

By Representative Bennett

1                                   A bill to be entitled  
2           An act relating to long-term care; amending s.  
3           400.0073, F.S.; clarifying duties of the local  
4           ombudsman councils with respect to inspections  
5           of nursing homes and long-term care facilities;  
6           amending s. 400.021, F.S.; defining the terms  
7           "controlling interest" and "voluntary board  
8           member" and revising the definition of  
9           "resident care plan" for purposes of part II of  
10          ch. 400, F.S., relating to the regulation of  
11          nursing homes; creating s. 400.0223, F.S.;  
12          requiring a nursing home facility to permit  
13          electronic monitoring devices in a resident's  
14          room; specifying conditions under which  
15          monitoring may occur; providing that electronic  
16          monitoring tapes are admissible in civil or  
17          criminal actions; providing penalties; creating  
18          s. 400.0247, F.S.; requiring that copies of  
19          certain documents be forwarded to the state  
20          attorney if punitive damages are awarded;  
21          amending s. 400.0255, F.S.; providing for  
22          applicability of provisions relating to  
23          transfer or discharge of nursing home  
24          residents; amending s. 400.062, F.S.;  
25          increasing the bed license fee for nursing home  
26          facilities; amending s. 400.071, F.S.; revising  
27          license application requirements; requiring  
28          certain disclosures; authorizing the Agency for  
29          Health Care Administration to issue an inactive  
30          license; requiring quality assurance and risk  
31          management plans; amending s. 400.111, F.S.;

1 prohibiting renewal of a license if an  
2 applicant has failed to pay certain fines;  
3 amending s. 400.118, F.S.; revising duties of  
4 quality-of-care monitors in nursing facilities;  
5 amending s. 400.121, F.S.; specifying  
6 additional circumstances under which the agency  
7 may deny, revoke, or suspend a facility's  
8 license or impose a fine; specifying facts and  
9 conditions upon which administrative actions  
10 that are challenged must be reviewed; amending  
11 s. 400.141, F.S.; providing additional  
12 administrative and management requirements for  
13 licensed nursing home facilities; requiring a  
14 facility to submit information on  
15 staff-to-resident ratios, staff turnover, and  
16 staff stability; requiring that certain  
17 residents be examined by a licensed physician;  
18 providing requirements for dining and  
19 hospitality attendants; requiring additional  
20 reports to the agency; creating s. 400.147,  
21 F.S.; requiring each licensed nursing home  
22 facility to establish an internal risk  
23 management and quality assurance program;  
24 providing requirements of the program;  
25 requiring the use of incident reports; defining  
26 the term "adverse incident"; requiring that the  
27 agency be notified of adverse incidents;  
28 requiring reporting of liability claims;  
29 specifying duties of the internal risk manager;  
30 requiring the reporting of sexual abuse;  
31 requiring that the Agency for Health Care

1 Administration review a facility's internal  
2 risk management and quality assurance program;  
3 limiting the liability of a risk manager;  
4 requiring that the agency report certain  
5 conduct to the appropriate regulatory board;  
6 requiring that the agency annually report to  
7 the Legislature on the internal risk management  
8 of nursing homes; creating s. 400.1755, F.S.;  
9 prescribing training standards for employees of  
10 nursing homes that provide care for persons  
11 with Alzheimer's disease or related disorders;  
12 prescribing duties of the Department of Elderly  
13 Affairs; amending s. 400.191, F.S.; requiring  
14 the agency to publish a Nursing Home Guide  
15 Watch List; specifying contents of the watch  
16 list; specifying distribution of the watch  
17 list; requiring that nursing homes post certain  
18 additional information; amending s. 400.211,  
19 F.S.; revising employment requirements for  
20 nursing assistants; requiring in service  
21 training; amending s. 400.23, F.S.; revising  
22 minimum staffing requirements for nursing  
23 homes; requiring the documentation and posting  
24 of compliance with such standards; increasing  
25 the fines imposed for certain deficiencies;  
26 amending s. 400.235, F.S.; revising  
27 requirements for the Gold Seal Program;  
28 creating s. 400.237, F.S.; providing  
29 legislative intent regarding improvements in  
30 quality in nursing home facilities; requiring  
31 the Agency for Health Care Administration to

1       develop and implement a system for grading  
2       nursing homes; specifying areas that must be  
3       evaluated by the grading system; requiring  
4       ranking of nursing homes according to their  
5       grading score; requiring the agency to identify  
6       improvement in nursing home performance;  
7       requiring the agency to reevaluate standards  
8       periodically and raise the standards to reflect  
9       improvements in nursing home grading scores;  
10      requiring the agency to convene a workgroup;  
11      specifying the membership of the workgroup;  
12      requiring nursing homes to post their rankings  
13      and improvement ratings; requiring the agency  
14      to publish the rankings and improvement  
15      ratings; authorizing the agency to adopt rules;  
16      creating s. 400.275, F.S.; providing for  
17      training of nursing home survey teams;  
18      providing requirements for participants in the  
19      agency's informal dispute resolution process;  
20      amending s. 400.402, F.S.; revising definitions  
21      applicable to part III of ch. 400, F.S.,  
22      relating to the regulation of assisted living  
23      facilities; amending s. 400.407, F.S.; revising  
24      certain licensing requirements; providing a bed  
25      fee for licensed facilities in lieu of the  
26      biennial license fee; amending s. 400.414,  
27      F.S.; specifying additional circumstances under  
28      which the Agency for Health Care Administration  
29      may deny, revoke, or suspend a license;  
30      providing for issuance of a temporary license;  
31      amending s. 400.417, F.S.; revising

1 requirements for license renewal; amending s.  
2 400.419, F.S.; increasing the fines imposed for  
3 certain violations; creating s. 400.423, F.S.;  
4 requiring certain assisted living facilities to  
5 establish an internal risk management and  
6 quality assurance program; providing  
7 requirements of the program; requiring the use  
8 of incident reports; defining the term "adverse  
9 incident"; requiring that the agency be  
10 notified of adverse incidents; requiring  
11 reporting of liability claims; specifying  
12 duties of the internal risk manager; requiring  
13 the reporting of sexual abuse; requiring that  
14 the Agency for Health Care Administration  
15 review a facility's internal risk management  
16 and quality assurance program; limiting the  
17 liability of a risk manager; requiring that the  
18 agency report certain conduct to the  
19 appropriate regulatory board; requiring that  
20 the agency annually report to the Legislature  
21 on the internal risk management of assisted  
22 living facilities; amending s. 400.426, F.S.;  
23 requiring that certain residents be examined by  
24 a licensed physician; amending s. 400.428,  
25 F.S.; revising requirements for the survey  
26 conducted of licensed facilities by the agency;  
27 creating s. 400.4303, F.S.; requiring that  
28 copies of certain documents be forwarded to the  
29 state attorney if punitive damages are awarded;  
30 amending s. 400.435, F.S., relating to  
31 maintenance of records; conforming provisions

1 to changes made by the act; amending s.  
2 400.441, F.S.; clarifying facility inspection  
3 requirements; amending s. 400.442, F.S.,  
4 relating to pharmacy and dietary services;  
5 conforming provisions to changes made by the  
6 act; creating s. 400.449, F.S.; prohibiting the  
7 alteration or falsification of medical or other  
8 records of an assisted living facility;  
9 providing penalties; amending s. 464.201, F.S.;  
10 authorizing an additional training program for  
11 certified nursing assistants; amending s.  
12 464.203, F.S.; revising certification  
13 requirements for nursing assistants;  
14 authorizing employment of certain nursing  
15 assistants pending certification; requiring  
16 continuing education; amending s. 397.405,  
17 F.S., relating to service providers; conforming  
18 provisions to changes made by the act;  
19 requiring wage and benefit increases; requiring  
20 a report; providing appropriations; providing  
21 for severability; providing effective dates.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Subsection (4) of section 400.0073, Florida  
26 Statutes, is amended to read:

27 400.0073 State and local ombudsman council  
28 investigations.--

29 (4) In addition to any specific investigation made  
30 pursuant to a complaint, the local ombudsman council shall  
31 conduct, at least annually, an investigation, which shall

1 consist, in part, of an onsite administrative inspection, of  
2 each nursing home or long-term care facility within its  
3 jurisdiction. This inspection shall focus on the rights,  
4 health, safety, and welfare of the residents.

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

7 400.021 Definitions.--When used in this part, unless  
8 the context otherwise requires, the term:

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

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

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

20 (4) "Board" means the Board of Nursing Home  
21 Administrators.

