

By Representative Frankel

1                                   A bill to be entitled  
2           An act relating to nursing homes and related  
3           facilities; amending s. 400.071, F.S.;  
4           requiring a plan for quality assurance and risk  
5           management as a condition for licensure;  
6           amending s. 400.102, F.S.; providing additional  
7           grounds for certain actions by the Agency for  
8           Health Care Administration against a nursing  
9           home; creating s. 400.117, F.S.; requiring each  
10          nursing home to maintain a quality assessment  
11          and assurance committee; providing membership  
12          and duties; providing for a quality improvement  
13          program; providing for monitoring of the  
14          provision of care and review of the staff  
15          education plan; amending s. 400.121, F.S.;  
16          increasing penalties; requiring, rather than  
17          authorizing, license suspension or revocation,  
18          or moratorium on admissions, under certain  
19          conditions; providing an additional condition  
20          for imposition of a moratorium; reducing  
21          timeframes for certain license suspensions and  
22          revocation hearings; reenacting s. 400.125,  
23          F.S., relating to authorization for injunction;  
24          amending s. 400.126, F.S.; providing for  
25          petition to the court for appointment of a  
26          receiver for a nursing home that fails to  
27          maintain required minimum staffing levels;  
28          requiring such petition to the court under  
29          certain circumstances; providing conditions for  
30          operation and termination of receivership;  
31          authorizing the agency to adopt rules; creating

1 s. 400.1411, F.S.; providing requirements for a  
2 facility's physical environment; creating s.  
3 400.1412, F.S.; specifying quality of care  
4 requirements; requiring certain daily charting;  
5 creating s. 400.14125, F.S.; specifying  
6 requirements for resident assessment and plan  
7 of care; creating s. 400.1413, F.S.; specifying  
8 minimum staffing requirements; creating s.  
9 400.1414, F.S.; requiring each facility to  
10 implement a staff education plan; specifying  
11 education requirements; amending s. 400.1415,  
12 F.S.; increasing penalty for alteration of  
13 records; creating s. 400.1416, F.S.; requiring  
14 designation of a full-time employee to be  
15 responsible for a facility's medical records;  
16 providing requirements for maintenance of  
17 medical records; creating s. 400.1417, F.S.;  
18 providing requirements for maintenance of  
19 fiscal records; amending s. 400.19, F.S.;  
20 deleting requirement for permission prior to  
21 certain entry and inspection of a facility;  
22 creating s. 400.201, F.S.; providing  
23 requirements for physician services; requiring  
24 a medical director for certain facilities;  
25 creating s. 400.203, F.S.; providing  
26 requirements for dietary services; requiring  
27 designation of a full-time employee as a  
28 dietary services supervisor; amending s.  
29 400.23, F.S.; providing for rules relating to  
30 resident assessment and plan of care;  
31 increasing penalties for deficient practices;

1 amending s. 400.241, F.S.; increasing a penalty  
2 for violation of minimum standards; providing  
3 penalties for failure of a nursing home to  
4 maintain required minimum staffing levels;  
5 creating s. 400.351, F.S.; establishing a  
6 nursing home internal risk management program;  
7 requiring employment of a facility internal  
8 risk manager; providing for rules; providing  
9 responsibilities; providing for certain  
10 immunity from liability; providing reporting  
11 requirements; providing penalties, including a  
12 penalty for false allegations; providing for  
13 agency review of internal risk management  
14 programs; creating s. 400.353, F.S.; providing  
15 for private utilization review of nursing home  
16 services; providing for registration of agents;  
17 providing a fee; providing for background  
18 screening; providing penalties; providing for  
19 rules; creating s. 400.354, F.S.; providing  
20 agency procedures for investigation of  
21 complaints against a nursing home; creating s.  
22 400.355, F.S.; providing purpose relating to  
23 minimum standards for nursing home risk  
24 managers; creating s. 400.356, F.S.; providing  
25 for appointment of a Nursing Home Risk Manager  
26 Advisory Council; creating s. 400.357, F.S.;  
27 providing powers and duties of the agency  
28 relating to standards, licensing, and  
29 disciplining of nursing home risk managers;  
30 creating s. 400.358, F.S.; providing for  
31 issuance of licenses; creating s. 400.359,

1 F.S.; providing grounds for denial, suspension,  
2 or revocation of a license; providing  
3 administrative fines; amending s. 408.040,  
4 F.S.; providing additional grounds for denial  
5 of certificate of need for a nursing home or  
6 related facility; amending ss. 458.331 and  
7 459.015, F.S.; providing for agency  
8 investigation of adverse incident occurrences  
9 that may constitute grounds for disciplinary  
10 action against a physician; amending s.  
11 400.063, F.S.; correcting a cross reference;  
12 prohibiting a nursing home or assisted living  
13 facility from taking retaliatory action against  
14 any person who discloses unlawful acts of the  
15 entity or its employees; providing a cause of  
16 action for aggrieved persons; authorizing  
17 specified court actions; requiring health care  
18 entities to provide notice on their premises  
19 that such retaliatory action is not permitted;  
20 providing definitions; requiring reports;  
21 providing for use of certain funds for wage and  
22 benefit increases for certain nursing home  
23 staff; requiring the Auditor General to develop  
24 and submit to the agency a standard chart of  
25 accounts for Medicaid long-term care provider  
26 cost reports; requiring the agency to implement  
27 the chart of accounts by a specified date;  
28 repealing s. 400.118, F.S., relating to the  
29 quality assurance early warning system,  
30 monitoring, and rapid response teams; providing  
31 an appropriation; providing an effective date.

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

2

3 Section 1. Subsections (9) and (10) of section  
4 400.071, Florida Statutes, are renumbered as subsections (10)  
5 and (11), respectively, and a new subsection (9) is added to  
6 said section to read:

7 400.071 Application for license.--

8 (9) As a condition of licensure, each facility must  
9 establish and submit with its application a plan for quality  
10 assurance and risk management.

11 Section 2. Subsection (1) of section 400.102, Florida  
12 Statutes, is amended to read:

13 400.102 Action by agency against licensee; grounds.--

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

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

18 (b) Misappropriation or conversion of the property of  
19 a resident of the facility;

20 (c) Failure to follow the criteria and procedures  
21 provided under part I of chapter 394 relating to the  
22 transportation, voluntary admission, and involuntary  
23 examination of a nursing home resident;

24 (d) Violation of provisions of this part or rules  
25 adopted under this part; ~~or~~

26 (e) Fraudulent altering, defacing, or falsifying any  
27 medical or other nursing home record, or causing or procuring  
28 any of these offenses to be committed;

29 (f) A demonstrated pattern of deficient practices;

30 (g) Failure to pay any outstanding fines assessed by  
31 final agency order or fines assessed by the Health Care

1 Financing Administration pursuant to requirements for federal  
2 Medicare certification;

3 (h) Exclusion from the Medicare or Medicaid programs;  
4 or

5 (i)~~(e)~~ Any act constituting a ground upon which  
6 application for a license may be denied.

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

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

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

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

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

1           (e) The total number of beds and the total number of  
2 Medicare and Medicaid certified beds.

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

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

28           Section 3. Section 400.117, Florida Statutes, is  
29 created to read:

30           400.117 Quality assessment and assurance committee.--  
31

1       (1) The facility shall maintain a quality assessment  
2 and assurance committee consisting of the facility  
3 administrator, director of nursing, medical director, and at  
4 least three other members of the facility's staff.

5       (2) The quality assessment and assurance committee  
6 shall meet at least monthly to develop and review facility  
7 policies and procedures, to identify issues to which quality  
8 assessment and assurance activities are necessary, and to  
9 develop plans of action to correct identified quality  
10 deficiencies.

11       (3) The quality assessment and assurance committee  
12 shall design a quality improvement program to enhance the  
13 quality of nursing home care. The program shall emphasize  
14 quality resident outcomes, corrective action for problems, and  
15 reporting to the agency of standardized data elements  
16 necessary to analyze quality of care outcomes. The committee  
17 shall use existing data, when available, and shall not  
18 duplicate the efforts of other entities in order to obtain  
19 such data.

20       (4) The quality assessment and assurance committee  
21 shall monitor, on a monthly basis, the provision of care to  
22 residents by direct care staff, to ensure compliance with this  
23 part.

24       (5) The quality assessment and assurance committee  
25 shall review the facility's staff education plan at least  
26 annually, and revise the plan as needed.

27       Section 4. Section 400.121, Florida Statutes, is  
28 amended to read:

29       400.121 Denial, suspension, revocation of license;  
30 moratorium on admissions; administrative fines; procedure~~+~~  
31 ~~order to increase staffing.--~~



1           (1) The agency may deny, revoke, or suspend a license  
2 or impose an administrative fine, not to exceed ~~\$1,000~~\$500  
3 per violation per day, for a violation of any provision of s.  
4 400.102(1). All hearings shall be held within the county in  
5 which the licensee or applicant operates or applies for a  
6 license to operate a facility as defined herein.

7           (2) The agency, as a part of any final order issued by  
8 it under this part, may impose such fine as it deems proper,  
9 except that such fine may not exceed ~~\$1,000~~\$500 for each  
10 violation. Each day a violation of this part occurs  
11 constitutes a separate violation and is subject to a separate  
12 fine, but in no event may any fine aggregate more than ~~\$10,000~~  
13 ~~\$5,000~~. A fine may be levied pursuant to this section in lieu  
14 of and notwithstanding the provisions of s. 400.23. Fines paid  
15 by any nursing home facility licensee under this subsection  
16 shall be deposited in the Resident Protection Trust Fund and  
17 expended as provided in s. 400.063.

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

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

27           (b) The facility shall notify the agency in writing,  
28 by facsimile machine, within 24 hours, any time staffing  
29 levels fall below the minimum requirements provided in s.  
30 400.1413(1)(a). The agency shall impose an immediate  
31 moratorium on admissions to a facility when the agency

1 determines that staffing levels have fallen below such minimum  
2 requirements during 10 days, or for 3 consecutive days, within  
3 a 30-day period.

4 (c)~~(b)~~ Where the agency has placed a moratorium on  
5 admissions on any facility two times within a 5-year ~~7-year~~  
6 period, the agency may suspend the license of the nursing home  
7 and the facility's management company, if any. The licensee  
8 shall be afforded an administrative hearing within 60 ~~90~~ days  
9 after the suspension to determine whether the license should  
10 be revoked. During the suspension, the agency shall take the  
11 facility into receivership and shall operate the facility.

