
29 to a resident will result or has resulted, the severity of the
30 action or potential harm, and the extent to which the
31 provisions of the applicable laws or rules were violated.

1 (b) Actions taken by the owner or administrator to
2 correct violations.

3 (c) Any previous violations.

4 (d) The financial benefit to the facility of
5 committing or continuing the violation.

6 (e) The licensed capacity of the facility.

7 (3)~~(4)~~ Each day of continuing violation after the date
8 fixed for termination of the violation, as ordered by the
9 agency, constitutes an additional, separate, and distinct
10 violation.

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

18 (5)~~(6)~~ For fines that are upheld following
19 administrative or judicial review, the violator shall pay the
20 fine, plus interest at the rate as specified in s. 55.03, for
21 each day beyond the date set by the agency for payment of the
22 fine.

23 (6)~~(7)~~ Any unlicensed facility that continues to
24 operate after agency notification is subject to a \$1,000 fine
25 per day. ~~Each day beyond 5 working days after agency~~
26 ~~notification constitutes a separate violation, and the~~
27 ~~facility is subject to a fine of \$500 per day.~~

28 (7)~~(8)~~ Any licensed facility whose owner or
29 administrator concurrently operates an unlicensed facility
30 shall be subject to an administrative fine of \$5,000 per day.
31 ~~Each day that the unlicensed facility continues to operate~~

1 ~~beyond 5 working days after agency notification constitutes a~~
2 ~~separate violation, and the licensed facility shall be subject~~
3 ~~to a fine of \$500 per day retroactive to the date of agency~~
4 ~~notification.~~

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

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

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

28 (11)~~(12)~~ Administrative fines paid by any facility
29 under this section shall be deposited into the Health Care
30 Trust Fund and expended as provided in s. 400.418.

31

1 ~~(12)(13)~~ The agency shall develop and disseminate an
2 annual list of all facilities sanctioned or fined \$5,000 or
3 more for violations of state standards, the number and class
4 of violations involved, the penalties imposed, and the current
5 status of cases. The list shall be disseminated, at no charge,
6 to the Department of Elderly Affairs, the Department of
7 Health, the Department of Children and Family Services, the
8 area agencies on aging, the Florida Statewide Advocacy
9 Council, and the state and local ombudsman councils. The
10 Department of Children and Family Services shall disseminate
11 the list to service providers under contract to the department
12 who are responsible for referring persons to a facility for
13 residency. The agency may charge a fee commensurate with the
14 cost of printing and postage to other interested parties
15 requesting a copy of this list.

16 Section 36. Section 400.423, Florida Statutes, is
17 created to read:

18 400.423 Internal risk management and quality assurance
19 program; adverse incidents and reporting requirements.--

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

28 (2) Every facility licensed under this part is
29 required to maintain adverse incident reports. For purposes of
30 this section, the term, "adverse incident" means:
31

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

4 1. Death;

5 2. Brain or spinal damage;

6 3. Permanent disfigurement;

7 4. Fracture or dislocation of bones or joints;

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

11 6. Any condition that requires the transfer of the
12 resident from the facility to a unit providing more acute care
13 due to the incident rather than the resident's condition
14 before the incident.

15 (b) Abuse, neglect, or exploitation as defined in s.
16 415.102;

17 (c) Events reported to law enforcement; or

18 (d) Elopement.

19 (3) Licensed facilities shall provide within 1
20 business day after the occurrence of an adverse incident, by
21 electronic mail, facsimile, or United States mail, a
22 preliminary report to the agency on all adverse incidents
23 specified under this section. The report must include
24 information regarding the identity of the affected resident,
25 the type of adverse incident, and the status of the facility's
26 investigation of the incident.

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

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

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

13 (a) A total number of adverse incidents;

14 (b) A listing, by category, of the type of adverse
15 incidents occurring within each category and the type of staff
16 involved;

17 (c) A listing, by category, of the types of injuries,
18 if any, and the number of injuries occurring within each
19 category;

20 (d) Types of liability claims filed based on an
21 adverse incident report or reportable injury; and

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

24 (7) The information reported to the agency pursuant to
25 subsection (3) which relates to persons licensed under chapter
26 458, chapter 459, chapter 461, chapter 464, or chapter 465
27 shall be reviewed by the agency. The agency shall determine
28 whether any of the incidents potentially involved conduct by a
29 health care professional who is subject to disciplinary
30 action, in which case the provisions of s. 456.073 apply. The
31 agency may investigate, as it deems appropriate, any such

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

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

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

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

20 Section 37. Present subsections (7), (8), (9), (10),
21 and (11) of section 400.426, Florida Statutes, are
22 redesignated as subsections (8), (9), (10), (11), and (12),
23 respectively, and a new subsection (7) is added to that
24 section, to read:

25 400.426 Appropriateness of placements; examinations of
26 residents.--

27 (7) The facility must notify a licensed physician when
28 a resident exhibits signs of dementia or cognitive impairment
29 or has a change of condition in order to rule out the presence
30 of an underlying physiological condition that may be
31 contributing to such dementia or impairment. The notification

1 must occur within 30 days after the acknowledgement of such
2 signs by facility staff. If an underlying condition is
3 determined to exist, the facility shall arrange, with the
4 appropriate health care provider, the necessary care and
5 services to treat the condition.