22 (5) "Controlling interest" means:

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

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

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

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The term does not include a voluntary board member.

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

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

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

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

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

(11)~~(10)~~ "Local ombudsman council" means a local long-term care ombudsman council established pursuant to s.



1 400.0069, located within the Older Americans Act planning and  
2 service areas.

3 (12)~~(11)~~ "Nursing home bed" means an accommodation  
4 which is ready for immediate occupancy, or is capable of being  
5 made ready for occupancy within 48 hours, excluding provision  
6 of staffing; and which conforms to minimum space requirements,  
7 including the availability of appropriate equipment and  
8 furnishings within the 48 hours, as specified by rule of the  
9 agency, for the provision of services specified in this part  
10 to a single resident.

11 (13)~~(12)~~ "Nursing home facility" means any facility  
12 which provides nursing services as defined in part I of  
13 chapter 464 and which is licensed according to this part.

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

17 (15)~~(14)~~ "Planning and service area" means the  
18 geographic area in which the Older Americans Act programs are  
19 administered and services are delivered by the Department of  
20 Elderly Affairs.

21 (16)~~(15)~~ "Respite care" means admission to a nursing  
22 home for the purpose of providing a short period of rest or  
23 relief or emergency alternative care for the primary caregiver  
24 of an individual receiving care at home who, without  
25 home-based care, would otherwise require institutional care.

26 (17)~~(16)~~ "Resident care plan" means a written plan  
27 developed, maintained, and reviewed not less than quarterly by  
28 a registered nurse, with participation from other facility  
29 staff and the resident or his or her designee or legal  
30 representative, which includes a comprehensive assessment of  
31 the needs of an individual resident, the type and frequency of

1 services required to provide the necessary care for the  
2 resident to attain or maintain the highest practicable  
3 physical, mental, and psychosocial well-being, a listing of  
4 services provided within or outside the facility to meet those  
5 needs, and an explanation of service goals. The resident care  
6 plan must be signed by the director of nursing and by the  
7 resident, the resident's designee, or the resident's legal  
8 representative.

9 (18)~~(17)~~ "Resident designee" means a person, other  
10 than the owner, administrator, or employee of the facility,  
11 designated in writing by a resident or a resident's guardian,  
12 if the resident is adjudicated incompetent, to be the  
13 resident's representative for a specific, limited purpose.

14 (19)~~(18)~~ "State ombudsman council" means the State  
15 Long-Term Care Ombudsman Council established pursuant to s.  
16 400.0067.

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

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

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1           400.0223 Resident's right to have electronic  
2 monitoring devices in room; requirements, penalties.--

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

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

13           (3) Monitoring conducted under this section must:

14           (a) Be noncompulsory and at the election of the  
15 resident or legal representative of the resident;

16           (b) Be funded by the resident or legal representative  
17 of the resident; and

18           (c) Protect the privacy rights of other residents and  
19 visitors to the nursing home facility to the extent reasonably  
20 possible.

21           (4) A nursing home facility may not refuse to admit an  
22 individual to residency in the facility or remove a resident  
23 from the facility because of a request for electronic  
24 monitoring.

25           (5) A nursing home facility shall make reasonable  
26 physical accommodation for electronic monitoring, by  
27 providing:

28           (a) A reasonably secure place to mount the electronic  
29 monitoring device; and

30           (b) Access to power sources.  
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1       (6) A nursing home facility shall inform a resident or  
2 the legal representative of the resident of the resident's  
3 right to electronic monitoring.

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

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

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

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

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

23       Section 4. Effective October 1, 2001, and applicable  
24 to causes of action accruing on or after that date, section  
25 400.0247, Florida Statutes, is created to read:

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

31

1           Section 5. Subsection (17) is added to section  
2 400.0255, Florida Statutes, to read:

3           400.0255 Resident transfer or discharge; requirements  
4 and procedures; hearings.--

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

9           Section 6. Subsection (3) of section 400.062, Florida  
10 Statutes, is amended to read:

11           400.062 License required; fee; disposition; display;  
12 transfer.--

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

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

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

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

24 Section 7. Subsections (2) and (5) of section 400.071,  
25 Florida Statutes, are amended, and subsections (11) and (12)  
26 are added to said section, to read:

27 400.071 Application for license.--

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

30 (a) The name, address, and social security number of  
31 the applicant if an individual; if the applicant is a firm,

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

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

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

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

23 (e) A signed affidavit disclosing any financial or  
24 ownership interest that a person or entity described in  
25 paragraph (a) or paragraph (d) has held in the last 5 years in  
26 any entity licensed by this state or any other state to  
27 provide health or residential care which has closed  
28 voluntarily or involuntarily; has filed for bankruptcy; has  
29 had a receiver appointed; has had a license denied, suspended,  
30 or revoked; or has had an injunction issued against it which  
31 was initiated by a regulatory agency. The affidavit must

1 disclose the reason any such entity was closed, whether  
2 voluntarily or involuntarily.

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

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

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

30 (5) The applicant shall furnish satisfactory proof of  
31 financial ability to operate and conduct the nursing home in



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

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

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

24 Section 8. Subsection (3) is added to section 400.111,  
25 Florida Statutes, to read:

26 400.111 Expiration of license; renewal.--

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

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1           Section 9. Subsection (2) of section 400.118, Florida  
2 Statutes, is amended to read:

3           400.118 Quality assurance; early warning system;  
4 monitoring; rapid response teams.--

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

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

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

1 witness may not be asked about his or her participation in  
2 such activities. The exclusion from the discovery or  
3 introduction of evidence in any civil or administrative action  
4 provided for herein shall not apply when the quality-of-care  
5 monitor makes a report to the appropriate authorities  
6 regarding a threat to the health or safety of a resident.

7 Section 10. Section 400.121, Florida Statutes, is  
8 amended to read:

9 400.121 Denial, suspension, revocation of license;  
10 moratorium on admissions; administrative fines; procedure;  
11 order to increase staffing.--

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

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

16 (b) A demonstrated pattern of deficient practice;

17 (c) Failure to pay any outstanding fines assessed by  
18 final order of the agency or fines assessed by the Health Care  
19 Financing Administration pursuant to requirements for federal  
20 certification;

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

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

30  
31

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

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

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

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

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

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

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

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

29           Section 11. Subsection (10) of section 400.141,  
30 Florida Statutes, is amended, and subsections (14), (15),  
31 (16), (17), (18), and (19) are added to said section, to read:

1           400.141 Administration and management of nursing home  
2 facilities.--Every licensed facility shall comply with all  
3 applicable standards and rules of the agency and shall:

4           (10) Keep full records of resident admissions and  
5 discharges; medical and general health status, including  
6 medical records, personal and social history, and identity and  
7 address of next of kin or other persons who may have  
8 responsibility for the affairs of the residents; and  
9 individual resident care plans including, but not limited to,  
10 prescribed services, services related to assistance with  
11 activities of daily living, service frequency and duration,  
12 and service goals. The records shall be open to inspection by  
13 the agency.

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

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

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

27           (b) Staff turnover must be reported for the most  
28 recent 12-month period ending on the last workday of the most  
29 recent calendar quarter prior to the date the information is  
30 submitted. The turnover rate must be computed quarterly, with  
31 the annual rate being the cumulative sum of the quarterly

1 rates. The formula for determining the turnover rate is the  
2 total number of terminations or separations from employment  
3 experienced during the quarter, excluding any employee  
4 terminated during a probationary period of 3 months or less,  
5 divided by the total number of staff employed at the end of  
6 the period for which the rate is computed, and expressed as a  
7 percentage.

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

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

16 (17) Ensure that any resident who displays mental,  
17 psychosocial, or adjustment difficulty receives appropriate  
18 treatment and services to correct the assessed problem. The  
19 attending physician of any resident who exhibits signs of  
20 dementia or cognitive impairment must be notified by the  
21 facility of the impairment to rule out the presence of an  
22 underlying physiological condition that may be contributing to  
23 such dementia or impairment. The notification must occur  
24 within 7 days after admission of a resident to the facility or  
25 within 7 days after the acknowledgement of such sign by  
26 facility staff. The facility must notify the resident's  
27 designee or legal representative prior to the notification.  
28 If an underlying condition is determined to exist, the  
29 facility shall arrange for necessary care and services to  
30 treat the underlying condition.