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

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

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

5 Section 5. Section 400.125, Florida Statutes, is  
6 reenacted to read:

7 400.125 Injunction proceedings authorized.--

8 (1) The agency may institute injunction proceedings in  
9 a court of competent jurisdiction to:

10 (a) Enforce the provisions of this part or any minimum  
11 standard, rule, or order issued or entered into pursuant  
12 thereto; or

13 (b) Terminate the operation of a home where any of the  
14 following exist:

15 1. Failure to take preventive or corrective measures  
16 in accordance with any order of the agency.

17 2. Failure to abide by any final order of the agency  
18 once it has become effective and binding.

19 3. Any violation as provided in s. 400.121  
20 constituting an emergency requiring immediate action.

21 (2) Such injunctive relief may include temporary and  
22 permanent injunction.

23 Section 6. Paragraph (e) is added to subsection (1) of  
24 section 400.126, Florida Statutes, present subsection (2) is  
25 redesignated as subsection (3) and present subsections (3)  
26 through (11) are redesignated as subsections (5) through (13),  
27 respectively, and new subsections (2) and (4) are added to  
28 said section, to read:

29 400.126 Receivership proceedings.--

30 (1) As an alternative to or in conjunction with an  
31 injunctive proceeding, the agency may petition a court of

1 competent jurisdiction for the appointment of a receiver, when  
2 any of the following conditions exist:

3 (e) The agency determines that the facility cannot  
4 meet minimum staffing levels as required pursuant to s.  
5 400.23(3)(e).

6 (2) The agency shall petition a court of competent  
7 jurisdiction for the appointment of a receiver for a facility  
8 in any case where:

9 (a) The agency has filed an administrative complaint  
10 to revoke the facility's license; or

11 (b) The facility has received a "notice to terminate"  
12 from Medicare or Medicaid.

13 (4) Upon appointment by the court of a receiver, the  
14 receiver shall operate the facility in accordance with this  
15 section until:

16 (a) The facility has been sold to new ownership; or

17 (b) The facility has been brought into compliance with  
18 all applicable care standards and the licensee has satisfied  
19 the agency that it has the means and intent to operate the  
20 facility in full compliance with all state and federal  
21 standards.

22  
23 The agency may adopt rules necessary to administer this  
24 subsection.

25 Section 7. Section 400.1411, Florida Statutes, is  
26 created to read:

27 400.1411 Physical environment.--Each facility shall  
28 provide:

29 (1) A safe, clean, comfortable, and homelike  
30 environment, which allows the resident to use his or her  
31 personal belongings to the extent possible.

1           (2) Housekeeping and maintenance services necessary to  
2 maintain a sanitary, orderly, and comfortable interior.

3           (3) Clean bed and bath linens that are in good  
4 condition.

5           (4) Private closet space for each resident.

6           (5) Furniture, such as a bedside cabinet, and drawer  
7 space.

8           (6) Adequate and comfortable lighting levels in all  
9 areas.

10          (7) Comfortable and safe temperature levels.

11          (8) The maintenance of comfortable sound levels.

12 Individual radios, TVs, and other such transmitters belonging  
13 to the resident shall be tuned to stations of the resident's  
14 choice.

15           Section 8. Section 400.1412, Florida Statutes, is  
16 created to read:

17           400.1412 Quality of care.--Each resident must receive,  
18 and the facility must provide, the necessary care and services  
19 to attain or maintain the highest practicable physical,  
20 mental, and psychosocial well-being, in accordance with the  
21 comprehensive assessment and plan of care.

22           (1) ACTIVITIES OF DAILY LIVING.--Based on the  
23 comprehensive assessment of a resident, the facility must  
24 ensure that:

25           (a) A resident's abilities in activities of daily  
26 living do not diminish unless circumstances of the  
27 individual's clinical condition demonstrate that diminution  
28 was unavoidable, including the resident's ability to:

29           1. Bathe, dress, and groom.

30           2. Transfer and ambulate.

31           3. Use the toilet.

1           4. Eat.  
2           5. Use speech, language, or other functional  
3 communication systems.  
4           (b) A resident is given the appropriate treatment and  
5 services to maintain or improve his or her abilities specified  
6 in paragraph (a).  
7           (c) A resident who is unable to carry out activities  
8 of daily living receives the necessary services to maintain  
9 good nutrition, grooming, and personal and oral hygiene.  
10          (2) VISION AND HEARING.--To ensure that residents  
11 receive proper treatment and assistive devices to maintain  
12 vision and hearing abilities, the facility must, if necessary,  
13 assist the resident:  
14           (a) In making appointments.  
15           (b) By arranging for transportation to and from the  
16 office of a practitioner specializing in the treatment of  
17 vision or hearing impairment or the office of a professional  
18 specializing in the provision of vision or hearing assistive  
19 devices.  
20          (3) PRESSURE SORES.--Based on the comprehensive  
21 assessment of a resident, the facility must ensure that:  
22           (a) A resident who enters the facility without  
23 pressure sores does not develop pressure sores unless the  
24 individual's clinical condition demonstrates that they were  
25 unavoidable.  
26           (b) A resident having pressure sores receives  
27 necessary treatment and services to promote healing, prevent  
28 infection, and prevent new sores from developing.  
29          (4) URINARY INCONTINENCE.--Based on the resident's  
30 comprehensive assessment, the facility must ensure that:  
31

1       (a) A resident who enters the facility without an  
2 indwelling catheter is not catheterized unless the resident's  
3 clinical condition demonstrates that catheterization was  
4 necessary.

5       (b) A resident who is incontinent of bladder receives  
6 appropriate treatment and services to prevent urinary tract  
7 infections and to restore as much normal bladder function as  
8 possible.

9       (5) RANGE OF MOTION.--Based on the comprehensive  
10 assessment of a resident, the facility must ensure that:

11       (a) A resident who enters the facility without a  
12 limited range of motion does not experience reduction in range  
13 of motion unless the resident's clinical condition  
14 demonstrates that a reduction in range of motion is  
15 unavoidable.

16       (b) A resident with a limited range of motion receives  
17 appropriate treatment and services to increase range of motion  
18 or to prevent further decrease in range of motion.

19       (6) MENTAL AND PSYCHOSOCIAL FUNCTIONING.--Based on the  
20 comprehensive assessment of a resident, the facility must  
21 ensure that:

22       (a) A resident who displays mental or psychosocial  
23 adjustment difficulty receives appropriate treatment and  
24 services to correct the assessed problem.

25       (b) A resident whose assessment did not reveal a  
26 mental or psychosocial adjustment difficulty does not display  
27 a pattern of decreased social interaction or increased  
28 withdrawn, angry, or depressive behaviors, unless the  
29 resident's clinical condition demonstrates that such a pattern  
30 was unavoidable.

31

1       (7) NASOGASTRIC TUBES.--Based on the comprehensive  
2 assessment of a resident, the facility must ensure that:

3           (a) A resident who has been able to eat enough alone  
4 or with assistance is not fed by nasogastric tube unless the  
5 resident's clinical condition demonstrates that use of a  
6 nasogastric tube was unavoidable.

7           (b) A resident who is fed by a nasogastric or  
8 gastrostomy tube receives the appropriate treatment and  
9 services to prevent aspiration pneumonia, diarrhea, vomiting,  
10 dehydration, metabolic abnormalities, and nasal-pharyngeal  
11 ulcers and to restore, if possible, normal eating skills.

12       (8) ACCIDENTS.--The facility must ensure that:

13           (a) The residents' environment remains as free of  
14 accident hazards as is possible.

15           (b) Each resident receives adequate supervision and  
16 assistance devices to prevent accidents.

17       (9) NUTRITION.--Based on a resident's comprehensive  
18 assessment, the facility must ensure that a resident:

19           (a) Maintains acceptable parameters of nutritional  
20 status, such as body weight and protein levels, unless the  
21 resident's clinical condition demonstrates that this is not  
22 possible.

23           (b) Receives a therapeutic diet when there is a  
24 nutritional problem.

25       (10) HYDRATION.--The facility must provide each  
26 resident with sufficient fluid intake to maintain proper  
27 hydration and health.

28       (11) SPECIAL NEEDS.--The facility must ensure that  
29 residents receive proper treatment and care for the following  
30 special services:

31           (a) Injections.



- 1           (b) Parenteral and enteral fluids.  
2           (c) Colostomy, ureterostomy, or ileostomy care.  
3           (d) Tracheostomy care.  
4           (e) Tracheal suctioning.  
5           (f) Respiratory care.  
6           (g) Foot care.  
7           (h) Prostheses.  
8           (12) UNNECESSARY DRUGS.--  
9           (a) General.--Each resident's drug regimen must be  
10 free from unnecessary drugs. An unnecessary drug is any drug  
11 used:  
12           1. In excessive dose, including duplicate drug  
13 therapy;  
14           2. For excessive duration;  
15           3. Without adequate monitoring;  
16           4. Without adequate indications for its use;  
17           5. In the presence of adverse consequences which  
18 indicate the dose should be reduced or discontinued;  
19  
20 or any combinations of the uses in subparagraphs 1.-5.  
21           (b) Antipsychotic drugs.--Based on a comprehensive  
22 assessment of a resident, the facility must ensure that:  
23           1. Residents who have not used antipsychotic drugs are  
24 not given these drugs unless antipsychotic drug therapy is  
25 necessary to treat a specific condition as diagnosed and  
26 documented in the clinical record.  
27           2. Residents who use antipsychotic drugs receive  
28 gradual dose reductions, and behavioral interventions, unless  
29 clinically contraindicated, in an effort to discontinue these  
30 drugs.  
31

1           (13) MEDICATION ERRORS.--The facility must ensure  
2 that:

3           (a) It is free of medication error rates of 5 percent  
4 or greater.

5           (b) Residents are free of any significant medication  
6 errors.

7           (14) DEMENTIA; COGNITIVE IMPAIRMENT.--The facility  
8 must ensure that each resident who exhibits any signs of  
9 dementia or cognitive impairment is examined by a licensed  
10 physician to rule out the presence of an underlying  
11 physiological condition that may be contributing to such  
12 signs. The examination must occur within 7 days after  
13 admission of the resident to the facility or within 7 days  
14 after such signs have first been observed by any facility  
15 staff. If an underlying physical condition is determined to  
16 exist, it is the facility's responsibility to provide the  
17 necessary care and services to treat the condition.

18  
19 The facility shall maintain in the medical record for each  
20 resident a daily chart of certified nursing assistant services  
21 provided to the resident. This record must be completed  
22 contemporaneously with the delivery of care, by the certified  
23 nursing assistant caring for the resident. This record must  
24 indicate assistance with activities of daily living,  
25 assistance with eating, and assistance with drinking, and must  
26 record each offering of nutrition and hydration for those  
27 residents whose plan of care or assessment indicates a risk  
28 for malnutrition or dehydration.