6 Section 38. Paragraph (k) of subsection (1) of section
7 400.428, Florida Statutes, is amended to read:

8 400.428 Resident bill of rights.--

9 (1) No resident of a facility shall be deprived of any
10 civil or legal rights, benefits, or privileges guaranteed by
11 law, the Constitution of the State of Florida, or the
12 Constitution of the United States as a resident of a facility.
13 Every resident of a facility shall have the right to:

14 (k) At least 45 ~~30~~ days' notice of relocation or
15 termination of residency from the facility unless, for medical
16 reasons, the resident is certified by a physician to require
17 an emergency relocation to a facility providing a more skilled
18 level of care or the resident engages in a pattern of conduct
19 that is harmful or offensive to other residents. In the case
20 of a resident who has been adjudicated mentally incapacitated,
21 the guardian shall be given at least 45 ~~30~~ days' notice of a
22 nonemergency relocation or residency termination. Reasons for
23 relocation shall be set forth in writing. In order for a
24 facility to terminate the residency of an individual without
25 notice as provided herein, the facility shall show good cause
26 in a court of competent jurisdiction.

27 Section 39. Effective May 15, 2001, and applying to
28 causes of action accruing on or after that date, section
29 400.429, Florida Statutes, is amended to read:

30 400.429 Civil actions to enforce rights.--

31

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

1 768.79 or the Florida Rules of Civil Procedure. Sections
2 400.429-400.4303 provide the exclusive remedy for a cause of
3 action for recovery of damages for the personal injury or
4 death of a resident arising out of negligence or a violation
5 of rights specified in s. 400.428. This section does not
6 preclude theories of recovery not arising out of negligence or
7 s. 400.428 which are available to a resident or to the agency.
8 The provisions of chapter 766 do not apply to any cause of
9 action brought under ss. 400.429-400.4303.~~Any plaintiff who~~
10 ~~prevails in any such action may be entitled to recover~~
11 ~~reasonable attorney's fees, costs of the action, and damages,~~
12 ~~unless the court finds that the plaintiff has acted in bad~~
13 ~~faith, with malicious purpose, and that there was a complete~~
14 ~~absence of a justiciable issue of either law or fact. A~~
15 ~~prevailing defendant may be entitled to recover reasonable~~
16 ~~attorney's fees pursuant to s. 57.105. The remedies provided~~
17 ~~in this section are in addition to and cumulative with other~~
18 ~~legal and administrative remedies available to a resident or~~
19 ~~to the agency.~~

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

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

31

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

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

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

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

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

30 ~~a. Agree on a mediator. If the parties cannot agree on~~
31 ~~a mediator, the defendant shall immediately notify the court,~~

1 ~~which shall appoint a mediator within 10 days after such~~
2 ~~notice.~~

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

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

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

13 ~~3. The mediation shall be conducted in the following~~
14 ~~manner:~~

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

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

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

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

1 ~~the last offer made by the defendant at mediation, the~~
2 ~~plaintiff is not entitled to recover any attorney's fees.~~

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

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

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

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

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

27 Section 40. Effective May 15, 2001, and applying to
28 causes of action accruing on or after that date, section
29 400.4293, Florida Statutes, is created to read:

30
31

1 400.4293 Presuit notice; investigation; notification
2 of violation of residents' rights or alleged negligence;
3 claims evaluation procedure; informal discovery; review.--

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

5 (a) "Claim for residents' rights violation or
6 negligence" means a negligence claim alleging injury to or the
7 death of a resident arising out of an asserted violation of
8 the rights of a resident under s. 400.428 or an asserted
9 deviation from the applicable standard of care.

10 (b) "Insurer" means any self-insurer authorized under
11 s. 627.357, liability insurance carrier, joint underwriting
12 association, or uninsured prospective defendant.

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

28 (3)(a) No suit may be filed for a period of 75 days
29 after notice is mailed to any prospective defendant. During
30 the 75-day period, the prospective defendants or their
31 insurers shall conduct an evaluation of the claim to determine

1 the liability of each defendant and to evaluate the damages of
2 the claimants. Each defendant or insurer of the defendant
3 shall have a procedure for the prompt evaluation of claims
4 during the 75-day period. The procedure shall include one or
5 more of the following:

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

8 2. Internal review by counsel for each prospective
9 defendant;

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

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

14

15 Each defendant or insurer of the defendant shall evaluate the
16 claim in good faith.

17 (b) At or before the end of the 75 days, the defendant
18 or insurer of the defendant shall provide the claimant with a
19 written response:

20 1. Rejecting the claim; or

21 2. Making a settlement offer.