31



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

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

14  
15 Facilities that have been awarded a Gold Seal under the  
16 program established in s. 400.235 may develop a plan to  
17 provide certified nursing assistant training as prescribed by  
18 federal regulations and state rules and may apply to the  
19 agency for approval of its program.

20       Section 12. Section 400.147, Florida Statutes, is  
21 created to read:

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

24       (1) Every facility shall, as part of its  
25 administrative functions, establish an internal risk  
26 management and quality assurance program, the purpose of which  
27 is to assess resident care practices; review facility quality  
28 indicators, facility incident reports, deficiencies cited by  
29 the agency, individual resident shared-risk agreements as  
30 defined in s. 400.021, and resident grievances; and develop  
31

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

3 (a) A risk manager employed by the facility and  
4 licensed under chapter 395 who is responsible for  
5 implementation and oversight of the facility's internal risk  
6 management and quality assurance program as required by this  
7 section. A risk manager must not be made responsible for more  
8 than four internal risk management and quality assurance  
9 programs in separate facilities licensed pursuant to chapter  
10 400 or chapter 395.

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

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

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

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

28 2. At least 3 hours of such education and training  
29 shall be provided annually for all nonphysician personnel of  
30 the licensed facility working in clinical areas and providing  
31 resident care.

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

3       (f) The development and implementation of an incident  
4 reporting system based upon the affirmative duty of all health  
5 care providers and all agents and employees of the facility to  
6 report adverse incidents to the risk manager.

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

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

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

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

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

1 for which such intervention occurred, and which results in one  
2 of the following:  
3       1. Death;  
4       2. Brain or spinal damage;  
5       3. Permanent disfigurement;  
6       4. Fracture or dislocation of bones or joints;  
7       5. A resulting limitation of neurological, physical,  
8 or sensory function;  
9       6. Any condition that required medical attention to  
10 which the resident has not given his or her informed consent  
11 including failure to honor advanced directives; or  
12       7. Any condition that required the transfer of the  
13 resident, within or outside the facility, to a unit providing  
14 a more acute level of care due to the adverse incident, rather  
15 than the resident's condition prior to the adverse incident;  
16       (b) Abuse, neglect, or exploitation as defined in s.  
17 415.102 or s. 39.01;  
18       (c) Resident elopement; or  
19       (d) An event that is reported to law enforcement.  
20       (6) The facility shall notify the agency within 1  
21 business day after the occurrence of an adverse incident. The  
22 notification must be made in writing and be provided by  
23 facsimile device or overnight mail delivery. The notification  
24 must include information regarding the identity of the  
25 affected resident, the type of adverse incident, the  
26 initiation of an investigation by the facility, and whether  
27 the events causing or resulting in the adverse incident  
28 represent a potential risk to any other resident. The  
29 notification is confidential as provided by law and is not  
30 discoverable or admissible in any civil or administrative  
31 action, except in disciplinary proceedings by the agency or

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

8 (7)(a) Each facility subject to this section shall  
9 submit an adverse incident report to the agency for each  
10 adverse incident within 15 calendar days after its occurrence  
11 on a form developed by the agency.

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

19 (c) The report submitted to the agency must also  
20 contain the name and license number of the risk manager of the  
21 facility.

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

26 (8) Each facility subject to this section shall report  
27 monthly any liability claim filed against it. The report must  
28 include the name of the resident, the date or dates of the  
29 incident leading to the claim, and the type of injury or  
30 violation of rights alleged to have occurred.

31 (9) The internal risk manager of each facility shall:

1       (a) Investigate every allegation of sexual misconduct  
2 which is made against a member of the facility's personnel who  
3 has direct resident contact if it is alleged that the sexual  
4 misconduct occurred at the facility or on the grounds of the  
5 facility;

6       (b) Report every allegation of sexual misconduct to  
7 the administrator of the facility; and

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

11       (10)(a) Any witness who witnessed or who possesses  
12 actual knowledge of the act that is the basis of an allegation  
13 of sexual abuse shall notify:

14           1. The local law enforcement agency;

15           2. The central abuse hotline of the Department of  
16 Children and Family Services; and

17           3. The risk manager and the administrator.

18       (b) As used in this subsection, the term "sexual  
19 abuse" means acts of a sexual nature committed for the sexual  
20 gratification of anyone upon or in the presence of a  
21 vulnerable adult, without the vulnerable adult's informed  
22 consent, or upon or in the presence of a minor. The term  
23 includes, but is not limited to, the acts defined in s.  
24 794.011(1)(h), fondling, exposure of a vulnerable adult's or  
25 minor's sexual organs, or the use of the vulnerable adult or  
26 minor to solicit for or engage in prostitution or sexual  
27 performance. The term does not include any act intended for a  
28 valid medical purpose or any act that may reasonably be  
29 construed to be a normal caregiving action.

30       (11) The agency shall review, as part of its licensure  
31 inspection process, the internal risk management and quality

1 assurance program at each facility regulated by this section  
2 to determine whether the program meets standards established  
3 in statutory laws and rules, is being conducted in a manner  
4 designed to reduce adverse incidents, and is appropriately  
5 reporting incidents as required by this section.

6 (12) There is no monetary liability on the part of,  
7 and a cause of action for damages may not arise against, any  
8 risk manager licensed under chapter 395 for the implementation  
9 and oversight of the internal risk management and quality  
10 assurance program in a facility licensed under this part as  
11 required by this section, or for any act or proceeding  
12 undertaken or performed within the scope of the functions of  
13 such internal risk management and quality assurance program if  
14 the risk manager acts without intentional fraud.

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

21 (14) The agency may adopt rules to administer this  
22 section.

23 (15) The agency shall annually submit to the  
24 Legislature a report on nursing home internal risk management.  
25 The report must include the following information arrayed by  
26 county:

27 (a) The total number of adverse incidents.

28 (b) A listing, by category, of the types of adverse  
29 incidents, the number of incidents occurring within each  
30 category, and the type of staff involved.

31

1       (c) A listing, by category, of the types of injury  
2 caused and the number of injuries occurring within each  
3 category.

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

6       (e) Disciplinary action taken against staff,  
7 categorized by type of staff involved.

8       Section 13. Section 400.1755, Florida Statutes, is  
9 created to read:

10       400.1755 Care for persons with Alzheimer's disease or  
11 other related disorders.--

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

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

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

30       (3) Upon completing any training listed in subsection  
31 (1), the employee or direct caregiver shall be issued a



1 certificate that includes the name of the training provider,  
2 the topic covered, and the date and signature of the training  
3 provider. The certificate is evidence of completion of  
4 training in the identified topic, and the employee or direct  
5 caregiver is not required to repeat training in that topic if  
6 the employee or direct caregiver changes employment to a  
7 different facility. The direct caregiver must comply with  
8 other applicable continuing education requirements.

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

12 (5) The Department of Elderly Affairs shall keep a  
13 current list of providers who are approved to provide initial  
14 and continuing education for staff of facilities that provide  
15 care for persons with Alzheimer's disease or other related  
16 disorders.

17 (6) The Department of Elderly Affairs shall adopt  
18 rules to establish standards for trainers and training  
19 necessary to administer this section.

20 Section 14. Subsection (3) and paragraph (a) of  
21 subsection (5) of section 400.191, Florida Statutes, are  
22 amended to read:

23 400.191 Availability, distribution, and posting of  
24 reports and records.--

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

1           (a) The agency shall quarterly publish a "Nursing Home  
2 Guide Watch List" to assist consumers in evaluating the  
3 quality of nursing home care in Florida. The watch list must  
4 identify each facility that met the criteria for a conditional  
5 licensure status on any day within the quarter covered by the  
6 list; each facility that was operating under bankruptcy  
7 protection on any day within the quarter; and each facility  
8 that was operating without liability insurance. The watch  
9 list must include the facility's name, address, and ownership;  
10 the county in which the facility operates; the license  
11 expiration date; the number of licensed beds; a description of  
12 the deficiency causing the facility to be placed on the list;  
13 any corrective action taken; and the cumulative number of  
14 times the facility has been on a watch list. The watch list  
15 must include a brief description regarding how to choose a  
16 nursing home, the categories of licensure, the agency's  
17 inspection process, an explanation of terms used in the watch  
18 list, and the addresses and phone numbers of the agency's  
19 managed care and health quality area offices.

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

24           (5) Every nursing home facility licensee shall:

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

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

1 licensee to rectify such deficiencies and indicating in such  
2 summaries where the full reports may be inspected in the  
3 nursing home.