29           Section 9. Section 400.14125, Florida Statutes, is  
30 created to read:

31           400.14125 Resident assessment and care plan.--

- 1       (1) Each resident admitted to the nursing home  
2 facility shall have a plan of care. The plan of care shall  
3 consist of:
- 4           (a) Physician's orders, diagnosis, medical history,  
5 physical examination, and rehabilitative or restorative  
6 potential.
- 7           (b) A preliminary nursing evaluation with physician's  
8 orders for immediate care, completed on admission.
- 9           (c) A complete, comprehensive, accurate, and  
10 reproducible assessment of each resident's functional capacity  
11 which is standardized in the facility and is completed within  
12 14 days after the resident's admission to the facility and  
13 every 12 months thereafter. The assessment shall be:
- 14               1. Reviewed no less than once every 3 months.  
15               2. Reviewed promptly after a significant change in the  
16 resident's physical or mental condition.
- 17               3. Revised as appropriate to assure the continued  
18 accuracy of the assessment.
- 19       (2) The assessment process must include direct  
20 observation and communication with the resident, as well as  
21 communication with licensed and nonlicensed direct care staff  
22 members on all shifts. A resident who has not been adjudged  
23 incapacitated shall be assisted to participate in the planning  
24 of all medical treatment and in the development of the plan of  
25 care. The assessment must include, at a minimum:
- 26           (a) Identification and demographic information.  
27           (b) Customary routine.  
28           (c) Cognitive patterns.  
29           (d) Communication.  
30           (e) Vision.  
31           (f) Mood and behavior patterns.

- 1        (g) Psychosocial well-being.  
2        (h) Physical functioning and structural problems.  
3        (i) Continence.  
4        (j) Disease diagnoses and health conditions.  
5        (k) Dental and nutritional status.  
6        (l) Skin condition.  
7        (m) Activity pursuit.  
8        (n) Medications.  
9        (o) Special treatments and procedures.  
10       (p) Discharge potential.  
11       (q) Documentation of summary information regarding the  
12 additional assessment performed through the resident  
13 assessment protocols.  
14       (r) Documentation of participation in assessment.  
15       (3) The facility is responsible for developing a  
16 comprehensive care plan for each resident that includes  
17 measurable objectives and timetables to meet a resident's  
18 medical, nursing, mental, and psychosocial needs that are  
19 identified in the comprehensive assessment. The care plan must  
20 describe the services that are to be furnished to attain or  
21 maintain the resident's highest practicable physical, mental,  
22 and social well-being. The care plan must be completed within  
23 7 days after completion of the initial resident assessment and  
24 must be reviewed and signed by the director of nursing, who  
25 shall attest to its adequacy and appropriateness.  
26       (4) At the resident's option, every effort shall be  
27 made to include the resident and family or responsible party,  
28 including private duty nurse or nursing assistant, in the  
29 development, implementation, maintenance, and evaluation of  
30 the resident plan of care.  
31

1       (5) All staff personnel who provide care and, at the  
2 resident's option, private duty nurses or nonemployees of the  
3 facility shall be knowledgeable of, and have access to, the  
4 resident's plan of care.

5       (6) A summary of the resident's plan of care and a  
6 copy of any advanced directives shall accompany each resident  
7 discharged or transferred to another health care facility  
8 licensed under this part, or shall be forwarded to the  
9 receiving facility as soon as possible consistent with good  
10 medical practice.

11       Section 10. Section 400.1413, Florida Statutes, is  
12 created to read:

13       400.1413 Minimum staffing requirements.--

14       (1) The nursing home facility shall have sufficient  
15 nursing staff, on a 24-hour basis, to provide nursing and  
16 related services to residents in order to maintain the highest  
17 practicable physical, mental, and psychosocial well-being of  
18 each resident, as determined by resident assessments and  
19 individual plans of care.

20       (a) Effective July 1, 2001, each facility shall staff,  
21 at a minimum, an average of 2.1 hours of certified nursing  
22 assistant and 1.0 hours of licensed nursing staff time for  
23 each resident during a 24-hour period. These minimum staffing  
24 levels shall be increased by 10 percent annually until July 1,  
25 2005.

26       (b) The agency shall be notified in writing, by  
27 facsimile machine, within 24 hours, any time staffing levels  
28 fall below the minimum requirements provided in this  
29 paragraph. The agency shall impose an immediate moratorium on  
30 admissions to a facility when the agency determines that  
31 staffing levels have fallen below such minimum requirements

1 during 10 days, or for 3 consecutive days, within a 30-day  
2 period.

3 (2) The administrator of each nursing home shall  
4 designate one full-time registered nurse as a director of  
5 nursing who shall be responsible and accountable for the  
6 supervision and administration of the total nursing services  
7 program. When a director of nursing is delegated institutional  
8 responsibilities, a full-time qualified registered nurse shall  
9 be designated to serve as assistant director of nursing. In a  
10 facility with a census of 121 or more residents, a registered  
11 nurse must be designated as an assistant director of nursing.

12 (3) Persons designated as director of nursing or  
13 assistant director of nursing shall serve only one nursing  
14 home facility in this capacity and shall not serve as the  
15 administrator of the nursing home facility.

16 (4) The director of nursing shall designate one  
17 licensed nurse on each shift to be responsible for the  
18 delivery of nursing services during that shift.

19 (5) In multistory, multiwing, or multistation nursing  
20 home facilities, there shall be a minimum of one nursing  
21 services staff person who is capable of providing direct care  
22 on duty at all times on each floor, wing, or station.

23 (6) No nursing services staff person shall be  
24 scheduled for more than 12 hours within a 24-hour period, for  
25 3 consecutive days, except in an emergency. Emergencies shall  
26 be documented and shall be for a limited, specified period of  
27 time.

28 Section 11. Section 400.1414, Florida Statutes, is  
29 created to read:

30 400.1414 Staff education.--  
31

1       (1) Each nursing home shall develop, implement, and  
2 maintain a written staff education plan that ensures a  
3 coordinated program for staff education for all facility  
4 employees. The staff education plan shall be reviewed at least  
5 annually by the quality assessment and assurance committee and  
6 revised as needed.

7       (2) The staff education plan shall include both  
8 preservice and inservice programs.

9       (3) The staff education plan shall ensure that  
10 education is conducted annually for all facility employees, at  
11 a minimum, in the following areas:

12           (a) Prevention and control of infection.

13           (b) Fire prevention, life safety, and disaster  
14 preparedness.

15           (c) Accident prevention and safety awareness.

16           (d) Residents' rights.

17           (e) Federal requirements for long-term care facilities  
18 set forth in 42 C.F.R. 483, 1991, and state laws set forth in  
19 this part and the rules adopted pursuant to this part.

20           (f) Requirements of ss. 442.101-442.127 or successor  
21 legislation, relating to toxic substances in the workplace.

22       (4) The staff education plan shall ensure that all  
23 nonlicensed employees of the nursing home complete an initial  
24 educational course on HIV/AIDS. An employee who does not have  
25 a certificate of course completion at the time of hiring must  
26 complete 2 hours of training within 6 months after initial  
27 employment and may not provide care for a resident diagnosed  
28 with HIV/AIDS until completing such training. All employees  
29 shall complete a minimum of 1 hour of continuing education on  
30 HIV/AIDS biennially.

31

1           Section 12. Subsection (1) of section 400.1415,  
2 Florida Statutes, is amended to read:

3           400.1415 Patient records; penalties for alteration.--

4           (1) Any person who fraudulently alters, defaces, or  
5 falsifies any medical or other nursing home record, or causes  
6 or procures any of these offenses to be committed, commits a  
7 misdemeanor of the first ~~second~~ degree, punishable as provided  
8 in s. 775.082 or s. 775.083.

9           Section 13. Section 400.1416, Florida Statutes, is  
10 created to read:

11           400.1416 Facility medical records.--

12           (1) The facility shall designate a full-time employee  
13 to be responsible and accountable for the facility's medical  
14 records. If this employee is not a qualified medical record  
15 practitioner, the facility shall employ the services of a  
16 qualified medical record practitioner on a consultant basis. A  
17 qualified medical record practitioner is a person who is  
18 eligible for a certification as a registered record  
19 administrator or an accredited record technician by the  
20 American Health Information Management Association or is a  
21 graduate of a School of Medical Record Science that is  
22 accredited jointly by the Council on Medical Education of the  
23 American Medical Association and the American Health  
24 Information Management Association.

25           (2) Each medical record shall contain sufficient  
26 information to clearly identify to the resident his or her  
27 diagnosis and treatment, and the results of treatment. Medical  
28 records shall be complete, accurate, accessible, and  
29 systematically organized.

30           (3) Medical records shall be retained for a period of  
31 5 years from the date of discharge. In the case of a minor,



1 the record shall be retained for 3 years after such person  
2 reaches legal age under state law.

3 Section 14. Section 400.1417, Florida Statutes, is  
4 created to read:

5 400.1417 Fiscal records.--

6 (1) The licensee, for each nursing home it operates,  
7 shall maintain fiscal records in accordance with the  
8 requirements of this part and the rules adopted pursuant to  
9 this part.

10 (2) An accrual or cash system of accounting shall be  
11 used to reflect transactions of the business. Records and  
12 accounts of transactions, such as general ledgers and  
13 disbursement journals, shall be brought current no less than  
14 quarterly and shall be available for review by the agency and  
15 authorized representatives of appropriate federal agencies.

16 Section 15. Subsection (1) of section 400.19, Florida  
17 Statutes, is amended to read:

18 400.19 Right of entry and inspection.--

19 (1) The agency and any duly designated officer or  
20 employee thereof or a member of the State Long-Term Care  
21 Ombudsman Council or the local long-term care ombudsman  
22 council shall have the right to enter upon and into the  
23 premises of any facility licensed pursuant to this part, or  
24 any distinct nursing home unit of a hospital licensed under  
25 chapter 395 or any freestanding facility licensed under  
26 chapter 395 that provides extended care or other long-term  
27 care services, at any reasonable time in order to determine  
28 the state of compliance with the provisions of this part and  
29 rules in force pursuant thereto. The right of entry and  
30 inspection shall also extend to any premises which the agency  
31 has reason to believe is being operated or maintained as a

1 ~~facility without a license, but no such entry or inspection of~~  
2 ~~any premises shall be made without the permission of the owner~~  
3 ~~or person in charge thereof, unless a warrant is first~~  
4 ~~obtained from the circuit court authorizing same.~~ Any  
5 application for a facility license or renewal thereof, made  
6 pursuant to this part, shall constitute permission for and  
7 complete acquiescence in any entry or inspection of the  
8 premises for which the license is sought, in order to  
9 facilitate verification of the information submitted on or in  
10 connection with the application; to discover, investigate, and  
11 determine the existence of abuse or neglect; or to elicit,  
12 receive, respond to, and resolve complaints. The agency shall,  
13 within 60 days after receipt of a complaint made by a resident  
14 or resident's representative, complete its investigation and  
15 provide to the complainant its findings and resolution.