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

28 (4) The notification of a violation of a resident's
29 rights or alleged negligence shall be served within the
30 applicable statute of limitations period; however, during the
31 75-day period, the statute of limitations is tolled as to all

1 prospective defendants. Upon stipulation by the parties, the
2 75-day period may be extended and the statute of limitations
3 is tolled during any such extension. Upon receiving written
4 notice by certified mail, return receipt requested, of
5 termination of negotiations in an extended period, the
6 claimant shall have 60 days or the remainder of the period of
7 the statute of limitations, whichever is greater, within which
8 to file suit.

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

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

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

29 (a) Unsworn statements.--Any party may require other
30 parties to appear for the taking of an unsworn statement. Such
31 statements may be used only for the purpose of claims

1 evaluation and are not discoverable or admissible in any civil
2 action for any purpose by any party. A party seeking to take
3 the unsworn statement of any party must give reasonable notice
4 in writing to all parties. The notice must state the time and
5 place for taking the statement and the name and address of the
6 party to be examined. Unless otherwise impractical, the
7 examination of any party must be done at the same time by all
8 other parties. Any party may be represented by counsel at the
9 taking of an unsworn statement. An unsworn statement may be
10 recorded electronically, stenographically, or on videotape.
11 The taking of unsworn statements is subject to the provisions
12 of the Florida Rules of Civil Procedure and may be terminated
13 for abuses.

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

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

29 (9) If a prospective defendant makes a written
30 settlement offer, the claimant shall have 15 days from the
31 date of receipt to accept the offer. An offer shall be deemed

1 rejected unless accepted by delivery of a written notice of
2 acceptance.

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

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

17 Section 41. Effective May 15, 2001, and applying to
18 causes of action accruing on or after that date, section
19 400.4294, Florida Statutes, is created to read:

20 400.4294 Availability of facility records for
21 investigation of resident's rights violations and defenses;
22 penalty.--

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

31

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

3 Section 42. Effective May 15, 2001, and applying to
4 causes of action accruing on or after that date, section
5 400.4295, Florida Statutes, is created to read:

6 400.4295 Certain provisions not applicable to actions
7 under this part.--An action under this part for a violation of
8 rights or negligence recognized herein is not a claim for
9 medical malpractice, and the provisions of s. 768.21(8) do not
10 apply to a claim alleging death of the resident.

11 Section 43. Effective May 15, 2001, section 400.4296,
12 Florida Statutes, is created to read:

13 400.4296 Statute of limitations.--

14 (1) Any action for damages brought under this part
15 shall be commenced within 2 years from the time the incident
16 giving rise to the action occurred or within 2 years from the
17 time the incident is discovered, or should have been
18 discovered with the exercise of due diligence; however, in no
19 event shall the action be commenced later than 4 years from
20 the date of the incident or occurrence out of which the cause
21 of action accrued.

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

30 (3) This section shall apply to causes of action that
31 have accrued prior to the effective date of this section;

1 however, any such cause of action that would not have been
2 barred under prior law may be brought within the time allowed
3 by prior law or within 2 years after the effective date of
4 this section, whichever is earlier, and will be barred
5 thereafter. In actions where it can be shown that fraudulent
6 concealment or intentional misrepresentation of fact prevented
7 the discovery of the injury, the period of limitations is
8 extended forward 2 years from the time that the injury is
9 discovered with the exercise of due diligence, but in no event
10 more than 4 years from the effective date of this section.

11 Section 44. Section 400.4297, Florida Statutes, is
12 created to read:

13 400.4297 Punitive damages; pleading; burden of
14 proof.--

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

28 (2) A defendant may be held liable for punitive
29 damages only if the trier of fact, based on clear and
30 convincing evidence, finds that the defendant was personally
31

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

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

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

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

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

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

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

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

31

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

3 Section 45. Section 400.4298, Florida Statutes, is
4 created to read:

5 400.4298 Punitive damages; limitation.--

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

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

11 2. The sum of \$1 million.

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

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

24 2. The sum of \$4 million.

25 (c) Where the fact finder determines that at the time
26 of injury the defendant had a specific intent to harm the
27 claimant and determines that the defendant's conduct did in
28 fact harm the claimant, there shall be no cap on punitive
29 damages.

30 (d) This subsection is not intended to prohibit an
31 appropriate court from exercising its jurisdiction under s.

1 768.74 in determining the reasonableness of an award of
2 punitive damages that is less than three times the amount of
3 compensatory damages.

4 (e) In any case in which the findings of fact support
5 an award of punitive damages pursuant to paragraph (b) or
6 paragraph (c), the clerk of the court shall refer the case to
7 the appropriate law enforcement agencies, to the state
8 attorney in the circuit where the long-term care facility that
9 is the subject of the underlying civil cause of action is
10 located, and, for multijurisdictional facility owners, to the
11 Office of the Statewide Prosecutor; and such agencies, state
12 attorney, or Office of the Statewide Prosecutor shall initiate
13 a criminal investigation into the conduct giving rise to the
14 award of punitive damages. All findings by the trier of fact
15 which support an award of punitive damages under this
16 paragraph shall be admissible as evidence in any subsequent
17 civil or criminal proceeding relating to the acts giving rise
18 to the award of punitive damages under this paragraph.