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

6 Section 15. Subsection (2) of section 400.211, Florida  
7 Statutes, is amended, and subsection (4) is added to said  
8 section, to read:

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

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

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

17 (b) Persons who have been positively verified as  
18 actively certified and on the registry in another state and  
19 who have not been found guilty of abuse, neglect, or  
20 exploitation in another state, regardless of adjudication, and  
21 have not entered a plea of nolo contendere or guilty with no  
22 findings of abuse; or

23 (c) Persons who have preliminarily passed the state's  
24 certification exam.

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

29 (4) When employed by a nursing home facility for a  
30 12-month period or longer, a nursing assistant, to maintain  
31 certification, shall submit to a performance review every 12

1 months and must receive regular in service education based on  
2 the outcome of such reviews. The in service training must:

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

6 (b) Include, at a minimum:

7 1. Techniques for assisting with eating and proper  
8 feeding;

9 2. Principles of adequate nutrition and hydration;

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

13 4. Techniques for caring for the resident at the  
14 end-of-life; and

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

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

21 Section 16. Subsections (2), (3), and (8) of section  
22 400.23, Florida Statutes, are amended to read:

23 400.23 Rules; evaluation and deficiencies; licensure  
24 status.--

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

30 (a) The location and construction of the facility;  
31 including fire and life safety, plumbing, heating, cooling,

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

28 (b) The number and qualifications of all personnel,  
29 including management, medical, nursing, and other professional  
30 personnel, and nursing assistants, orderlies, and support  
31

1 personnel, having responsibility for any part of the care  
2 given residents.

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

7 (d) The equipment essential to the health and welfare  
8 of the residents.

9 (e) A uniform accounting system.

10 (f) The care, treatment, and maintenance of residents  
11 and measurement of the quality and adequacy thereof, based on  
12 rules developed under this chapter and the Omnibus Budget  
13 Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,  
14 1987), Title IV (Medicare, Medicaid, and Other Health-Related  
15 Programs), Subtitle C (Nursing Home Reform), as amended.

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

1 of Health, the Agency for Health Care Administration, and the  
2 Department of Community Affairs. Also, appropriate volunteer  
3 organizations must be given the opportunity to review the  
4 plan. The local emergency management agency shall complete  
5 its review within 60 days and either approve the plan or  
6 advise the facility of necessary revisions.

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

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

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

23 (b) The agency shall adopt rules to allow properly  
24 trained staff of a nursing facility, in addition to certified  
25 nursing assistants and licensed nurses, to assist residents  
26 with eating. The rules shall specify the minimum training  
27 requirements and shall specify the physiological conditions or  
28 disorders of residents which would necessitate that the eating  
29 assistance be provided by nursing personnel of the facility.  
30 Nonnursing staff providing eating assistance to residents  
31



1 under the provisions of this subsection shall not count  
2 towards compliance with minimum staffing standards.

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

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

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

28 (b) Class II deficiencies are those which the agency  
29 determines have a direct or immediate relationship to the  
30 health, safety, or security of the nursing home facility  
31 residents, other than class I deficiencies. A class II

1 deficiency is subject to a civil penalty in an amount not less  
2 than \$5,000~~\$1,000~~ and not exceeding \$10,000 for each and  
3 every deficiency. A citation for a class II deficiency must  
4 ~~shall~~ specify the time within which the deficiency is required  
5 to be corrected. ~~If a class II deficiency is corrected within~~  
6 ~~the time specified, no civil penalty shall be imposed, unless~~  
7 ~~it is a repeated offense.~~

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

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

21 400.235 Nursing home quality and licensure status;  
22 Gold Seal Program.--

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

25 (a) Had no class I or class II deficiencies within the  
26 30 months preceding application for the program.

27 (b) Evidence financial soundness and stability  
28 according to standards adopted by the agency in administrative  
29 rule.

30 (c) Participate consistently in the required consumer  
31 satisfaction process as prescribed by the agency, and

1 demonstrate that information is elicited from residents,  
2 family members, and guardians about satisfaction with the  
3 nursing facility, its environment, the services and care  
4 provided, the staff's skills and interactions with residents,  
5 attention to resident's needs, and the facility's efforts to  
6 act on information gathered from the consumer satisfaction  
7 measures.

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

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

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

21 (g) Provide targeted inservice training provided to  
22 meet training needs identified by internal or external quality  
23 assurance efforts.

24

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

30 Section 18. Section 400.237, Florida Statutes, is  
31 created to read:

1           400.237 Nursing home facility grading system; ranking  
2 of nursing home facilities; use of ranking information.--

3           (1) It is the intent of the Legislature to encourage  
4 continuous improvement in the quality of care and quality of  
5 life of nursing home facility residents. It is further the  
6 intent of the Legislature that nursing home facilities with a  
7 record of providing good quality care receive favorable rates  
8 from liability insurers and favorable consideration by the  
9 courts in civil litigation.

10           (2) The Legislature intends to develop a grading  
11 system that measures nursing home facility performance related  
12 to quality indicators. The system must build upon the  
13 procedures for measuring quality of care developed by the Gold  
14 Seal Program under s. 400.235.

15           (3) By July 1, 2002, the agency shall prepare and  
16 implement a system for grading nursing home facilities against  
17 optimal standards for quality of care and quality of life. The  
18 system must include a uniform method of evaluating nursing  
19 home facilities in the following areas:

20           (a) Staffing levels and ratios.

21           (b) Staff turnover rates.

22           (c) Credentials of key personnel.

23           (d) Pressure ulcers.

24           (e) Nutrition and hydration.

25           (f) Use of restraints.

26           (g) Dignity.

27           (h) Maintenance of residents' functioning.

28           (i) Resident and resident family satisfaction.

29           (j) Substantiated complaints.

30           (k) Deficiency citations.

31           (l) Adverse incidents and past claims experience.

- 1       (m) Hospitalizations.  
2       (n) Facility cleanliness.  
3       (o) Falls.  
4       (p) Community and family involvement.  
5       (q) Ombudsman program evaluation.  
6       (r) Living environment.  
7       (s) Risk management, loss control, and general safety.  
8       (t) Privacy.  
9       (4) Each nursing home facility must be graded annually  
10 against an optimal quality score and ranked according to  
11 whether its score is at or above 80 percent of the optimal  
12 score, in which case the facility shall be given five stars;  
13 at or above 60 percent, but not greater than 79 percent of the  
14 optimal score, in which case the facility shall be given four  
15 stars; at or above 40 percent, but not greater than 59 percent  
16 of the optimal score, in which case the facility shall be  
17 given three stars; at or above 20 percent, but not greater  
18 than 39 percent of the optimal score, in which case the  
19 facility shall be given two stars; or at or below 19 percent  
20 of the optimal score, in which case the facility shall be  
21 given one star.  
22       (5) The agency shall reevaluate each nursing home  
23 facility quarterly through announced and unannounced  
24 inspections.  
25       (6) Beginning with the second annual grading period  
26 and every year thereafter, the agency shall identify each  
27 nursing home facility's performance as having improved,  
28 remained the same, or declined. The facility improvement  
29 rating shall be based on a comparison of the current year's  
30 and previous year's performance.  
31

1       (7) By July 1, 2007, and every 5 years thereafter, the  
2 agency shall reevaluate the optimal standards for nursing home  
3 facility quality of care and quality of life and raise the  
4 standards to reflect improvements in the grading scores of  
5 nursing home facilities.

6       (8) The secretary of the agency shall convene a  
7 workgroup to assist the agency in developing the grading  
8 system. The workgroup shall be composed of two nursing home  
9 administrators whose facilities have not had a class I or  
10 class II deficiency since January 1, 1999; a physician with  
11 geriatric training and experience in treating nursing home  
12 residents; a person with training and experience in designing  
13 grading and ranking systems; a licensed risk manager with  
14 experience in a nursing facility; the State Long-Term Care  
15 Ombudsman; a designee of the Secretary of Elderly Affairs; a  
16 quality-of-care monitor or licensure surveyor with monitoring  
17 or survey experience in nursing homes; and a representative of  
18 an organized group that advocates for the elderly.

19       (9) Each nursing home facility shall post, in a  
20 sufficient number of prominent positions in the nursing home  
21 so as to be accessible to all residents and to the public, the  
22 facility's ranking and improvement ratings.

23       (10) The agency shall publish the ranking and  
24 improvement rating of all nursing home facilities on the  
25 agency's website and in printed guides by region of the state.