16 Section 16. Section 400.201, Florida Statutes, is  
17 created to read:

18 400.201 Physician services.--

19 (1) Each nursing home facility shall retain, pursuant  
20 to a written agreement, a physician licensed under chapter 458  
21 or chapter 459, to serve as medical director. In facilities  
22 with a licensed capacity of 60 beds or less, pursuant to  
23 written agreement, a physician licensed under chapter 458 or  
24 chapter 459 may serve as medical consultant in lieu of a  
25 medical director.

26 (2) Each resident or legal representative shall be  
27 allowed to select his or her own private physician.

28 (3) Verbal orders, including telephone orders, shall  
29 be immediately recorded, dated, and signed by the person  
30 receiving the order. All verbal treatment orders shall be  
31

1 countersigned by the physician or other health care  
2 professional on the next visit to the facility.

3 (4) Physician orders may be transmitted by facsimile  
4 machine. It is not necessary for a physician to re-sign a  
5 facsimile order when he or she visits a facility.

6 (5) All physician orders shall be followed as  
7 prescribed, and if not followed, the reason shall be recorded  
8 on the resident's medical record during that shift.

9 (6) Each resident shall be seen by a physician, or  
10 another licensed health professional acting within his or her  
11 scope of practice, at least once every 30 days for the first  
12 90 days after admission, and at least once every 60 days  
13 thereafter. A physician visit is considered timely if it  
14 occurs not later than 10 days after the date the visit was  
15 required. If a physician documents that a resident does not  
16 need to be seen on this schedule and there is no other  
17 requirement for physician's services that must be met due to  
18 Title XVIII (Medicare) or Title XIX (Medicaid) of the Social  
19 Security Act, the resident's physician may document an  
20 alternate visitation schedule.

21 (7) If the physician chooses to designate another  
22 health care professional to fulfill the physician's component  
23 of resident care, the physician may do so after the required  
24 visit. All responsibilities of a physician, except for the  
25 position of medical director, may be carried out by other  
26 health care professionals acting within their scope of  
27 practice.

28 (8) Each facility shall have a list of physicians  
29 designated to provide emergency services to residents when the  
30 resident's attending physician, or designated alternate, is  
31 not available.

1           Section 17. Section 400.203, Florida Statutes, is  
2 created to read:

3           400.203 Dietary services.--

4           (1) The administrator shall designate one full-time  
5 employee as a dietary services supervisor. In a facility with  
6 a census of 61 or more residents, the duties of the dietary  
7 services supervisor shall not include food preparation or  
8 service on a regular basis.

9           (2) Either the dietary services supervisor shall be a  
10 qualified dietitian or the facility shall obtain consultation  
11 from a qualified dietitian. A qualified dietitian is a person  
12 who:

13           (a) Is a registered dietitian as defined by the  
14 Commission on Dietetic Registration of the American Dietetic  
15 Association, and is currently registered with the American  
16 Dietetic Association; or

17           (b) Has a baccalaureate degree with major studies in  
18 food and nutrition, dietetics, or food service management, as  
19 defined by the Commission on Dietetic Registration of the  
20 American Dietetic Association, has 1 year of supervisory  
21 experience in the dietetic service of a health care facility,  
22 and participates annually in continuing dietetic education.

23           (3) A dietary services supervisor is a person who:

24           (a) Is a qualified dietitian as defined in paragraph  
25 (2)(a) or paragraph (2)(b);

26           (b) Has successfully completed an associate degree  
27 program which meets the education standard established by the  
28 American Dietetic Association;

29           (c) Has successfully completed a dietetic assistant  
30 correspondence or classroom training program, approved by the  
31 American Dietetic Association;

1       (d) Has successfully completed a course offered by an  
2 accredited college or university that provided 90 or more  
3 hours of correspondence or classroom instruction in food  
4 service supervision and has prior work experience as a dietary  
5 supervisor in a health care institution with consultation from  
6 a qualified dietitian;

7       (e) Has training and experience in food service  
8 supervision and management in the military service equivalent  
9 in content to the program in paragraph (b), paragraph (c), or  
10 paragraph (d); or

11       (f) Is a certified dietary manager who has  
12 successfully completed the dietary manager's course and is  
13 certified through the certifying board for dietary managers  
14 and is maintaining certification with continuing clock hours  
15 at 45 continuing education credit per 3-year period.

16       (4) The facility shall provide a wholesome and  
17 nourishing diet sufficient to meet generally accepted  
18 standards of proper nutrition for its residents and provide  
19 such therapeutic diets as may be prescribed by attending  
20 physicians. In making rules to implement this subsection, the  
21 agency shall be guided by standards recommended by nationally  
22 recognized professional groups and associations with knowledge  
23 of dietetics.

24       (5) A 1-week supply of a variety of nonperishable food  
25 and supplies that represent a good diet shall be maintained by  
26 the facility at all times.

27       Section 18. Paragraph (f) of subsection (2) and  
28 subsection (8) of section 400.23, Florida Statutes, are  
29 amended to read:

30       400.23 Rules; evaluation and deficiencies; licensure  
31 status; penalties.--

1           (2) Pursuant to the intention of the Legislature, the  
2 agency, in consultation with the Department of Health and the  
3 Department of Elderly Affairs, shall adopt and enforce rules  
4 to implement this part, which shall include reasonable and  
5 fair criteria in relation to:

6           (f) The care, treatment, and maintenance of residents  
7 and measurement of the quality and adequacy thereof, including  
8 implementation of s. 400.14125 relating to resident assessment  
9 and plan of care based on rules developed under this chapter  
10 ~~and the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.~~  
11 ~~100-203) (December 22, 1987), Title IV (Medicare, Medicaid,~~  
12 ~~and Other Health-Related Programs), Subtitle C (Nursing Home~~  
13 ~~Reform), as amended.~~

14           (8) The agency shall adopt rules to provide that, when  
15 the criteria established under subsection (2) are not met,  
16 such deficiencies shall be classified according to the nature  
17 of the deficiency. The agency shall indicate the  
18 classification on the face of the notice of deficiencies as  
19 follows:

20           (a) Class I deficiencies are those which the agency  
21 determines present an imminent danger to the residents or  
22 guests of the nursing home facility or a substantial  
23 probability that death or serious physical harm would result  
24 therefrom. The condition or practice constituting a class I  
25 violation shall be abated or eliminated immediately, unless a  
26 fixed period of time, as determined by the agency, is required  
27 for correction. Notwithstanding s. 400.121(2), a class I  
28 deficiency is subject to a civil penalty in an amount not less  
29 than \$10,000~~\$5,000~~ and not exceeding \$30,000~~\$25,000~~ for each  
30 and every deficiency. A fine may be levied notwithstanding the  
31 correction of the deficiency.

1 (b) Class II deficiencies are those which the agency  
2 determines have a direct or immediate relationship to the  
3 health, safety, or security of the nursing home facility  
4 residents, other than class I deficiencies. A class II  
5 deficiency is subject to a civil penalty in an amount not less  
6 than \$5,000~~\$1,000~~ and not exceeding \$15,000~~\$10,000~~ for each  
7 and every deficiency. A citation for a class II deficiency  
8 shall specify the time within which the deficiency is required  
9 to be corrected. If a class II deficiency is corrected within  
10 the time specified, no civil penalty shall be imposed, unless  
11 it is a repeated offense.

12 (c) Class III deficiencies are those which the agency  
13 determines to have an indirect or potential relationship to  
14 the health, safety, or security of the nursing home facility  
15 residents, other than class I or class II deficiencies. A  
16 class III deficiency shall be subject to a civil penalty of  
17 not less than \$1,500~~\$500~~ and not exceeding \$5,000~~\$2,500~~ for  
18 each and every deficiency. A citation for a class III  
19 deficiency shall specify the time within which the deficiency  
20 is required to be corrected. If a class III deficiency is  
21 corrected within the time specified, no civil penalty shall be  
22 imposed, unless it is a repeated offense.

23 Section 19. Subsection (4) of section 400.241, Florida  
24 Statutes, is amended, and subsection (5) is added to said  
25 section, to read:

26 400.241 Prohibited acts; penalties for violations.--

27 (4) Except as otherwise provided in this part,a  
28 violation of any provision of this part or of any minimum  
29 standard or~~rule, or regulation~~ adopted pursuant thereto  
30 constitutes a felony of the third ~~misdemeanor of the second~~  
31 degree, punishable as provided in s. 775.082 or s. 775.083.

1 Each day of a continuing violation shall be considered a  
2 separate offense.

3 (5) The failure of a nursing home to maintain required  
4 minimum staffing levels, as provided in s. 400.1413(1)(a) for:

5 (a) Three shifts during a 90-day period constitutes a  
6 misdemeanor of the second degree;

7 (b) More than 3 but less than 10 shifts during a  
8 90-day period constitutes a misdemeanor of the first degree;  
9 or

10 (c) Ten or more shifts during a 90-day period  
11 constitutes a felony of the third degree,

12  
13 punishable as provided in s. 775.082 or s. 775.083.

14 Section 20. Section 400.351, Florida Statutes, is  
15 created to read:

16 400.351 Nursing home internal risk management  
17 program.--

18 (1) Every nursing home facility shall, as a part of  
19 its administrative functions, establish an internal risk  
20 management program that includes all of the following  
21 components:

22 (a) The investigation and analysis of the frequency  
23 and causes of general categories and specific types of adverse  
24 incidents to residents.

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

29 1. Such education and training of all personnel as  
30 part of their initial orientation; and

31



1           2. At least 1 hour of such education and training  
2 annually for all personnel of the facility working in clinical  
3 areas or providing resident care.

4           (c) The analysis of resident grievances that relate to  
5 resident care or the quality of medical services.

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

12           (2) The internal risk management program is the  
13 responsibility of the governing board, if there is a governing  
14 board, or, if not, the administrator of the nursing home  
15 facility. Each facility shall hire a risk manager, licensed  
16 under part IX of chapter 626, who is responsible for  
17 implementation and oversight of such facility's internal risk  
18 management program as required by this section. A risk  
19 manager must not be made responsible for more than four  
20 internal risk management programs in separate licensed  
21 facilities, unless the facilities are under one corporate  
22 ownership or the risk management programs are in rural nursing  
23 homes.