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

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

27 (4) Notwithstanding any other law to the contrary, the
28 amount of punitive damages awarded pursuant to this section
29 shall be equally divided between the claimant and the Quality
30 of Long-Term Care Facility Improvement Trust Fund, in
31 accordance with the following provisions:

1 (a) The clerk of the court shall transmit a copy of
2 the jury verdict to the State Treasurer by certified mail. In
3 the final judgment the court shall order the percentages of
4 the award, payable as provided herein.

5 (b) A settlement agreement entered into between the
6 original parties to the action after a verdict has been
7 returned must provide a proportionate share payable to the
8 Quality of Long-Term Care Facility Improvement Trust Fund
9 specified herein. For purposes of this paragraph, a
10 proportionate share is a 50-percent share of that percentage
11 of the settlement amount which the punitive damages portion of
12 the verdict bore to the total of the compensatory and punitive
13 damages in the verdict.

14 (c) The Department of Banking and Finance shall
15 collect or cause to be collected all payments due the state
16 under this section. Such payments are made to the Comptroller
17 and deposited in the appropriate fund specified in this
18 subsection.

19 (d) If the full amount of punitive damages awarded
20 cannot be collected, the claimant and the other recipient
21 designated pursuant to this subsection are each entitled to a
22 proportionate share of the punitive damages collected.

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

25 Section 46. Section 400.434, Florida Statutes, is
26 amended to read:

27 400.434 Right of entry and inspection.--Any duly
28 designated officer or employee of the department, the
29 Department of Children and Family Services, the agency, the
30 state or local fire marshal, or a member of the state or local
31 long-term care ombudsman council shall have the right to enter

1 unannounced upon and into the premises of any facility
2 licensed pursuant to this part in order to determine the state
3 of compliance with the provisions of this part and of rules or
4 standards in force pursuant thereto. The right of entry and
5 inspection shall also extend to any premises which the agency
6 has reason to believe is being operated or maintained as a
7 facility without a license; but no such entry or inspection of
8 any premises may be made without the permission of the owner
9 or person in charge thereof, unless a warrant is first
10 obtained from the circuit court authorizing such entry. The
11 warrant requirement shall extend only to a facility which the
12 agency has reason to believe is being operated or maintained
13 as a facility without a license. Any application for a
14 license or renewal thereof made pursuant to this part shall
15 constitute permission for, and complete acquiescence in, any
16 entry or inspection of the premises for which the license is
17 sought, in order to facilitate verification of the information
18 submitted on or in connection with the application; to
19 discover, investigate, and determine the existence of abuse or
20 neglect; or to elicit, receive, respond to, and resolve
21 complaints. Any current valid license shall constitute
22 unconditional permission for, and complete acquiescence in,
23 any entry or inspection of the premises by authorized
24 personnel. The agency shall retain the right of entry and
25 inspection of facilities that have had a license revoked or
26 suspended within the previous 24 months, to ensure that the
27 facility is not operating unlawfully. However, before entering
28 the facility, a statement of probable cause must be filed with
29 the director of the agency, who must approve or disapprove the
30 action within 48 hours. Probable cause shall include, but is
31 not limited to, evidence that the facility holds itself out to

1 the public as a provider of personal care services or the
2 receipt of a complaint by the long-term care ombudsman council
3 about the facility. Data collected by the state or local
4 long-term care ombudsman councils or the state or local
5 advocacy councils may be used by the agency in investigations
6 involving violations of regulatory standards.

7 Section 47. Paragraph (h) of subsection (1) and
8 subsection (4) of section 400.441, Florida Statutes, are
9 amended to read:

10 400.441 Rules establishing standards.--

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

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

- 30 1. The supervision of residents;
- 31 2. The provision of personal services;

1 3. The provision of, or arrangement for, social and
2 leisure activities;

3 4. The arrangement for appointments and transportation
4 to appropriate medical, dental, nursing, or mental health
5 services, as needed by residents;

6 5. The management of medication;

7 6. The nutritional needs of residents; ~~and~~

8 7. Resident records; ~~and-~~

9 8. Internal risk management and quality assurance.

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

1 that were converted to full inspection; the number and type of
2 subsequent complaints received by the agency or department on
3 facilities which have had abbreviated inspections; any
4 recommendations for modification to this subsection; any plans
5 by the agency to modify its implementation of this subsection;
6 and any other information which the department believes should
7 be reported.

8 Section 48. Section 400.449, Florida Statutes, is
9 created to read:

10 400.449 Resident records; penalties for alteration.--

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

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

19 Section 49. Paragraph (b) of subsection (2) of section
20 409.908, Florida Statutes, is amended and subsection (22) is
21 added to that section, to read:

22 409.908 Reimbursement of Medicaid providers.--Subject
23 to specific appropriations, the agency shall reimburse
24 Medicaid providers, in accordance with state and federal law,
25 according to methodologies set forth in the rules of the
26 agency and in policy manuals and handbooks incorporated by
27 reference therein. These methodologies may include fee
28 schedules, reimbursement methods based on cost reporting,
29 negotiated fees, competitive bidding pursuant to s. 287.057,
30 and other mechanisms the agency considers efficient and
31 effective for purchasing services or goods on behalf of

1 recipients. Payment for Medicaid compensable services made on
2 behalf of Medicaid eligible persons is subject to the
3 availability of moneys and any limitations or directions
4 provided for in the General Appropriations Act or chapter 216.
5 Further, nothing in this section shall be construed to prevent
6 or limit the agency from adjusting fees, reimbursement rates,
7 lengths of stay, number of visits, or number of services, or
8 making any other adjustments necessary to comply with the
9 availability of moneys and any limitations or directions
10 provided for in the General Appropriations Act, provided the
11 adjustment is consistent with legislative intent.