26       (11) The agency may adopt rules necessary to  
27 administer this section.

28       Section 19. Section 400.275, Florida Statutes, is  
29 created to read:

30       400.275 Nursing home survey teams; agency duties.--  
31

1       (1) The agency shall ensure that each newly hired  
2 nursing home surveyor, as a part of basic training, is  
3 assigned full-time to a licensed nursing home for at least 2  
4 days within a 7-day period to observe facility operations  
5 outside of the survey process before the surveyor begins  
6 survey responsibilities. The agency may not assign an  
7 individual to be a member of a survey team for purposes of a  
8 survey, evaluation, or consultation visit at a nursing home  
9 facility in which the surveyor was an employee within the  
10 preceding 5 years.

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

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

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

30       Section 20. Section 400.402, Florida Statutes, is  
31 amended to read:

1           400.402 Definitions.--When used in this part, the  
2 term:

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

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

9           (3) "Agency" means the Agency for Health Care  
10 Administration.

11           (4) "Aging in place" or "age in place" means the  
12 process of providing increased or adjusted services to a  
13 person to compensate for the physical or mental decline that  
14 may occur with the aging process, in order to maximize the  
15 person's dignity and independence and permit them to remain in  
16 a familiar, noninstitutional, residential environment for as  
17 long as possible. Such services may be provided by facility  
18 staff, volunteers, family, or friends, or through contractual  
19 arrangements with a third party.

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

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

31



1           (7) "Chemical restraint" means a pharmacologic drug  
2 that physically limits, restricts, or deprives an individual  
3 of movement or mobility, and is used for discipline or  
4 convenience and not required for the treatment of medical  
5 symptoms.

6           (8) "Community living support plan" means a written  
7 document prepared by a mental health resident and the  
8 resident's mental health case manager in consultation with the  
9 administrator of an assisted living facility with a limited  
10 mental health license or the administrator's designee. A copy  
11 must be provided to the administrator. The plan must include  
12 information about the supports, services, and special needs of  
13 the resident which enable the resident to live in the assisted  
14 living facility and a method by which facility staff can  
15 recognize and respond to the signs and symptoms particular to  
16 that resident which indicate the need for professional  
17 services.

18           (9) "Cooperative agreement" means a written statement  
19 of understanding between a mental health care provider and the  
20 administrator of the assisted living facility with a limited  
21 mental health license in which a mental health resident is  
22 living. The agreement must specify directions for accessing  
23 emergency and after-hours care for the mental health resident.  
24 A single cooperative agreement may service all mental health  
25 residents who are clients of the same mental health care  
26 provider.

27           (10) "Department" means the Department of Elderly  
28 Affairs.

29           (11) "Emergency" means a situation, physical  
30 condition, or method of operation which presents imminent  
31

1 danger of death or serious physical or mental harm to facility  
2 residents.

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

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

16 (14) "Limited nursing services" means acts that may be  
17 performed pursuant to part I of chapter 464 by persons  
18 licensed thereunder while carrying out their professional  
19 duties but limited to those acts which the department  
20 specifies by rule. Acts which may be specified by rule as  
21 allowable limited nursing services shall be for persons who  
22 meet the admission criteria established by the department for  
23 assisted living facilities and shall not be complex enough to  
24 require 24-hour nursing supervision and may include such  
25 services as the application and care of routine dressings, and  
26 care of casts, braces, and splints.

27 ~~(15) "Managed risk" means the process by which the~~  
28 ~~facility staff discuss the service plan and the needs of the~~  
29 ~~resident with the resident and, if applicable, the resident's~~  
30 ~~representative or designee or the resident's surrogate,~~  
31 ~~guardian, or attorney in fact, in such a way that the~~

1 ~~consequences of a decision, including any inherent risk, are~~  
2 ~~explained to all parties and reviewed periodically in~~  
3 ~~conjunction with the service plan, taking into account changes~~  
4 ~~in the resident's status and the ability of the facility to~~  
5 ~~respond accordingly.~~

6 (15)~~(16)~~ "Mental health resident" means an individual  
7 who receives social security disability income due to a mental  
8 disorder as determined by the Social Security Administration  
9 or receives supplemental security income due to a mental  
10 disorder as determined by the Social Security Administration  
11 and receives optional state supplementation.

12 (16)~~(17)~~ "Personal services" means direct physical  
13 assistance with or supervision of the activities of daily  
14 living and the self-administration of medication and other  
15 similar services which the department may define by rule.  
16 "Personal services" shall not be construed to mean the  
17 provision of medical, nursing, dental, or mental health  
18 services.

19 (17)~~(18)~~ "Physical restraint" means a device which  
20 physically limits, restricts, or deprives an individual of  
21 movement or mobility, including, but not limited to, a  
22 half-bed rail, a full-bed rail, a geriatric chair, and a posey  
23 restraint. The term "physical restraint" shall also include  
24 any device which was not specifically manufactured as a  
25 restraint but which has been altered, arranged, or otherwise  
26 used for this purpose. The term shall not include bandage  
27 material used for the purpose of binding a wound or injury.

28 (18)~~(19)~~ "Relative" means an individual who is the  
29 father, mother, stepfather, stepmother, son, daughter,  
30 brother, sister, grandmother, grandfather, great-grandmother,  
31 great-grandfather, grandson, granddaughter, uncle, aunt, first

1 cousin, nephew, niece, husband, wife, father-in-law,  
2 mother-in-law, son-in-law, daughter-in-law, brother-in-law,  
3 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,  
4 half brother, or half sister of an owner or administrator.

5 (19)~~(20)~~ "Resident" means a person 18 years of age or  
6 older, residing in and receiving care from a facility.

7 (20)~~(21)~~ "Resident's representative or designee" means  
8 a person other than the owner, or an agent or employee of the  
9 facility, designated in writing by the resident, if legally  
10 competent, to receive notice of changes in the contract  
11 executed pursuant to s. 400.424; to receive notice of and to  
12 participate in meetings between the resident and the facility  
13 owner, administrator, or staff concerning the rights of the  
14 resident; to assist the resident in contacting the ombudsman  
15 council if the resident has a complaint against the facility;  
16 or to bring legal action on behalf of the resident pursuant to  
17 s. 400.429.

18 (21)~~(22)~~ "Service plan" means a written plan,  
19 developed and agreed upon by the resident and, if applicable,  
20 the resident's representative or designee or the resident's  
21 surrogate, guardian, or attorney in fact, if any, and the  
22 administrator or designee representing the facility, which  
23 addresses the unique physical and psychosocial needs,  
24 abilities, and personal preferences of each resident receiving  
25 extended congregate care services. The plan shall include a  
26 brief written description, in easily understood language, of  
27 what services shall be provided, who shall provide the  
28 services, when the services shall be rendered, and the  
29 purposes and benefits of the services.

30 (22)~~(23)~~ "Shared responsibility" means exploring the  
31 options available to a resident within a facility and the

1 risks involved with each option when making decisions  
2 pertaining to the resident's abilities, preferences, and  
3 service needs, thereby enabling the resident and, if  
4 applicable, the resident's representative or designee, or the  
5 resident's surrogate, guardian, or attorney in fact, and the  
6 facility to develop a service plan which best meets the  
7 resident's needs and seeks to improve the resident's quality  
8 of life.

9       (23)~~(24)~~ "Supervision" means reminding residents to  
10 engage in activities of daily living and the  
11 self-administration of medication, and, when necessary,  
12 observing or providing verbal cuing to residents while they  
13 perform these activities.

14       (24)~~(25)~~ "Supplemental security income," Title XVI of  
15 the Social Security Act, means a program through which the  
16 Federal Government guarantees a minimum monthly income to  
17 every person who is age 65 or older, or disabled, or blind and  
18 meets the income and asset requirements.

19       (25)~~(26)~~ "Supportive services" means services designed  
20 to encourage and assist aged persons or adults with  
21 disabilities to remain in the least restrictive living  
22 environment and to maintain their independence as long as  
23 possible.

24       (26)~~(27)~~ "Twenty-four-hour nursing supervision" means  
25 services that are ordered by a physician for a resident whose  
26 condition requires the supervision of a physician and  
27 continued monitoring of vital signs and physical status. Such  
28 services shall be: medically complex enough to require  
29 constant supervision, assessment, planning, or intervention by  
30 a nurse; required to be performed by or under the direct  
31 supervision of licensed nursing personnel or other

1 professional personnel for safe and effective performance;  
2 required on a daily basis; and consistent with the nature and  
3 severity of the resident's condition or the disease state or  
4 stage.