24           (3) In addition to the programs mandated by this  
25 section, other innovative approaches intended to reduce the  
26 frequency and severity of medical malpractice and resident  
27 injury claims shall be encouraged and their implementation and  
28 operation facilitated. Such additional approaches may include  
29 extending internal risk management programs to nursing home  
30 providers' offices and the assuming of provider liability by a  
31 facility for acts or omissions occurring within the facility.

1           (4) The agency shall, after consulting with the  
2 Department of Insurance, adopt rules governing the  
3 establishment of internal risk management programs to meet the  
4 needs of individual nursing home facilities. Each internal  
5 risk management program shall include the use of incident  
6 reports to be filed with an individual of responsibility who  
7 is competent in risk management techniques in the employ of  
8 each facility, such as an insurance coordinator. The  
9 individual responsible for the risk management program shall  
10 have free access to all medical records of the facility. The  
11 incident reports are part of the workpapers of the attorney  
12 defending the facility in litigation relating to the facility  
13 and are subject to discovery, but are not admissible as  
14 evidence in court. A person filing an incident report is not  
15 subject to civil suit by virtue of such incident report. As a  
16 part of each internal risk management program, the incident  
17 reports shall be used to develop categories of incidents which  
18 identify problem areas. Once identified, procedures shall be  
19 adjusted to correct the problem areas.

20           (5) For purposes of reporting to the agency pursuant  
21 to this section, the term "adverse incident" means an event  
22 over which nursing home personnel could exercise control and  
23 which is associated in whole or in part with medical  
24 intervention, rather than the condition for which such  
25 intervention occurred, and which results in one of the  
26 following injuries:

- 27           (a) Death.  
28           (b) Brain or spinal damage.  
29           (c) Permanent disfigurement.  
30           (d) Fracture or dislocation of bones or joints.

31

1       (e) A resulting limitation of neurological, physical,  
2 or sensory function which continues after discharge from the  
3 facility.

4       (f) Any condition that required specialized medical  
5 attention or surgical intervention resulting from nonemergency  
6 medical intervention, other than an emergency medical  
7 condition, to which the resident has not given his or her  
8 informed consent.

9       (g) Any condition that required the transfer of the  
10 resident, within or outside the facility, to a facility  
11 providing a more acute level of care due to the adverse  
12 incident, rather than the resident's condition prior to the  
13 adverse incident.

14       (6)(a) Each facility subject to this section shall  
15 submit an annual report to the agency summarizing the incident  
16 reports that have been filed in the facility for that year.  
17 The report shall include:

18           1. The total number of adverse incidents.

19           2. A listing, by category, of the types of operations,  
20 diagnostic treatment procedures, or other actions causing the  
21 injuries, and the number of incidents occurring within each  
22 category.

23           3. A listing, by category, of the types of injuries  
24 caused and the number of incidents occurring within each  
25 category.

26           4. A code number using the health care professional's  
27 licensure number and a separate code number identifying all  
28 other individuals directly involved in adverse incidents to  
29 residents, the relationship of the individual to the facility,  
30 and the number of incidents in which each individual has been  
31 directly involved. Each facility shall maintain names of the

1 health care professionals and individuals identified by code  
2 numbers for purposes of this section.

3 5. A description of all malpractice claims filed  
4 against the facility, including the total number of pending  
5 and closed claims and the nature of the incident which led to,  
6 the persons involved in, and the status and disposition of  
7 each claim. Each report shall update status and disposition  
8 for all prior reports.

9 (b) The information reported to the agency pursuant to  
10 paragraph (a) which relates to persons licensed under chapter  
11 458, chapter 459, chapter 461, chapter 464, or chapter 466  
12 shall be reviewed by the agency. The agency shall determine  
13 whether any of the incidents potentially involved conduct by a  
14 health care professional who is subject to disciplinary  
15 action, in which case the provisions of s. 456.073 shall  
16 apply.

17 (c) The report submitted to the agency shall also  
18 contain the name and license number of the risk manager of the  
19 nursing home facility, a copy of its policy and procedures  
20 which govern the measures taken by the facility and its risk  
21 manager to reduce the risk of injuries and adverse incidents,  
22 and the results of such measures.

23 (7) The facility shall notify the agency no later than  
24 1 business day after the risk manager or his or her designee  
25 has received a report pursuant to paragraph (1)(d) and can  
26 determine within 1 business day that any of the following  
27 adverse incidents has occurred, whether occurring in the  
28 facility or arising from health care prior to admission in the  
29 facility:

30 (a) The death of a resident.

31 (b) Brain or spinal damage to a resident.

1  
2 The notification must be made in writing and be provided by  
3 facsimile device or overnight mail delivery. The notification  
4 must include information regarding the identity of the  
5 affected resident, the type of adverse incident, the  
6 initiation of an investigation by the facility, and whether  
7 the events causing or resulting in the adverse incident  
8 represent a potential risk to other residents.

9       (8) Any of the following adverse incidents, whether  
10 occurring in the facility or arising from health care prior to  
11 admission in the facility, shall be reported by the facility  
12 to the agency within 15 calendar days after its occurrence:

- 13           (a) The death of a resident.  
14           (b) Brain or spinal damage to a resident.

15  
16 The agency may grant extensions to this reporting requirement  
17 for more than 15 days upon justification submitted in writing  
18 by the facility administrator to the agency. The agency may  
19 require an additional, final report.

20       (9) The internal risk manager of each nursing home  
21 facility shall:

22           (a) Investigate every allegation of sexual misconduct  
23 made against a member of the facility's personnel who has  
24 direct resident contact, when the allegation is that the  
25 sexual misconduct occurred at the facility or on the grounds  
26 of the facility.

27           (b) Report every allegation of sexual misconduct to  
28 the facility administrator.

29           (c) Notify the family or guardian of the victim, if a  
30 minor, that an allegation of sexual misconduct has been made  
31 and that an investigation is being conducted.

1           (10) Any witness who witnessed or who possesses actual  
2 knowledge of the act that is the basis of an allegation of  
3 sexual abuse shall:

4           (a) Notify the local police; and

5           (b) Notify the nursing home risk manager and the  
6 facility administrator.

7  
8 For purposes of this subsection, "sexual abuse" means acts of  
9 a sexual nature committed for the sexual gratification of  
10 anyone upon, or in the presence of, a vulnerable adult,  
11 without the vulnerable adult's informed consent, or a minor.

12 "Sexual abuse" includes, but is not limited to, the acts  
13 defined in s. 794.011(1)(h), fondling, exposure of a  
14 vulnerable adult's or minor's sexual organs, or the use of the  
15 vulnerable adult or minor to solicit for or engage in  
16 prostitution or sexual performance. "Sexual abuse" does not  
17 include any act intended for a valid medical purpose or any  
18 act which may reasonably be construed to be a normal  
19 caregiving action.

20           (11) A person who, with malice or with intent to  
21 discredit or harm a nursing home facility or any person, makes  
22 a false allegation of sexual misconduct against a member of a  
23 facility's personnel commits of a misdemeanor of the second  
24 degree, punishable as provided in s. 775.082 or s. 775.083.

25           (12) In addition to any penalty imposed pursuant to  
26 this section, the agency shall require a written plan of  
27 correction from the facility. For a single incident or series  
28 of isolated incidents that are nonwillful violations of the  
29 reporting requirements of this section, the agency shall first  
30 seek to obtain corrective action by the facility. If the  
31 correction is not demonstrated within the timeframe

1 established by the agency or if there is a pattern of  
2 nonwillful violations of this section, the agency may impose  
3 an administrative fine, not to exceed \$5,000 for any violation  
4 of the reporting requirements of this section. The  
5 administrative fine for repeated nonwillful violations shall  
6 not exceed \$10,000 for any violation. The administrative fine  
7 for each intentional and willful violation may not exceed  
8 \$25,000 per violation, per day. The fine for an intentional  
9 and willful violation of this section may not exceed \$250,000.

10 (13) The agency shall have access to all facility  
11 records necessary to carry out the provisions of this section.

12 (14) The agency shall review, as part of its licensure  
13 inspection process, the internal risk management program at  
14 each nursing home facility regulated by this section to  
15 determine whether the program meets standards established in  
16 statutes and rules, whether the program is being conducted in  
17 a manner designed to reduce adverse incidents, and whether the  
18 program is appropriately reporting incidents under subsections  
19 (5), (6), (7), and (8).

20 (15) There shall be no monetary liability on the part  
21 of, and no cause of action for damages shall arise against,  
22 any risk manager licensed under part IX of chapter 626 for the  
23 implementation and oversight of the internal risk management  
24 program in a facility licensed under this part as required by  
25 this section, for any act or proceeding undertaken or  
26 performed within the scope of the functions of such internal  
27 risk management program if the risk manager acts without  
28 intentional fraud.

29 (16) If the agency, through its receipt of the annual  
30 reports prescribed in subsection (6) or through any  
31 investigation, has a reasonable belief that conduct by a staff

1 member or employee of a nursing home facility is grounds for  
2 disciplinary action by the appropriate regulatory board, the  
3 agency shall report this fact to such regulatory board.

4 (17) The agency shall annually publish a report  
5 summarizing the information contained in the annual incident  
6 reports submitted by nursing home facilities pursuant to  
7 subsection (6) and disciplinary actions reported to the agency  
8 pursuant to s. 395.0193. The report must, at a minimum,  
9 summarize:

10 (a) Adverse incidents, by category of reported  
11 incident, and by type of professional involved.

12 (b) Types of claims filed, by type of professional  
13 involved.

14 (c) Disciplinary actions taken against professionals,  
15 by type of professional involved.

16 Section 21. Section 400.353, Florida Statutes, is  
17 created to read:

18 400.353 Private utilization review.--

19 (1) The purpose of this section is to:

20 (a) Promote the delivery of quality nursing home care  
21 in a cost-effective manner.

22 (b) Foster greater coordination between nursing homes  
23 and liability insurers performing utilization review.

24 (c) Protect residents and insurance providers by  
25 ensuring that private review agents are qualified to perform  
26 utilization review activities and to make informed decisions  
27 on the appropriateness of nursing home care.

28 (d) This section does not regulate the activities of  
29 private review agents, liability insurers, or nursing homes,  
30 except as expressly provided herein, or authorize regulation  
31



1 or intervention as to the correctness of utilization review  
2 decisions of insurers or private review agents.

3 (2) A private review agent conducting utilization  
4 review as to nursing home services performed or proposed to be  
5 performed in this state shall register with the agency in  
6 accordance with this section.

7 (3) Registration shall be made annually with the  
8 agency on forms furnished by the agency and shall be  
9 accompanied by the appropriate registration fee as set by the  
10 agency. The fee shall be sufficient to pay for the  
11 administrative costs of registering the agent, but shall not  
12 exceed \$250. The agency may also charge reasonable fees,  
13 reflecting actual costs, to persons requesting copies of  
14 registration.