12 (2)

13 (b) Subject to any limitations or directions provided
14 for in the General Appropriations Act, the agency shall
15 establish and implement a Florida Title XIX Long-Term Care
16 Reimbursement Plan (Medicaid) for nursing home care in order
17 to provide care and services in conformance with the
18 applicable state and federal laws, rules, regulations, and
19 quality and safety standards and to ensure that individuals
20 eligible for medical assistance have reasonable geographic
21 access to such care.

22 1. Changes of ownership or of licensed operator do not
23 qualify for increases in reimbursement rates associated with
24 the change of ownership or of licensed operator. The agency
25 shall amend the Title XIX Long Term Care Reimbursement Plan to
26 provide that the initial nursing home reimbursement rates, for
27 the operating, patient care, and MAR components, associated
28 with related and unrelated party changes of ownership or
29 licensed operator filed on or after September 1, 2001, are
30 equivalent to the previous owner's reimbursement rate.

31

1 2. The agency shall amend the long-term care
2 reimbursement plan and cost reporting system to create direct
3 care and indirect care subcomponents of the patient care
4 component of the per diem rate. These two subcomponents
5 together shall equal the patient care component of the per
6 diem rate. Separate cost-based ceilings shall be calculated
7 for each patient care subcomponent. The direct care
8 subcomponent of the per diem rate shall be limited by the
9 cost-based class ceiling and the indirect care subcomponent
10 shall be limited by the lower of the cost-based class ceiling,
11 by the target rate class ceiling or by the individual provider
12 target. The agency shall adjust the patient care component
13 effective January 1, 2002. The cost to adjust the direct care
14 subcomponent shall be net of the total funds previously
15 allocated for the case mix add-on. The agency shall make the
16 required changes to the nursing home cost reporting forms to
17 implement this requirement effective January 1, 2002.

18 3. The direct care subcomponent shall include salaries
19 and benefits of direct care staff providing nursing services
20 including registered nurses, licensed practical nurses, and
21 certified nursing assistants who deliver care directly to
22 residents in the nursing home facility. This excludes nursing
23 administration, MDS, and care plan coordinators, staff
24 development, and staffing coordinator.

25 4. All other patient care costs shall be included in
26 the indirect care cost subcomponent of the patient care per
27 diem rate. There shall be no costs directly or indirectly
28 allocated to the direct care subcomponent from a home office
29 or management company.

30 5. On July 1 of each year, the agency shall report to
31 the Legislature direct and indirect care costs, including

1 average direct and indirect care costs per resident per
2 facility and direct care and indirect care salaries and
3 benefits per category of staff member per facility.

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

1 ~~case-mix methodology developed by the agency shall take into~~
2 ~~account the medical, behavioral, and cognitive deficits of~~
3 ~~residents. In developing the reimbursement methodology, the~~
4 ~~agency shall evaluate and modify other aspects of the~~
5 ~~reimbursement plan as necessary to improve the overall~~
6 ~~effectiveness of the plan with respect to the costs of patient~~
7 ~~care, operating costs, and property costs. In the event~~
8 ~~adequate data are not available, the agency is authorized to~~
9 ~~adjust the patient's care component or the per diem rate to~~
10 ~~more adequately cover the cost of services provided in the~~
11 ~~patient's care component. The agency shall work with the~~
12 ~~Department of Elderly Affairs, the Florida Health Care~~
13 ~~Association, and the Florida Association of Homes for the~~
14 ~~Aging in developing the methodology.~~

15

16 It is the intent of the Legislature that the reimbursement
17 plan achieve the goal of providing access to health care for
18 nursing home residents who require large amounts of care while
19 encouraging diversion services as an alternative to nursing
20 home care for residents who can be served within the
21 community. The agency shall base the establishment of any
22 maximum rate of payment, whether overall or component, on the
23 available moneys as provided for in the General Appropriations
24 Act. The agency may base the maximum rate of payment on the
25 results of scientifically valid analysis and conclusions
26 derived from objective statistical data pertinent to the
27 particular maximum rate of payment.

28 (22) The agency shall request and implement Medicaid
29 waivers from the federal Health Care Financing Administration
30 to advance and treat a portion of the Medicaid nursing home
31 per diem as capital for creating and operating a

1 risk-retention group for self-insurance purposes, consistent
2 with federal and state laws and rules.