5 Section 21. Subsections (3) and (4) of section  
6 400.407, Florida Statutes, are amended to read:

7 400.407 License required; fee, display.--

8 (3) Any license granted by the agency must state the  
9 maximum resident capacity of the facility, the type of care  
10 for which the license is granted, the date the license is  
11 issued, the expiration date of the license, and any other  
12 information deemed necessary by the agency. Licenses shall be  
13 issued for one or more of the following categories of care:  
14 standard, extended congregate care, limited nursing services,  
15 or limited mental health.

16 (a) A standard license shall be issued to facilities  
17 providing one or more of the personal services identified in  
18 s. 400.402. Such facilities may also employ or contract with a  
19 person licensed under part I of chapter 464 to administer  
20 medications and perform other tasks as specified in s.  
21 400.4255.

22 (b) An extended congregate care license shall be  
23 issued to facilities providing, directly or through contract,  
24 services beyond those authorized in paragraph (a), including  
25 acts performed pursuant to part I of chapter 464 by persons  
26 licensed thereunder, and supportive services defined by rule  
27 to persons who otherwise would be disqualified from continued  
28 residence in a facility licensed under this part.

29 1. In order for extended congregate care services to  
30 be provided in a facility licensed under this part, the agency  
31 must first determine that all requirements established in law

1 and rule are met and must specifically designate, on the  
2 facility's license, that such services may be provided and  
3 whether the designation applies to all or part of a facility.  
4 Such designation may be made at the time of initial licensure  
5 or ~~biennial~~ relicensure, or upon request in writing by a  
6 licensee under this part. Notification of approval or denial  
7 of such request shall be made within 90 days after receipt of  
8 such request and all necessary documentation. Existing  
9 facilities qualifying to provide extended congregate care  
10 services must have maintained a standard license and may not  
11 have been subject to administrative sanctions during the  
12 previous 2 years, or since initial licensure if the facility  
13 has been licensed for less than 2 years, for any of the  
14 following reasons:

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

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

30           3. Facilities that are licensed to provide extended  
31 congregate care services shall:



- 1           a. Demonstrate the capability to meet unanticipated  
2 resident service needs.
- 3           b. Offer a physical environment that promotes a  
4 homelike setting, provides for resident privacy, promotes  
5 resident independence, and allows sufficient congregate space  
6 as defined by rule.
- 7           c. Have sufficient staff available, taking into  
8 account the physical plant and firesafety features of the  
9 building, to assist with the evacuation of residents in an  
10 emergency, as necessary.
- 11           d. Adopt and follow policies and procedures that  
12 maximize resident independence, dignity, choice, and  
13 decisionmaking to permit residents to age in place to the  
14 extent possible, so that moves due to changes in functional  
15 status are minimized or avoided.
- 16           e. Allow residents or, if applicable, a resident's  
17 representative, designee, surrogate, guardian, or attorney in  
18 fact to make a variety of personal choices, participate in  
19 developing service plans, and share responsibility in  
20 decisionmaking.
- 21           f. Implement the concept of managed risk.
- 22           g. Provide, either directly or through contract, the  
23 services of a person licensed pursuant to part I of chapter  
24 464.
- 25           h. In addition to the training mandated in s. 400.452,  
26 provide specialized training as defined by rule for facility  
27 staff.
- 28           4. Facilities licensed to provide extended congregate  
29 care services are exempt from the criteria for continued  
30 residency as set forth in rules adopted under s. 400.441.  
31 Facilities so licensed shall adopt their own requirements

1 within guidelines for continued residency set forth by the  
2 department in rule. However, such facilities may not serve  
3 residents who require 24-hour nursing supervision. Facilities  
4 licensed to provide extended congregate care services shall  
5 provide each resident with a written copy of facility policies  
6 governing admission and retention.

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

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

21         7. When a facility can no longer provide or arrange  
22 for services in accordance with the resident's service plan  
23 and needs and the facility's policy, the facility shall make  
24 arrangements for relocating the person in accordance with s.  
25 400.428(1)(k).

26         8. Failure to provide extended congregate care  
27 services may result in denial of extended congregate care  
28 license renewal.

29         9. No later than January 1 of each year, the  
30 department, in consultation with the agency, shall prepare and  
31 submit to the Governor, the President of the Senate, the

1 Speaker of the House of Representatives, and the chairs of  
2 appropriate legislative committees, a report on the status of,  
3 and recommendations related to, extended congregate care  
4 services. The status report must include, but need not be  
5 limited to, the following information:

6 a. A description of the facilities licensed to provide  
7 such services, including total number of beds licensed under  
8 this part.

9 b. The number and characteristics of residents  
10 receiving such services.

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

13 d. An analysis of deficiencies cited during licensure  
14 ~~biennial~~ inspections.

15 e. The number of residents who required extended  
16 congregate care services at admission and the source of  
17 admission.

18 f. Recommendations for statutory or regulatory  
19 changes.

20 g. The availability of extended congregate care to  
21 state clients residing in facilities licensed under this part  
22 and in need of additional services, and recommendations for  
23 appropriations to subsidize extended congregate care services  
24 for such persons.

25 h. Such other information as the department considers  
26 appropriate.

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

30 1. In order for limited nursing services to be  
31 provided in a facility licensed under this part, the agency

1 must first determine that all requirements established in law  
2 and rule are met and must specifically designate, on the  
3 facility's license, that such services may be provided. Such  
4 designation may be made at the time of initial licensure or  
5 ~~biennial~~ relicensure, or upon request in writing by a licensee  
6 under this part. Notification of approval or denial of such  
7 request shall be made within 90 days after receipt of such  
8 request and all necessary documentation. Existing facilities  
9 qualifying to provide limited nursing services shall have  
10 maintained a standard license and may not have been subject to  
11 administrative sanctions that affect the health, safety, and  
12 welfare of residents for the previous 2 years or since initial  
13 licensure if the facility has been licensed for less than 2  
14 years.

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

29           3. A person who receives limited nursing services  
30 under this part must meet the admission criteria established  
31 by the agency for assisted living facilities. When a resident

1 no longer meets the admission criteria for a facility licensed  
2 under this part, arrangements for relocating the person shall  
3 be made in accordance with s. 400.428(1)(k), unless the  
4 facility is licensed to provide extended congregate care  
5 services.

6           (4)~~(a)~~ Each facility shall be assessed a bed fee of  
7 \$100 for each initial, renewal, and change-of-ownership  
8 application processed, except that a bed fee may not be  
9 assessed for any bed designated for recipients of optional  
10 state supplementation payments. The fee for processing an  
11 application, as described in this part, may not exceed  
12 \$10,000.~~The biennial license fee required of a facility is~~  
13 ~~\$240 per license, with an additional fee of \$30 per resident~~  
14 ~~based on the total licensed resident capacity of the facility,~~  
15 ~~except that no additional fee will be assessed for beds~~  
16 ~~designated for recipients of optional state supplementation~~  
17 ~~payments provided for in s. 409.212. The total fee may not~~  
18 ~~exceed \$10,000, no part of which shall be returned to the~~  
19 ~~facility. The agency shall adjust the per bed license fee and~~  
20 ~~the total licensure fee annually by not more than the change~~  
21 ~~in the consumer price index based on the 12 months immediately~~  
22 ~~preceding the increase.~~

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

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

13           Section 22. Paragraph (n) is added to subsection (1)  
14 of section 400.414, Florida Statutes, and subsection (8) is  
15 added to said section, to read:

16           400.414 Denial, revocation, or suspension of license;  
17 imposition of administrative fine; grounds.--

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

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

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

30  
31

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

4           Section 23. Subsections (1) and (6) of section  
5 400.417, Florida Statutes, are amended to read:

6           400.417 Expiration of license; renewal; conditional  
7 license.--

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

21           ~~(6) When an extended care or limited nursing license~~  
22 ~~is requested during a facility's biennial license period, the~~  
23 ~~fee shall be prorated in order to permit the additional~~  
24 ~~license to expire at the end of the biennial license period.~~  
25 ~~The fee shall be calculated as of the date the additional~~  
26 ~~license application is received by the agency.~~

27           Section 24. Section 400.419, Florida Statutes, is  
28 amended to read:

29           400.419 Violations; administrative fines.--

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

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

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

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

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



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

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

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

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

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

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

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

6 (c) Any previous violations.