15 (4) Each applicant for registration must comply with  
16 the following requirements:

17 (a) Upon receipt of a completed, signed, and dated  
18 application, the agency shall require background screening, in  
19 accordance with the level 2 standards for screening set forth  
20 in chapter 435, of the managing employee or other similarly  
21 titled individual who is responsible for the operation of the  
22 entity. The applicant must comply with the procedures for  
23 level 2 background screening as set forth in chapter 435, as  
24 well as the requirements of s. 435.03(3).

25 (b) The agency may require background screening of any  
26 other individual who is an applicant, if the agency has  
27 probable cause to believe that he or she has been convicted of  
28 a crime or has committed any other offense prohibited under  
29 the level 2 standards for screening set forth in chapter 435.

30 (c) Proof of compliance with the level 2 background  
31 screening requirements of chapter 435 which has been submitted

1 within the previous 5 years in compliance with any other  
2 health care licensure requirements of this state is acceptable  
3 in fulfillment of the requirements of paragraph (a).

4 (d) A provisional registration may be granted to an  
5 applicant when each individual required by this section to  
6 undergo background screening has met the standards for the  
7 Department of Law Enforcement background check, but the agency  
8 has not yet received background screening results from the  
9 Federal Bureau of Investigation, or a request for a  
10 disqualification exemption has been submitted to the agency as  
11 set forth in chapter 435 but a response has not yet been  
12 issued. A standard registration may be granted to the  
13 applicant upon the agency's receipt of a report of the results  
14 of the Federal Bureau of Investigation background screening  
15 for each individual required by this section to undergo  
16 background screening which confirms that all standards have  
17 been met, or upon the granting of a disqualification exemption  
18 by the agency as set forth in chapter 435. Any other person  
19 who is required to undergo level 2 background screening may  
20 serve in his or her capacity pending the agency's receipt of  
21 the report from the Federal Bureau of Investigation. However,  
22 the person may not continue to serve if the report indicates  
23 any violation of background screening standards and a  
24 disqualification exemption has not been requested of and  
25 granted by the agency as set forth in chapter 435.

26 (e) Each applicant must submit to the agency, with its  
27 application, a description and explanation of any exclusions,  
28 permanent suspensions, or terminations of the applicant from  
29 the Medicare or Medicaid programs. Proof of compliance with  
30 the requirements for disclosure of ownership and control  
31

1 interests under the Medicaid or Medicare programs shall be  
2 accepted in lieu of this submission.

3 (f) Each applicant must submit to the agency a  
4 description and explanation of any conviction of an offense  
5 prohibited under the level 2 standards of chapter 435 by a  
6 member of the board of directors of the applicant, its  
7 officers, or any individual owning 5 percent or more of the  
8 applicant. This requirement does not apply to a director of a  
9 not-for-profit corporation or organization if the director  
10 serves solely in a voluntary capacity for the corporation or  
11 organization, does not regularly take part in the day-to-day  
12 operational decisions of the corporation or organization,  
13 receives no remuneration for his or her services on the  
14 corporation or organization's board of directors, and has no  
15 financial interest and has no family members with a financial  
16 interest in the corporation or organization, provided that the  
17 director and the not-for-profit corporation or organization  
18 include in the application a statement affirming that the  
19 director's relationship to the corporation satisfies the  
20 requirements of this paragraph.

21 (g) A registration may not be granted to an applicant  
22 if the applicant or managing employee has been found guilty  
23 of, regardless of adjudication, or has entered a plea of nolo  
24 contendere or guilty to, any offense prohibited under the  
25 level 2 standards for screening set forth in chapter 435,  
26 unless an exemption from disqualification has been granted by  
27 the agency as set forth in chapter 435.

28 (h) The agency may deny or revoke the registration if  
29 any applicant:

30 1. Has falsely represented a material fact in the  
31 application required by paragraph (e) or paragraph (f), or has

1 omitted any material fact from the application required by  
2 paragraph (e) or paragraph (f); or  
3 2. Has had prior action taken against the applicant  
4 under the Medicaid or Medicare program as set forth in  
5 paragraph (e).  
6 (i) An application for registration renewal must  
7 contain the information required under paragraphs (e) and (f).  
8 (5) Registration shall include the following:  
9 (a) A description of the review policies and  
10 procedures to be used in evaluating proposed or delivered  
11 nursing home care.  
12 (b) The name, address, and telephone number of the  
13 utilization review agent performing utilization review, who  
14 shall be at least:  
15 1. A licensed practical nurse or licensed registered  
16 nurse, or other similarly qualified medical records or health  
17 care professionals, for performing initial review when  
18 information is necessary from the physician or nursing home to  
19 determine the medical necessity or appropriateness of nursing  
20 home services; or  
21 2. A licensed physician, or a licensed physician  
22 practicing in the field of psychiatry for review of mental  
23 health services, for an initial denial determination prior to  
24 a final denial determination by the health insurer and which  
25 shall include the written evaluation and findings of the  
26 reviewing physician.  
27 (c) A description of an appeal procedure for residents  
28 or nursing home care providers whose services are under  
29 review, who may appeal an initial denial determination prior  
30 to a final determination by the liability insurer with whom  
31 the private review agent has contracted. The appeal procedure

1 shall provide for review by a licensed physician, or by a  
2 licensed physician practicing in the field of psychiatry for  
3 review of mental health services, and shall include the  
4 written evaluation and findings of the reviewing physician.

5 (d) A designation of the times when the staff of the  
6 utilization review agent will be available by toll-free  
7 telephone, which shall include at least 40 hours per week  
8 during the normal business hours of the agent.

9 (e) An acknowledgment and agreement that any private  
10 review agent which, as a general business practice, fails to  
11 adhere to the policies, procedures, and representations made  
12 in its application for registration shall have its  
13 registration revoked.

14 (f) Disclosure of any incentive payment provision or  
15 quota provision which is contained in the agent's contract  
16 with a liability insurer and is based on reduction or denial  
17 of services, reduction of length of stay, or selection of  
18 treatment setting.

19 (g) Updates of any material changes to review policies  
20 or procedures.

21 (6) The agency may impose fines or suspend or revoke  
22 the registration of any private review agent in violation of  
23 this section. Any private review agent failing to register or  
24 update registration as required by this section shall be  
25 deemed to be within the jurisdiction of the agency and subject  
26 to an administrative penalty not to exceed \$1,000. The agency  
27 may bring actions to enjoin activities of private review  
28 agents in violation of this section.

29 (7) No insurer shall knowingly contract with or  
30 utilize a private review agent which has failed to register as  
31

1 required by this section or which has had a registration  
2 revoked by the agency.

3 (8) A private review agent which operates under  
4 contract with the federal or state government for utilization  
5 review of residents eligible for nursing home services under  
6 Title XVIII or Title XIX of the Social Security Act is exempt  
7 from the provisions of this section for services provided  
8 under such contract. A private review agent which provides  
9 utilization review services to the federal or state government  
10 and a private insurer shall not be exempt for services  
11 provided to nonfederally funded patients.

12 (9) Facilities licensed under this part shall promptly  
13 comply with the requests of utilization review agents or  
14 insurers which are reasonably necessary to facilitate prompt  
15 accomplishment of utilization review activities.

16 (10) The agency shall adopt rules to implement the  
17 provisions of this section.

18 Section 22. Section 400.354, Florida Statutes, is  
19 created to read:

20 400.354 Complaint investigation procedures.--

21 (1) The agency shall investigate any complaint against  
22 a nursing home for any violation of this part that the agency  
23 reasonably believes to be legally sufficient. A complaint is  
24 legally sufficient if it contains ultimate facts which show  
25 that a violation of this part, or any rule adopted under this  
26 part by the agency, has occurred. The agency may investigate,  
27 or continue to investigate, and may take appropriate final  
28 action on a complaint, even though the original complainant  
29 withdraws his or her complaint or otherwise indicates his or  
30 her desire not to cause it to be investigated to completion.  
31 When an investigation of any person or facility is undertaken,

1 the agency shall notify such person in writing of the  
2 investigation and inform the person or facility in writing of  
3 the substance, the facts which show that a violation has  
4 occurred, and the source of any complaint filed against him or  
5 her. The agency may conduct an investigation without  
6 notification to any person if the act under investigation is a  
7 criminal offense. The agency shall have access to all records  
8 necessary for the investigation of the complaint.

9 (2) The agency or its agent shall expeditiously  
10 investigate each complaint against a nursing home for a  
11 violation of this part. When its investigation is complete,  
12 the agency shall prepare an investigative report. The report  
13 shall contain the investigative findings and the  
14 recommendations of the agency concerning the existence of  
15 probable cause.

16 Section 23. Section 400.355, Florida Statutes, is  
17 created to read:

18 400.355 Purpose.--The Legislature finds that control  
19 and prevention of medical accidents and resident injuries in  
20 nursing homes is a significant public health and safety  
21 concern. An essential method of controlling such accidents  
22 and injuries is a comprehensive program of risk management, as  
23 required by s. 400.351. The key to such a program is a  
24 competent and qualified nursing home risk manager. It is the  
25 intent of the Legislature to establish certain minimum  
26 standards for nursing home risk managers to ensure the public  
27 welfare.

28 Section 24. Section 400.356, Florida Statutes, is  
29 created to read:

30 400.356 Nursing Home Risk Manager Advisory  
31 Council.--The Secretary of Health Care Administration may

1 appoint a five-member advisory council to advise the agency on  
2 matters pertaining to nursing home risk managers. The members  
3 of the council shall serve at the pleasure of the secretary.  
4 The council shall designate a chair. The council shall meet at  
5 the call of the secretary or at those times as may be required  
6 by rule of the agency. The members of the advisory council  
7 shall receive no compensation for their services, but shall be  
8 reimbursed for travel expenses as provided in s. 112.061. The  
9 council shall consist of individuals representing the  
10 following areas:

- 11 (1) Two shall be active nursing home risk managers.  
12 (2) One shall be an active nursing home administrator.  
13 (3) One shall be an employee of an insurer or  
14 self-insurer of medical malpractice coverage.  
15 (4) One shall be a representative of consumers of  
16 nursing home care.

17 Section 25. Section 400.357, Florida Statutes, is  
18 created to read:

19 400.357 Powers and duties of the agency.--It is the  
20 function of the agency to:

- 21 (1) Adopt rules pursuant to ss. 120.536(1) and 120.54  
22 to implement the provisions of this part conferring duties  
23 upon it.  
24 (2) Develop, impose, and enforce specific standards  
25 within the scope of the general qualifications established by  
26 this part which must be met by individuals in order to receive  
27 licenses as nursing home risk managers. These standards shall  
28 be designed to ensure that nursing home risk managers are  
29 individuals of good character and otherwise suitable and, by  
30 training or experience in the field of nursing home risk  
31 management, qualified in accordance with the provisions of



1 this part to serve as nursing home risk managers, within  
2 statutory requirements.