3 Section 50. 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 inservice 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 51. 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 52. Notwithstanding the establishment of need
27 as provided for in chapter 408, Florida Statutes, no
28 certificate of need for additional community nursing home beds
29 shall be approved by the agency until July 1, 2006. The
30 Legislature finds that the continued growth in the Medicaid
31 budget for nursing home care has constrained the ability of

1 the state to meet the needs of its elderly residents through
2 the use of less restrictive and less institutional methods of
3 long-term care. It is therefore the intent of the Legislature
4 to limit the increase in Medicaid nursing home expenditures in
5 order to 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. This moratorium
9 on certificates of need shall not apply to sheltered nursing
10 home beds in a continuing care retirement community certified
11 by the Department of Insurance pursuant to chapter 651,
12 Florida Statutes.

13 Section 53. Subsections (3) and (8) of section
14 400.0255, Florida Statutes, as amended by section 138 of
15 chapter 2000-349, section 3 of chapter 2000-350, and section
16 58 of chapter 2000-367, Laws of Florida, are reenacted to
17 read:

18 400.0255 Resident transfer or discharge; requirements
19 and procedures; hearings.--

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

31

1 physician, medical director, treating physician, nurse
2 practitioner, or physician assistant.

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

28 Section 54. Subsection (5) of section 400.23, Florida
29 Statutes, as amended by section 6 of chapter 2000-350, Laws of
30 Florida, is reenacted to read:

31

1 400.23 Rules; evaluation and deficiencies; licensure
2 status.--

3 (5) The agency, in collaboration with the Division of
4 Children's Medical Services of the Department of Health, must,
5 no later than December 31, 1993, adopt rules for minimum
6 standards of care for persons under 21 years of age who reside
7 in nursing home facilities. The rules must include a
8 methodology for reviewing a nursing home facility under ss.
9 408.031-408.045 which serves only persons under 21 years of
10 age. A facility may be exempt from these standards for
11 specific persons between 18 and 21 years of age, if the
12 person's physician agrees that minimum standards of care based
13 on age are not necessary.

14 Section 55. Subsection (2) of section 400.191, Florida
15 Statutes, as amended by section 5 of chapter 2000-350, Laws of
16 Florida, and subsection (6) of that section, as created by
17 section 5 of chapter 2000-350, Laws of Florida, are reenacted
18 to read:

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

21 (2) The agency shall provide additional information in
22 consumer-friendly printed and electronic formats to assist
23 consumers and their families in comparing and evaluating
24 nursing home facilities.

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

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

31

- 1 2. Whether such nursing home facilities are
2 proprietary or nonproprietary.
- 3 3. The current owner of the facility's license and the
4 year that that entity became the owner of the license.
- 5 4. The name of the owner or owners of each facility
6 and whether the facility is affiliated with a company or other
7 organization owning or managing more than one nursing facility
8 in this state.
- 9 5. The total number of beds in each facility.
- 10 6. The number of private and semiprivate rooms in each
11 facility.
- 12 7. The religious affiliation, if any, of each
13 facility.
- 14 8. The languages spoken by the administrator and staff
15 of each facility.
- 16 9. Whether or not each facility accepts Medicare or
17 Medicaid recipients or insurance, health maintenance
18 organization, Veterans Administration, CHAMPUS program, or
19 workers' compensation coverage.
- 20 10. Recreational and other programs available at each
21 facility.
- 22 11. Special care units or programs offered at each
23 facility.
- 24 12. Whether the facility is a part of a retirement
25 community that offers other services pursuant to part III,
26 part IV, or part V.
- 27 13. The results of consumer and family satisfaction
28 surveys for each facility, as described in s. 400.0225. The
29 results may be converted to a score or scores, which may be
30 presented in either numeric or symbolic form for the intended
31 consumer audience.

1 14. Survey and deficiency information contained on the
2 Online Survey Certification and Reporting (OSCAR) system of
3 the federal Health Care Financing Administration, including
4 annual survey, revisit, and complaint survey information, for
5 each facility for the past 45 months. For noncertified
6 nursing homes, state survey and deficiency information,
7 including annual survey, revisit, and complaint survey
8 information for the past 45 months shall be provided.

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

19 (b) The agency shall provide the following information
20 in printed form:

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

23 2. Whether such nursing home facilities are
24 proprietary or nonproprietary.

25 3. The current owner or owners of the facility's
26 license and the year that entity became the owner of the
27 license.

28 4. The total number of beds, and of private and
29 semiprivate rooms, in each facility.

30 5. The religious affiliation, if any, of each
31 facility.

1 6. The name of the owner of each facility and whether
2 the facility is affiliated with a company or other
3 organization owning or managing more than one nursing facility
4 in this state.

5 7. The languages spoken by the administrator and staff
6 of each facility.

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

11 9. Recreational programs, special care units, and
12 other programs available at each facility.

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

18 11. The Internet address for the site where more
19 detailed information can be seen.

20 12. A statement advising consumers that each facility
21 will have its own policies and procedures related to
22 protecting resident property.