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

9 (e) The licensed capacity of the facility.

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

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

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

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

31

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

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

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

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

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

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

19           Section 25. Section 400.423, Florida Statutes, is  
20 created to read:

21           400.423 Internal risk management and quality assurance  
22 program.--

23           (1) Each facility with a minimum of 26 beds shall, as  
24 part of its administrative functions, establish an internal  
25 risk management and quality assurance program, the purpose of  
26 which is to assess resident care practices; review facility  
27 quality indicators, facility incident reports, deficiencies  
28 cited by the agency, individual resident shared-risk  
29 agreements as defined in s. 400.402, and resident grievances;  
30 and develop plans of action to correct and respond quickly to  
31 identified quality deficiencies. The program must include:

1       (a) A risk manager employed by the facility and  
2 licensed under chapter 395 who is responsible for  
3 implementation and oversight of the facility's internal risk  
4 management and quality assurance program as required by this  
5 section. A risk manager must not be made responsible for more  
6 than four internal risk management and quality assurance  
7 programs in separate facilities licensed pursuant to chapter  
8 400 or chapter 395. However, a risk manager may be made  
9 responsible for as many as eight assisted living facilities  
10 with a standard license if the risk manager is not responsible  
11 for any other facilities licensed under this chapter or  
12 chapter 395.

13       (b) A risk management and quality assurance committee  
14 consisting of the facility risk manager, the administrator,  
15 and at least three other members of the facility staff. The  
16 risk management and quality assurance committee shall meet at  
17 least monthly.

18       (c) Policies and procedures to implement the internal  
19 risk management and quality assurance program, which must  
20 include the investigation and analysis of the frequency and  
21 causes of general categories and specific types of adverse  
22 incidents to residents.

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

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

30           2. At least 3 hours of such education and training  
31 shall be provided annually for all nonphysician personnel of

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

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

5 (f) The development and implementation of an incident  
6 reporting system based upon the affirmative duty of all health  
7 care providers and all agents and employees of the facility to  
8 report adverse incidents to the risk manager.

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

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

16 (4) Each internal risk management and quality  
17 assurance program shall include the use of incident reports to  
18 be filed with the risk manager and the facility administrator.  
19 The risk manager shall have free access to all resident  
20 records of the facility. The incident reports are confidential  
21 as provided by law, are part of the workpapers of the attorney  
22 defending the facility in litigation relating to the facility,  
23 and are subject to discovery but are not admissible as  
24 evidence in court. As a part of each internal risk management  
25 and quality assurance program, the incident reports shall be  
26 used to develop categories of incidents which identify problem  
27 areas. Once identified, procedures shall be adjusted to  
28 correct the problem areas.

29 (5) For purposes of reporting to the agency under this  
30 section, the term "adverse incident" means:  
31

1       (a) An event over which facility personnel could  
2 exercise control and which is associated in whole or in part  
3 with the facility's intervention, rather than the condition  
4 for which such intervention occurred, and which results in one  
5 of the following:  
6           1. Death;  
7           2. Brain or spinal damage;  
8           3. Permanent disfigurement;  
9           4. Fracture or dislocation of bones or joints;  
10          5. A resulting limitation of neurological, physical,  
11 or sensory function;  
12          6. Any condition that required medical attention to  
13 which the resident has not given his or her informed consent,  
14 including failure to honor advanced directives; or  
15          7. Any condition that required the transfer of the  
16 patient, within or outside the facility, to a unit providing a  
17 more acute level of care due to the adverse incident rather  
18 than to the resident's condition prior to the adverse  
19 incident;  
20       (b) Abuse, neglect, or exploitation, as defined in s.  
21 415.102 or s. 39.01;  
22       (c) Resident elopement; or  
23       (d) An event that is reported to law enforcement.  
24       (6) Every facility, regardless of the number of beds,  
25 shall notify the agency within 1 business day after the  
26 occurrence of an adverse incident. The notification must be  
27 made in writing and be provided by facsimile device or  
28 overnight mail delivery. The notification must include  
29 information regarding the identity of the affected resident,  
30 the type of adverse incident, the initiation of an  
31 investigation by the facility, and whether the events causing

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

13 (7)(a) Every facility, regardless of the number of  
14 beds, shall submit an adverse incident report to the agency  
15 for each adverse incident within 15 calendar days after its  
16 occurrence on a form developed by the agency. The Department  
17 of Elderly Affairs shall have access to such reports as it  
18 deems appropriate.

19 (b) The information reported to the agency pursuant to  
20 paragraph (a) which relates to persons licensed under chapter  
21 458, chapter 459, chapter 461, or chapter 466 shall be  
22 reviewed by the agency. The agency shall determine whether any  
23 of the incidents potentially involved conduct by a health care  
24 professional who is subject to disciplinary action, in which  
25 case the provisions of s. 456.073 shall apply.

26 (c) The report submitted to the agency must also  
27 contain the name and license number of the risk manager, if  
28 applicable, of the licensed facility.

29 (d) The adverse incident report is confidential as  
30 provided by law and is not discoverable or admissible in any  
31



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

3 (8) Each facility subject to this section shall report  
4 monthly any liability claim files against it. The report must  
5 include the name of the resident, the date or dates of the  
6 incident leading to the claim, and the type of injury or  
7 violation of rights alleged to have occurred.

8 (9) The internal risk manager or administrator of each  
9 facility shall:

10 (a) Investigate every allegation of sexual misconduct  
11 which is made against a member of the facility's personnel who  
12 has direct resident contact if it is alleged that the sexual  
13 misconduct occurred at the facility or on the grounds of the  
14 facility;

15 (b) If the allegation is investigated by the internal  
16 risk manager, report the allegation of sexual misconduct to  
17 the administrator of the facility; and

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

21 (10)(a) Any witness who witnessed or who possesses  
22 actual knowledge of the act that is the basis of an allegation  
23 of sexual abuse shall notify:

24 1. The local law enforcement agency;

25 2. The central abuse hotline of the Department of  
26 Children and Family Services; and

27 3. The risk manager, if applicable, and the  
28 administrator.

29 (b) As used in this subsection, the term "sexual  
30 abuse" means acts of a sexual nature committed for the sexual  
31 gratification of anyone upon, or in the presence of, a

1 vulnerable adult, without the vulnerable adult's informed  
2 consent, or a minor. The term includes, but is not limited to,  
3 the acts defined in s. 794.011(1)(h), fondling, exposure of a  
4 vulnerable adult's or minor's sexual organs, or the use of the  
5 vulnerable adult or minor to solicit for or engage in  
6 prostitution or sexual performance. The term does not include  
7 any act intended for a valid medical purpose or any act that  
8 may reasonably be construed to be a normal caregiving action.

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

16 (12) There is no monetary liability on the part of,  
17 and a cause of action for damages may not arise against, any  
18 risk manager licensed under chapter 395 for the implementation  
19 and oversight of the internal risk management and quality  
20 assurance program in a facility licensed under this part as  
21 required by this section, or for any act or proceeding  
22 undertaken or performed within the scope of the functions of  
23 such internal risk management and quality assurance program if  
24 the risk manager acts without intentional fraud.

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

31

1       (14) The agency shall annually submit to the  
2 Legislature a report on assisted living facility internal risk  
3 management. The report must include the following information  
4 arrayed by county:

5           (a) The total number of adverse incidents.

6           (b) A listing, by category, of the types of adverse  
7 incidents, the number of incidents occurring within each  
8 category, and the type of staff involved.

9           (c) A listing, by category, of the types of injury  
10 caused and the number of injuries occurring within each  
11 category.

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

14           (e) Disciplinary action taken against staff,  
15 categorized by type of staff involved.

16       Section 26. Present subsections (7), (8), (9), (10),  
17 and (11) of section 400.426, Florida Statutes, are  
18 redesignated as subsections (8), (9), (10), (11), and (12),  
19 respectively, and a new subsection (7) is added to said  
20 section, to read:

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

23           (7) Any resident who exhibits signs of dementia or  
24 cognitive impairment must be examined by a licensed physician  
25 to rule out the presence of an underlying physiological  
26 condition that may be contributing to such dementia or  
27 impairment. The examination must occur within 7 days after the  
28 admission of a resident to the facility or within 7 days after  
29 the acknowledgement of such signs by facility staff. The  
30 facility must notify the resident's designee or legal  
31 representative prior to the examination. If an underlying

1 condition is determined to exist, the facility shall arrange  
2 for necessary care and services to treat the condition.