3 (3) Develop a method for determining whether an  
4 individual meets the standards set forth in s. 400.358.

5 (4) Issue licenses to qualified individuals meeting  
6 the standards set forth in s. 400.358.

7 (5) Receive, investigate, and take appropriate action  
8 with respect to any charge or complaint filed with the agency  
9 to the effect that a certified nursing home risk manager has  
10 failed to comply with the requirements or standards adopted by  
11 rule by the agency or to comply with the provisions of this  
12 part.

13 (6) Establish procedures for providing periodic  
14 reports on persons certified or disciplined by the agency  
15 under this part.

16 (7) Develop a model risk management program for  
17 nursing home facilities that will satisfy the requirements of  
18 s. 400.351.

19 (8) Enforce the special-occupancy provisions of the  
20 Florida Building Code which apply to nursing homes, in  
21 conducting any inspection authorized by this part.

22 Section 26. Section 400.358, Florida Statutes, is  
23 created to read:

24 400.358 Qualifications for nursing home risk  
25 managers.--

26 (1) Any person desiring to be licensed as a nursing  
27 home risk manager shall submit an application on a form  
28 provided by the agency. In order to qualify, the applicant  
29 shall submit evidence satisfactory to the agency which  
30 demonstrates the applicant's competence, by education or  
31 experience, in the following areas:

- 1           (a) Applicable standards of nursing home risk  
2 management.
- 3           (b) Applicable federal, state, and local health and  
4 safety laws and rules.
- 5           (c) General risk management administration.
- 6           (d) Resident care.
- 7           (e) Medical care.
- 8           (f) Accident prevention.
- 9           (g) Departmental organization and management.
- 10          (h) Community interrelationships.
- 11          (i) Medical terminology.
- 12
- 13 The agency may require such additional information, from the  
14 applicant or any other person, as may be reasonably required  
15 to verify the information contained in the application.
- 16          (2) The agency shall not grant or issue a license as a  
17 nursing home risk manager to any individual unless from the  
18 application it affirmatively appears that the applicant:
- 19           (a) Is 18 years of age or over;
- 20           (b) Is a high school graduate or equivalent; and
- 21           (c)1. Has fulfilled the requirements of a 1-year  
22 program or its equivalent in nursing home risk management  
23 training which may be developed or approved by the agency;
- 24           2. Has completed 2 years of college-level studies  
25 which would prepare the applicant for nursing home risk  
26 management, to be further defined by rule; or
- 27           3. Has obtained 1 year of practical experience in  
28 nursing home risk management.
- 29          (3) The agency shall issue a license to practice  
30 nursing home risk management to any applicant who qualifies  
31 under this section and submits an application fee of not more

1 than \$75, a fingerprinting fee of not more than \$75, and a  
2 license fee of not more than \$100. The agency shall by rule  
3 establish fees and procedures for the issuance and  
4 cancellation of licenses.

5 (4) The agency shall renew a nursing home risk manager  
6 license upon receipt of a biennial renewal application and  
7 fees. The agency shall by rule establish a procedure for the  
8 biennial renewal of licenses.

9 Section 27. Section 400.359, Florida Statutes, is  
10 created to read:

11 400.359 Grounds for denial, suspension, or revocation  
12 of a nursing home risk manager's license; administrative  
13 fine.--

14 (1) The agency may, in its discretion, deny, suspend,  
15 revoke, or refuse to renew or continue the license of any  
16 nursing home risk manager or applicant, if it finds that as to  
17 such applicant or licensee any one or more of the following  
18 grounds exist:

19 (a) Any cause for which issuance of the license could  
20 have been refused had it then existed and been known to the  
21 agency.

22 (b) Giving false or forged evidence to the agency for  
23 the purpose of obtaining a license.

24 (c) Having been found guilty of, or having pleaded  
25 guilty or nolo contendere to, a crime in this state or any  
26 other state relating to the practice of risk management or the  
27 ability to practice risk management, whether or not a judgment  
28 or conviction has been entered.

29 (d) Having been found guilty of, or having pleaded  
30 guilty or nolo contendere to, a felony, or a crime involving  
31 moral turpitude punishable by imprisonment of 1 year or more

1 under the law of the United States, under the law of any  
2 state, or under the law of any other country, without regard  
3 to whether a judgment of conviction has been entered by the  
4 court having jurisdiction of such cases.

5 (e) Making or filing a report or record which the  
6 licensee knows to be false; or intentionally failing to file a  
7 report or record required by state or federal law; or  
8 willfully impeding or obstructing, or inducing another person  
9 to impede or obstruct, the filing of a report or record  
10 required by state or federal law. Such reports or records  
11 shall include only those which are signed in the capacity of a  
12 licensed nursing home risk manager.

13 (f) Fraud or deceit, negligence, incompetence, or  
14 misconduct in the practice of nursing home risk management.

15 (g) Violation of any provision of this part or any  
16 other law applicable to the business of nursing home risk  
17 management.

18 (h) Violation of any lawful order or rule of the  
19 agency or failure to comply with a lawful subpoena issued by  
20 the department.

21 (i) Practicing with a revoked or suspended nursing  
22 home risk manager license.

23 (j) Repeatedly acting in a manner inconsistent with  
24 the health and safety of the residents of the licensed  
25 facility in which the licensee is the nursing home risk  
26 manager.

27 (k) Being unable to practice nursing home risk  
28 management with reasonable skill and safety to residents by  
29 reason of illness; drunkenness; or use of drugs, narcotics,  
30 chemicals, or any other material or substance or as a result  
31 of any mental or physical condition. Any person affected

1 under this paragraph shall have the opportunity, at reasonable  
2 intervals, to demonstrate that he or she can resume the  
3 competent practices of nursing home risk manager with  
4 reasonable skill and safety to residents.

5 (l) Willfully permitting unauthorized disclosure of  
6 information relating to a resident or a resident's records.

7 (m) Discriminating in respect to residents, employees,  
8 or staff on account of race, religion, color, sex, or national  
9 origin.

10 (2) If the agency finds that one or more of the  
11 grounds set forth in subsection (1) exist, it may, in lieu of  
12 or in addition to suspension or revocation, enter an order  
13 imposing one or more of the following penalties:

14 (a) Imposition of an administrative fine not to exceed  
15 \$2,500 for each count or separate offense.

16 (b) Issuance of a reprimand.

17 (c) Placement of the licensee on probation for a  
18 period of time and subject to such conditions as the agency  
19 may specify, including requiring the licensee to attend  
20 continuing education courses or to work under the supervision  
21 of another licensee.

22 (3) The agency may reissue the license of a  
23 disciplined licensee in accordance with the provisions of this  
24 part.

25 Section 28. Paragraphs (e) and (f) are added to  
26 subsection (1) of section 408.040, Florida Statutes, to read:

27 408.040 Conditions and monitoring.--

28 (1)

29 (e) The agency shall deny a certificate of need for a  
30 nursing home or related facility to any person the agency  
31 determines has provided materially false or incorrect

1 information, or has included an unallowable cost after  
2 previously being advised of the cost unallowability, or has  
3 withheld information required to be provided, in annual cost  
4 reports submitted to the agency.

5 (f) The agency shall deny an application for  
6 modification of certificate of need for any nursing home or  
7 related facility for any person who owns or operates two or  
8 more nursing homes or related facilities appearing on the  
9 agency's watchlist for facilities with documented uncorrected  
10 deficiencies.

11 Section 29. Subsections (7) and (9) of section  
12 458.331, Florida Statutes, are amended to read:

13 458.331 Grounds for disciplinary action; action by the  
14 board and department.--

15 (7) Upon the department's receipt from the Agency for  
16 Health Care Administration pursuant to s. 395.0197 or s.  
17 400.351 of the name of a physician whose conduct may  
18 constitute grounds for disciplinary action by the department,  
19 the department shall investigate the occurrences upon which  
20 the report was based and determine if action by the department  
21 against the physician is warranted.

22 (9) When an investigation of a physician is  
23 undertaken, the department shall promptly furnish to the  
24 physician or the physician's attorney a copy of the complaint  
25 or document which resulted in the initiation of the  
26 investigation. For purposes of this subsection, such  
27 documents include, but are not limited to: the pertinent  
28 portions of an annual report submitted to the department  
29 pursuant to s. 395.0197(6) or s. 400.351(6); a report of an  
30 adverse incident which is provided to the department pursuant  
31 to s. 395.0197(8) or s. 400.351(8); a report of peer review

1 disciplinary action submitted to the department pursuant to s.  
2 395.0193(4) or s. 458.337, providing that the investigations,  
3 proceedings, and records relating to such peer review  
4 disciplinary action shall continue to retain their privileged  
5 status even as to the licensee who is the subject of the  
6 investigation, as provided by ss. 395.0193(8) and 458.337(3);  
7 a report of a closed claim submitted pursuant to s. 627.912; a  
8 presuit notice submitted pursuant to s. 766.106(2); and a  
9 petition brought under the Florida Birth-Related Neurological  
10 Injury Compensation Plan, pursuant to s. 766.305(2). The  
11 physician may submit a written response to the information  
12 contained in the complaint or document which resulted in the  
13 initiation of the investigation within 45 days after service  
14 to the physician of the complaint or document. The physician's  
15 written response shall be considered by the probable cause  
16 panel.

17 Section 30. Subsections (7) and (9) of section  
18 459.015, Florida Statutes, are amended to read:

19 459.015 Grounds for disciplinary action; action by the  
20 board and department.--

21 (7) Upon the department's receipt from the Agency for  
22 Health Care Administration pursuant to s. 395.0197 or s.  
23 400.351 of the name of an osteopathic physician whose conduct  
24 may constitute grounds for disciplinary action by the  
25 department, the department shall investigate the occurrences  
26 upon which the report was based and determine if action by the  
27 department against the osteopathic physician is warranted.