23 13. A summary of the Online Survey Certification and
24 Reporting (OSCAR) data for each facility over the past 45
25 months. Such summary may include a score, rating, or
26 comparison ranking with respect to other facilities based on
27 the number of citations received by the facility on annual,
28 revisit, and complaint surveys; the severity and scope of the
29 citations; the number of citations; and the number of annual
30 recertification surveys the facility has had during the past
31 45 months. The score, rating, or comparison ranking may be

1 presented in either numeric or symbolic form for the intended
2 consumer audience.

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

7 (d) The agency may provide the following additional
8 information on an Internet site or in printed form as the
9 information becomes available:

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

19 (6) The agency may adopt rules as necessary to
20 administer this section.

21 Section 56. Section 400.0225, Florida Statutes, as
22 amended by section 2 of chapter 2000-350, Laws of Florida, is
23 reenacted to read:

24 400.0225 Consumer satisfaction surveys.--The agency,
25 or its contractor, in consultation with the nursing home
26 industry and consumer representatives, shall develop an
27 easy-to-use consumer satisfaction survey, shall ensure that
28 every nursing facility licensed pursuant to this part
29 participates in assessing consumer satisfaction, and shall
30 establish procedures to ensure that, at least annually, a
31 representative sample of residents of each facility is

1 selected to participate in the survey. The sample shall be of
2 sufficient size to allow comparisons between and among
3 facilities. Family members, guardians, or other resident
4 designees may assist the resident in completing the survey.
5 Employees and volunteers of the nursing facility or of a
6 corporation or business entity with an ownership interest in
7 the facility are prohibited from assisting a resident with or
8 attempting to influence a resident's responses to the consumer
9 satisfaction survey. The agency, or its contractor, shall
10 survey family members, guardians, or other resident designees.
11 The agency, or its contractor, shall specify the protocol for
12 conducting and reporting the consumer satisfaction surveys.
13 Reports of consumer satisfaction surveys shall protect the
14 identity of individual respondents. The agency shall contract
15 for consumer satisfaction surveys and report the results of
16 those surveys in the consumer information materials prepared
17 and distributed by the agency. The agency may adopt rules as
18 necessary to administer this section.

19 Section 57. Subsections (4) and (5) of section
20 400.141, Florida Statutes, as renumbered and amended by
21 section 4 of chapter 2000-350, Laws of Florida, are reenacted
22 to read:

23 400.141 Administration and management of nursing home
24 facilities.--Every licensed facility shall comply with all
25 applicable standards and rules of the agency and shall:

26 (4) Provide for resident use of a community pharmacy
27 as specified in s. 400.022(1)(q). Any other law to the
28 contrary notwithstanding, a registered pharmacist licensed in
29 Florida, that is under contract with a facility licensed under
30 this chapter, shall repackage a nursing facility resident's
31 bulk prescription medication which has been packaged by

1 another pharmacist licensed in any state in the United States
2 into a unit dose system compatible with the system used by the
3 nursing facility, if the pharmacist is requested to offer such
4 service. To be eligible for repackaging, a resident or the
5 resident's spouse must receive prescription medication
6 benefits provided through a former employer as part of his or
7 her retirement benefits a qualified pension plan as specified
8 in s. 4972 of the Internal Revenue Code, a federal retirement
9 program as specified under 5 C.F.R. s. 831, or a long-term
10 care policy as defined in s. 627.9404(1). A pharmacist who
11 correctly repackages and relabels the medication and the
12 nursing facility which correctly administers such repackaged
13 medication under the provisions of this subsection shall not
14 be held liable in any civil or administrative action arising
15 from the repackaging. In order to be eligible for the
16 repackaging, a nursing facility resident for whom the
17 medication is to be repackaged shall sign an informed consent
18 form provided by the facility which includes an explanation of
19 the repackaging process and which notifies the resident of the
20 immunities from liability provided herein. A pharmacist who
21 repackages and relabels prescription medications, as
22 authorized under this subsection, may charge a reasonable fee
23 for costs resulting from the implementation of this provision.

24 (5) Provide for the access of the facility residents
25 to dental and other health-related services, recreational
26 services, rehabilitative services, and social work services
27 appropriate to their needs and conditions and not directly
28 furnished by the licensee. When a geriatric outpatient nurse
29 clinic is conducted in accordance with rules adopted by the
30 agency, outpatients attending such clinic shall not be counted
31 as part of the general resident population of the nursing home

1 facility, nor shall the nursing staff of the geriatric
2 outpatient clinic be counted as part of the nursing staff of
3 the facility, until the outpatient clinic load exceeds 15 a
4 day.

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

11 Section 58. Paragraph (a) of subsection (3) and
12 subsection (4) of section 400.235, Florida Statutes, as
13 amended by section 12 of chapter 2000-305 and section 7 of
14 chapter 2000-350, Laws of Florida, and subsection (9) of
15 section 400.235, Florida Statutes, as created by section 7 of
16 chapter 2000-350, Laws of Florida, are reenacted to read:

17 400.235 Nursing home quality and licensure status;
18 Gold Seal Program.--

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

1 Secretary of Health; two persons appointed by the Secretary of
2 Health Care Administration; one person appointed by the
3 Florida Association of Homes for the Aging; and one person
4 appointed by the Florida Health Care Association. Vacancies on
5 the panel shall be filled in the same manner as the original
6 appointments.