3 Section 27. Subsection (3) of section 400.428, Florida  
4 Statutes, is amended to read:

5 400.428 Resident bill of rights.--

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

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

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

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

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

31

1           Section 28. Effective October 1, 2001, and applicable  
2 to causes of action accruing on or after that date, section  
3 400.4303, Florida Statutes, is created to read:

4           400.4303 Copies forwarded to state attorney.--In any  
5 action in which punitive damages are awarded, notwithstanding  
6 any appeals, the clerk of the court shall forward to the state  
7 attorney of that circuit a copy of the complaint, any amended  
8 complaints, the verdict form, and the final judgment.

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

11           400.435 Maintenance of records; reports.--

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

22           Section 30. Paragraph (h) of subsection (1) and  
23 subsection (4) of section 400.441, Florida Statutes, are  
24 amended to read:

25           400.441 Rules establishing standards.--

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

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

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

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

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

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

23 |           Section 31. Section 400.442, Florida Statutes, is  
24 | amended to read:

25 |           400.442 Pharmacy and dietary services.--

26 |           (1) Any assisted living facility in which the agency  
27 | has documented a class I or class II deficiency or uncorrected  
28 | class III deficiencies regarding medicinal drugs or  
29 | over-the-counter preparations, including their storage, use,  
30 | delivery, or administration, or dietary services, or both,  
31 | during a licensure ~~biennial~~ survey or a monitoring visit or an

1 investigation in response to a complaint, shall, in addition  
2 to or as an alternative to any penalties imposed under s.  
3 400.419, be required to employ the consultant services of a  
4 licensed pharmacist, a licensed registered nurse, or a  
5 registered or licensed dietitian, as applicable. The  
6 consultant shall, at a minimum, provide onsite quarterly  
7 consultation until the inspection team from the agency  
8 determines that such consultation services are no longer  
9 required.

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

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

22 (4) The department may by rule establish procedures  
23 and specify documentation as necessary to administer ~~implement~~  
24 this section.

25 Section 32. Section 400.449, Florida Statutes, is  
26 created to read:

27 400.449 Resident records; penalties for alteration.--

28 (1) Any person who fraudulently alters, defaces, or  
29 falsifies any medical or other record of an assisted living  
30 facility, or causes or procures any such offense to be  
31



1 committed, commits a misdemeanor of the second degree,  
2 punishable as provided in s. 775.082 or s. 775.083.

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

6 Section 33. Subsection (1) of section 464.201, Florida  
7 Statutes, is amended to read:

8 464.201 Definitions.--As used in this part, the term:

9 (1) "Approved training program" means:

10 (a) A course of training conducted by a public sector  
11 or private sector educational center licensed by the  
12 Department of Education to implement the basic curriculum for  
13 nursing assistants which is approved by the Department of  
14 Education. Beginning October 1, 2000, the board shall assume  
15 responsibility for approval of training programs under this  
16 paragraph.

17 (b) A training program operated under s. 400.141.

18 (c) A nursing assistant training program developed  
19 under the Enterprise Florida Jobs and Education Partnership  
20 Grant.

21 Section 34. Section 464.203, Florida Statutes, is  
22 amended to read:

23 464.203 Certified nursing assistants; certification  
24 requirement.--

25 (1) The board shall issue a certificate to practice as  
26 a certified nursing assistant to any person who demonstrates a  
27 minimum competency to read and write and successfully passes  
28 the required Level I or Level II screening pursuant to s.  
29 400.215 and meets one of the following requirements:

30 (a) Has successfully completed an approved training  
31 program and achieved a minimum score, established by rule of

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

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

10 1. Has a high school diploma, or its equivalent; or

11 2. Is at least 18 years of age.

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

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

23 (2) If an applicant fails to pass the nursing  
24 assistant competency examination in three attempts, the  
25 applicant is not eligible for reexamination unless the  
26 applicant completes an approved training program.

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

31

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

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

13           ~~(6)~~(5) A certified nursing assistant shall maintain a  
14 current address with the board in accordance with s. 456.035.

15           (7) A certified nursing assistant must complete a  
16 minimum of 18 hours of continuing education during each  
17 calendar year of certification. Continuing education must  
18 include training in assisting and responding to individuals  
19 who are cognitively impaired or who exhibit difficult  
20 behaviors.

21           Section 35. Subsection (2) of section 397.405, Florida  
22 Statutes, is amended to read:

23           397.405 Exemptions from licensure.--The following are  
24 exempt from the licensing provisions of this chapter:

25           (2) A nursing home facility as defined in s. 400.021  
26 ~~s. 400.021(12)~~.

27  
28 The exemptions from licensure in this section do not apply to  
29 any facility or entity which receives an appropriation, grant,  
30 or contract from the state to operate as a service provider as  
31 defined in this chapter or to any substance abuse program

1 regulated pursuant to s. 397.406. No provision of this  
2 chapter shall be construed to limit the practice of a  
3 physician licensed under chapter 458 or chapter 459, a  
4 psychologist licensed under chapter 490, or a psychotherapist  
5 licensed under chapter 491, providing outpatient or inpatient  
6 substance abuse treatment to a voluntary patient, so long as  
7 the physician, psychologist, or psychotherapist does not  
8 represent to the public that he or she is a licensed service  
9 provider under this act. Failure to comply with any  
10 requirement necessary to maintain an exempt status under this  
11 section is a misdemeanor of the first degree, punishable as  
12 provided in s. 775.082 or s. 775.083.

13           Section 36. The Agency for Health Care Administration  
14 shall require that a portion of each nursing facility's  
15 Medicaid rate be used exclusively for wage and benefit  
16 increases for nursing home direct care staff. Such funds shall  
17 be used only for actual wage or benefit improvements. Eligible  
18 staff members include all direct care workers (including RNs,  
19 LPNs and CNAs), and all dietary, housekeeping, laundry, and  
20 maintenance workers. Temporary, contract, agency, and pool  
21 employees are excluded. The agency shall develop  
22 cost-reporting systems to ensure that the funds the agency has  
23 required to be used for wage and benefit increases for direct  
24 care staff are used for this purpose. On January 1 of each  
25 year, the agency shall report to the Legislature the effect of  
26 such wage and benefit increases for employees in nursing  
27 facilities in this state.

28           Section 37. The sum of \$\_\_\_\_\_ is appropriated from  
29 the General Revenue Fund to the Agency for Health Care  
30 Administration for the purpose of implementing the provisions  
31 of this act during the 2001-2002 fiscal year.

1           Section 38. The sum of \$948,782 is appropriated from  
2 the General Revenue Fund to the Department of Elderly Affairs  
3 for the purpose of paying the salaries and other  
4 administrative expenses of the Office of State Long-Term Care  
5 Ombudsman to carry out the provisions of this act during the  
6 2001-2002 fiscal year.

7           Section 39. If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 invalidity does not affect other provisions or applications of  
10 the act which can be given effect without the invalid  
11 provision or application, and to this end the provisions of  
12 this act are severable.

13           Section 40. Except as otherwise provided herein, this  
14 act shall take effect upon becoming a law.

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HOUSE SUMMARY

Revises provisions of parts II and III of ch. 400, F.S., relating to regulation of nursing homes and assisted living facilities. Requires such facilities to establish internal risk management and quality assurance programs. Specifies program requirements, requires the Agency for Health Care Administration to be notified of adverse incidents, limits the liability of risk managers, and requires the agency to report certain conduct to the appropriate professional regulatory board. Requires certain documents to be forwarded to the state attorney if punitive damages are awarded. Revises nursing home and assisted living facility licensure requirements, provides additional grounds for license denial, suspension, or revocation, and increases penalties for certain deficiencies and violations. Requires quality assurance and risk management plans as a condition for licensure. Requires the agency to publish a Nursing Home Guide Watch List, and specifies contents and distribution. Requires nursing homes to permit electronic monitoring devices in residents' rooms, and provides requirements and penalties. Provides training standards for nursing home staff who care for persons with Alzheimer's disease or related disorders. Revises nursing assistant employment, training, and certification requirements. Specifies nursing home minimum staffing levels, and requirements for documentation and posting. Requires the agency to develop and implement a system for grading nursing homes, providing rankings, and evaluating improvements. Requires the agency to use certain funds for wage and benefit increases for nursing home direct care staff. Provides appropriations. See bill for details.