28 (9) When an investigation of an osteopathic physician  
29 is undertaken, the department shall promptly furnish to the  
30 osteopathic physician or his or her attorney a copy of the  
31 complaint or document which resulted in the initiation of the

1 investigation. For purposes of this subsection, such documents  
2 include, but are not limited to: the pertinent portions of an  
3 annual report submitted to the department pursuant to s.  
4 395.0197(6) or s. 400.351(6); a report of an adverse incident  
5 which is provided to the department pursuant to s. 395.0197(8)  
6 or s. 400.351(8); a report of peer review disciplinary action  
7 submitted to the department pursuant to s. 395.0193(4) or s.  
8 459.016, provided that the investigations, proceedings, and  
9 records relating to such peer review disciplinary action shall  
10 continue to retain their privileged status even as to the  
11 licensee who is the subject of the investigation, as provided  
12 by ss. 395.0193(8) and 459.016(3); a report of a closed claim  
13 submitted pursuant to s. 627.912; a presuit notice submitted  
14 pursuant to s. 766.106(2); and a petition brought under the  
15 Florida Birth-Related Neurological Injury Compensation Plan,  
16 pursuant to s. 766.305(2). The osteopathic physician may  
17 submit a written response to the information contained in the  
18 complaint or document which resulted in the initiation of the  
19 investigation within 45 days after service to the osteopathic  
20 physician of the complaint or document. The osteopathic  
21 physician's written response shall be considered by the  
22 probable cause panel.

23 Section 31. Subsection (1) of section 400.063, Florida  
24 Statutes, is amended to read:

25 400.063 Resident Protection Trust Fund.--

26 (1) A Resident Protection Trust Fund shall be  
27 established for the purpose of collecting and disbursing funds  
28 generated from the license fees and administrative fines as  
29 provided for in ss. 393.0673(2), 400.062(3)(b), 400.111(1),  
30 400.121(2), and 400.23(8). Such funds shall be for the sole  
31 purpose of paying for the appropriate alternate placement,



1 care, and treatment of residents who are removed from a  
2 facility licensed under this part or a facility specified in  
3 s. 393.0678(1) in which the agency determines that existing  
4 conditions or practices constitute an immediate danger to the  
5 health, safety, or security of the residents. If the agency  
6 determines that it is in the best interest of the health,  
7 safety, or security of the residents to provide for an orderly  
8 removal of the residents from the facility, the agency may  
9 utilize such funds to maintain and care for the residents in  
10 the facility pending removal and alternative placement. The  
11 maintenance and care of the residents shall be under the  
12 direction and control of a receiver appointed pursuant to s.  
13 393.0678(1) or s. 400.126~~(1)~~. However, funds may be expended  
14 in an emergency upon a filing of a petition for a receiver,  
15 upon the declaration of a state of local emergency pursuant to  
16 s. 252.38(3)(a)5., or upon a duly authorized local order of  
17 evacuation of a facility by emergency personnel to protect the  
18 health and safety of the residents.

19 Section 32. (1) A nursing home or assisted living  
20 facility must not take any retaliatory action against any  
21 person because the person:

22 (a) Discloses or threatens to disclose an activity,  
23 policy, procedure, action, or failure to act on the part of  
24 the employer or another employer with whom there is a business  
25 relationship which the employee reasonably believes is in  
26 violation of a federal, state, or local law, rule, ordinance,  
27 declaratory ruling, standard, professional or ethical code,  
28 contract provision, or subscriber or membership agreement, or  
29 is incompatible with a clear mandate of public policy.

30 (b) Provides information to or testifies before any  
31 public body conducting an investigation, hearing, or inquiry

1 into any alleged violation of a federal, state, or local law,  
2 rule, regulation, ordinance, declaratory ruling, standard,  
3 professional or ethical code, contract provision, or  
4 subscriber or membership agreement, or into any alleged  
5 incompatibility with a clear mandate of public policy.

6 (c) Objects to or refuses to participate in any  
7 activity, policy, or practice that the employee reasonably  
8 believes:

9 1. Is in violation of a federal, state, or local law,  
10 rule, regulation, ordinance, declaratory ruling, standard,  
11 professional or ethical code, contract provision, or  
12 subscriber or membership agreement, or is incompatible with a  
13 clear mandate of public policy; or

14 2. Is fraudulent or criminal.

15 (2) Upon a violation of any of the provisions of this  
16 section, an aggrieved person may, within 3 years, institute a  
17 civil action in a court of competent jurisdiction. Upon the  
18 application of any party, a jury trial shall be directed to  
19 try the validity of any claim under this section as specified  
20 in the suit. All remedies available in common law tort actions  
21 are available to prevailing plaintiffs. These remedies are in  
22 addition to any legal or equitable relief provided by law.  
23 Interest on any damages awarded must be awarded at the  
24 prevailing rate. The court may also order:

25 (a) A temporary, preliminary, or permanent injunction  
26 to restrain continued violation of this section;

27 (b) The reinstatement of the employee to the same  
28 position held before the retaliatory action or to an  
29 equivalent position;

30 (c) The reinstatement of full fringe benefits and  
31 seniority rights;

1           (d) Compensatory damages, including compensation for  
2 lost wages, benefits, and other remuneration;  
3           (e) The payment by the employer of reasonable costs,  
4 including expert witness fees and attorney's fees;  
5           (f) Punitive damages; or  
6           (g) An assessment of a civil fine of not more than  
7 \$1,000 for the first violation of this section and not more  
8 than \$5,000 for each subsequent violation, which must be paid  
9 to the State Treasurer for deposit into the General Revenue  
10 Fund.  
11           (3) Nursing homes and assisted living facilities shall  
12 post and keep posted, in conspicuous places on their premises  
13 where notices to employees and applicants for employment are  
14 customarily posted, a notice to be prepared or approved by the  
15 Secretary of Labor and Employment Security setting forth  
16 excerpts from or summaries of the pertinent provisions of this  
17 section and information pertaining to the filing of a charge  
18 under this section.  
19           (4) As used in this section, the term:  
20           (a) "Person" includes any employee, former employee,  
21 consumer, provider, independent contractor, job applicant or  
22 bidder, individual, partnership, association, corporation,  
23 public body, or group of persons.  
24           (b) "Public body" means:  
25           1. The United States Congress, the State Legislature,  
26 or any elected local governmental body, or any member or  
27 employee thereof;  
28           2. Any federal, state, or local judiciary, or any  
29 member or employee thereof, or any grand or petit jury;  
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1           3. Any federal, state, or local regulatory,  
2 administrative, or public agency or authority, or  
3 instrumentality thereof;

4           4. Any federal, state, or local law enforcement  
5 agency, prosecutorial office, or police or peace officer;

6           5. Any federal, state, or local department of an  
7 executive branch of government; or

8           6. Any division, board, bureau, office, committee, or  
9 commission of any of the public bodies described in this  
10 paragraph.

11           (c) "Retaliatory action" means the discharge,  
12 suspension, or demotion or other adverse change in the  
13 person's wages, benefits, or terms or conditions of  
14 employment. The term includes actions, failures to act,  
15 threats, intimidations, and the cancellation of or refusal to  
16 renew a contract.

17           Section 33. The Agency for Health Care Administration,  
18 in cooperation with the nursing home industry, shall report to  
19 the Legislature, on a quarterly basis, information regarding  
20 the imposition of violations and penalties, and the  
21 assessments and collection of fees, fines, cost reports, and  
22 other documents as required by the agency in its regulation of  
23 nursing homes and related facilities. The agency shall submit  
24 a preliminary report, due by December 1, 2001, and a final  
25 report, due by February 1, 2002, on the implementation of this  
26 section. The reports shall include verification from each  
27 nursing home that the funds appropriated for the purpose of  
28 meeting the increased minimum staffing requirements specified  
29 in s. 400.1413(1)(a), Florida Statutes, by recruiting and  
30 retaining qualified certified nursing assistants and licensed  
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1 nurses have been appropriately allocated as required by the  
2 Legislature.

3           Section 34. The Agency for Health Care Administration  
4 shall earmark a portion of each nursing home facility's  
5 Medicaid rate to be used exclusively for wage and benefit  
6 increases for nursing home staff. Such earmarked funds shall  
7 not be less than \$1 per hour for each eligible staff member,  
8 and may be used only for actual wage increases or benefit  
9 improvements. Eligible staff members shall include all direct  
10 care workers, including registered nurses, licensed practical  
11 nurses, and certified nursing assistants, and all dietary,  
12 housekeeping, laundry, and maintenance workers. Temporary,  
13 contract, agency, and pool employees are excluded. The agency  
14 shall develop cost reporting systems to ensure that the  
15 earmarked funds are used exclusively for the designated  
16 purposes.

17           Section 35. The Auditor General shall develop a  
18 standard chart of accounts to govern the content and manner of  
19 presentation of financial information to be submitted by  
20 Medicaid long-term care providers in their cost reports. The  
21 Auditor General shall submit the standard chart of accounts to  
22 the Agency for Health Care Administration not later than  
23 December 31, 2001. The agency shall amend the Florida Title  
24 XIX Long-Term Care Reimbursement Plan to incorporate this  
25 standard chart of accounts and shall implement use of this  
26 standard chart of accounts effective January 1, 2002. The  
27 standard chart of accounts shall include specific accounts for  
28 each component of direct care staff by type of personnel and  
29 may not be revised without the written consent of the Auditor  
30 General.

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1           Section 36. Section 400.118, Florida Statutes, is  
2 repealed.  
3           Section 37. There is hereby appropriated the sum of  
4 \$44 million from the General Revenue Fund and the sum of \$56  
5 million from the Medical Care Trust Fund, to the Agency for  
6 Health Care Administration, to assist in the implementation of  
7 the increased nursing home minimum staff requirements  
8 specified in s. 400.1413(1)(a), Florida Statutes, by funding  
9 nursing home recruitment and retention of qualified certified  
10 nursing assistants and licensed nurses.  
11          Section 38. This act shall take effect July 1, 2001.  
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HOUSE SUMMARY

Requires a plan for quality assurance and internal risk management as a condition for nursing home licensure. Requires nursing homes to maintain quality assessment and assurance committees and provides duties. Increases various penalties applicable to nursing homes, provides additional grounds for a moratorium or other actions by the Agency for Health Care Administration, and reduces timeframes for suspension and revocation hearings. Provides for placing in receivership a facility that fails to maintain minimum staffing levels. Specifies requirements for physical environment, quality of care, resident assessments and plans of care, minimum staffing requirements and staff supervision, staff education, maintenance of medical and physical records, physician services, and dietary services. Establishes a nursing home internal risk management program, provides powers and duties of the agency, and requires employment of internal risk managers. Provides requirements and penalties. Provides for private utilization review of nursing homes. Provides for a Nursing Home Risk Management Council. Provides additional grounds for denial of a nursing home or related facility certificate of need. Prohibits a nursing home or assisted living facility from taking retaliatory action against a person who discloses unlawful acts of the entity or its employees. Requires reports to the Legislature on regulation of nursing homes and related facilities. Provides for use of certain funds for wage and benefit increases for nursing home staff. Requires the Auditor General to develop, and the agency to implement, a chart of accounts for Medicaid long-term care provider cost reports. Repeals provisions relating to the nursing home quality assurance early warning system and rapid response teams. Provides an appropriation. See bill for details.