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

11 (9) The agency may adopt rules as necessary to
12 administer this section.

13 Section 59. Subsection (1) of section 400.962, Florida
14 Statutes, as amended by section 8 of chapter 2000-350, Laws of
15 Florida, is reenacted to read:

16 400.962 License required; license application.--

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

19 Section 60. Section 10 of chapter 2000-350, Laws of
20 Florida, is reenacted to read:

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

1 the Senate by January 1, 2001. If the study determines that
2 such dispensing machines would benefit residents of nursing
3 facilities and should be allowed, the report shall identify
4 those specific statutory changes necessary to allow nursing
5 facilities to use automated medication dispensing machines.

6 Section 61. Paragraph (g) is added to subsection (1)
7 of section 400.562, Florida Statutes, to read:

8 400.562 Rules establishing standards.--

9 (1) The Department of Elderly Affairs, in conjunction
10 with the agency, shall adopt rules to implement the provisions
11 of this part. The rules must include reasonable and fair
12 standards. Any conflict between these standards and those that
13 may be set forth in local, county, or municipal ordinances
14 shall be resolved in favor of those having statewide effect.
15 Such standards must relate to:

16 (g) Components of a comprehensive emergency management
17 plan, developed in consultation with the Department of Health,
18 the Agency for Health Care Administration, and the Department
19 of Community Affairs.

20 Section 62. Notwithstanding any other provision of
21 this act to the contrary, sections 400.0237, 400.0238,
22 400.4297, 400.4298, Florida Statutes, as created by this act,
23 and section 768.735, Florida Statutes, as amended by this act,
24 shall become effective May 15, 2001; shall apply to causes of
25 action accruing on or after May 15, 2001; and shall be applied
26 retroactively to causes of action accruing before May 15,
27 2001, for which no case has been filed prior to October 5,
28 2001.

29 Section 63. The Agency for Health Care Administration
30 shall develop by October 31, 2001, a standard chart of
31 accounts to govern the content and manner of presentation of

1 financial information to be submitted by Medicaid long-term
2 care providers in their cost reports. The Auditor General
3 shall approve the standard chart of accounts developed by the
4 Agency for Health Care Administration not later than December
5 31, 2001. The agency shall amend the Florida Title XIX
6 Long-Term Care Reimbursement Plan to incorporate this standard
7 chart of accounts and shall implement use of this standard
8 chart of accounts effective for cost reports filed for the
9 periods ending on or after December 31, 2002. The standard
10 chart of accounts shall include specific accounts for each
11 component of direct care staff by type of personnel and may
12 not be revised without the written consent of the Auditor
13 General.

14 Section 64. The Agency for Health Care Administration
15 shall amend the Medicaid Title XIX Long-Term Care
16 Reimbursement Plan effective December 31, 2001, to include the
17 following provisions:

18 (1) Effective with nursing facility cost reports filed
19 for periods ending on or after December 31, 2002, the cost
20 report shall contain detailed information on the salary,
21 benefits, agency, and overtime costs and corresponding hours
22 for direct care staffing for registered nurses, licensed
23 practical nurses, and certified nursing assistants.

24 (2) Effective for cost reports filed for periods
25 ending on or after December 31, 2003, the cost reports shall
26 be submitted electronically in a format and manner prescribed
27 by the agency.

28 Section 65. The Office of State Long-Term Care
29 Ombudsman shall be responsible for the cost of leasing its own
30 office space, but shall not be colocated with the headquarters
31 office of the Department of Elderly Affairs.

1 Section 66. The Agency for Health Care Administration
2 shall not take any administrative action to enforce the
3 requirement that nursing home facilities and assisted living
4 facilities maintain liability insurance until after January 1,
5 2002.

6 Section 67. (1) The sum of \$5,035,636 is appropriated
7 from the General Revenue Fund, the sum of \$3,428,975 is
8 appropriated from the Health Care Trust Fund, and the sum of
9 \$6,710,164 is appropriated from the Medical Care Trust Fund to
10 the Agency for Health Care Administration, and 79 positions
11 are authorized, for the purposes of implementing this act
12 during the 2001-2002 fiscal year.

13 (2) The sum of \$100,000 is appropriated from the
14 General Revenue Fund to the Department of Elderly Affairs for
15 the purposes of implementing this act during the 2001-2002
16 fiscal year.

17 Section 68. The sum of \$948,782 is appropriated from
18 the General Revenue Fund to the Department of Elderly Affairs
19 for the purpose of paying the salaries and other
20 administrative expenses of the Office of State Long-Term Care
21 Ombudsman to carry out the provisions of this act during the
22 2001-2002 fiscal year.

23 Section 69. If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 invalidity does not affect other provisions or applications of
26 the act which can be given effect without the invalid
27 provision or application, and to this end the provisions of
28 this act are severable.

29 Section 70. Except as otherwise expressly provided in
30 this act, this act shall take effect upon becoming a law.
31