

By the Committee on Elder & Long-Term Care and
Representative Green

1 A bill to be entitled
2 An act relating to long-term care; amending s.
3 400.0073, F.S., relating to state and local
4 ombudsman council investigations; requiring
5 ombudsman verification and reporting of nursing
6 home staff on duty and the posting thereof;
7 providing penalty for refusal of a nursing home
8 or assisted living facility to allow entry to
9 an ombudsman; amending s. 400.021, F.S.;
10 revising definitions; defining "controlling
11 interest" and "voluntary board member";
12 creating s. 400.0223, F.S.; requiring nursing
13 homes to allow electronic monitoring of
14 residents in their rooms; requiring posting of
15 notice; providing facility requirements;
16 providing penalties; amending ss. 400.023 and
17 400.429, F.S.; providing for civil actions to
18 enforce nursing home and assisted living
19 facility residents' rights; providing who may
20 pursue such actions; providing for attorney's
21 fees and costs; providing the burden of proof;
22 providing evidence of breach of duty; providing
23 certain liability; limiting period for
24 commencement of actions; providing definitions;
25 providing for claims involving death of the
26 resident; providing for punitive damages;
27 providing nonenforceability of judgments or
28 agreements concealing certain information;
29 requiring facility report of a judgment or
30 agreement to the Agency for Health Care
31 Administration within a specified period;

1 providing a penalty; providing agency
2 rulemaking authority; providing applicability;
3 creating s. 400.0235, F.S.; providing
4 requirements of the presuit process; creating
5 s. 400.0236, F.S.; providing for presuit
6 screening; creating s. 400.0237, F.S.;
7 providing for presuit notice, review, and
8 investigation; specifying timeframes; creating
9 ss. 400.0238 and 400.430, F.S.; providing for
10 voluntary binding arbitration; providing for
11 selection of an arbitration panel; providing
12 for compensation; providing obligations and
13 procedures; providing rulemaking authority of
14 the Division of Administrative Hearings;
15 providing for the right to jury trial and for
16 certain limitations on damages; providing
17 procedures; creating s. 400.0239, F.S.;
18 providing for binding arbitration to allocate
19 responsibility among defendants; providing
20 procedures; creating s. 400.024, F.S.;
21 providing for misarbitration; creating s.
22 400.0241, F.S.; providing for payment of an
23 arbitration award; providing for interest;
24 creating s. 400.0242, F.S.; providing for
25 appeal of an arbitration award or allocation of
26 financial responsibility; creating ss. 400.0245
27 and 400.455, F.S.; creating the "Nursing Home
28 Facility Whistleblower's Act" and the "Assisted
29 Living Facility Whistleblower's Act,"
30 respectively; prohibiting retaliatory actions
31 from a facility or independent contractor

1 against an employee for disclosure of certain
2 information; providing legislative intent;
3 providing definitions; specifying the nature of
4 information, to whom disclosed, and persons
5 protected; authorizing civil actions for
6 violation; providing forms of relief; providing
7 penalties; providing reward for information
8 disclosed; requiring facilities to post notice
9 of protections, rewards, and remedies;
10 providing defenses to certain actions;
11 protecting existing rights of employees;
12 amending s. 400.071, F.S.; revising
13 requirements and providing additional
14 requirements for application for a nursing home
15 license; amending s. 400.102, F.S.; providing
16 additional grounds for administrative or other
17 actions against a nursing home; amending s.
18 400.118, F.S.; requiring agency staff to verify
19 and report staff on duty at a nursing home;
20 providing requirements for resident
21 comprehensive assessment, plan of care, and
22 treatment and services; providing for a
23 resident's incapacity or refusal with regard to
24 the plan of care; creating s. 400.1183, F.S.;
25 requiring nursing homes to have a grievance
26 procedure for residents; providing
27 requirements; requiring recordkeeping and
28 reports to the agency; providing for agency
29 investigations; providing a penalty for
30 noncompliance; amending s. 400.121, F.S.;
31 revising a penalty for violations of pt. II of

1 ch. 400, F.S.; providing additional grounds for
2 denial of a nursing home licensure application;
3 providing for review of administrative
4 proceedings challenging agency licensure
5 enforcement actions; amending s. 400.141, F.S.;
6 providing qualifications for nursing home
7 medical directors and nursing personnel;
8 requiring sufficient nursing staff; requiring a
9 comprehensive resident assessment; requiring
10 daily charting of certain care delivered;
11 requiring report of management agreements;
12 requiring report of staff ratios, turnover, and
13 stability, and bed vacancies; creating s.
14 400.1413, F.S.; requiring nursing homes to
15 establish internal risk management and quality
16 assurance programs; providing requirements for
17 implementation; defining "adverse incident";
18 requiring reports to the agency; providing
19 agency access to facility records, review of
20 incidents and programs, and report to
21 regulatory boards; limiting liability of risk
22 managers; amending s. 400.1415, F.S.; providing
23 for administrative penalties or a moratorium on
24 admissions for a nursing home where alteration
25 of records has occurred; requiring reporting;
26 requiring referral of personnel for
27 disciplinary action; amending s. 400.19, F.S.;
28 providing for quarterly onsite review of
29 facilities with a conditional licensure status;
30 amending s. 400.191, F.S.; requiring facility
31 posting of the Florida Nursing Home Guide Watch

1 List; amending s. 400.211, F.S.; revising
2 qualifications for temporary employment of
3 nursing assistants; providing performance
4 review and inservice training requirements for
5 certified nursing assistants; amending s.
6 400.23, F.S.; deleting obsolete language and
7 references; deleting requirement for review of
8 local emergency management plans; providing for
9 agency rules relating to consumer satisfaction
10 surveys, posting of reports and records, and
11 quality assurance and risk management;
12 specifying minimum nursing home staffing
13 requirements; providing a moratorium on
14 admissions for certain failure to comply with
15 minimum staffing requirements; providing a
16 penalty; revising provisions relating to
17 deficient practices and classifications
18 thereof; revising penalties; requiring a
19 report; amending s. 400.241, F.S.; providing a
20 cross reference; providing a penalty; amending
21 s. 400.407, F.S.; correcting a cross reference;
22 amending s. 400.426, F.S.; requiring a daily
23 record of care of residents; providing for
24 access to and maintenance of such records;
25 amending ss. 400.428 and 400.431, F.S.;
26 revising requirement for notice of a resident's
27 relocation or termination from a facility;
28 providing a penalty; creating s. 400.449, F.S.;
29 providing penalties for altering, defacing, or
30 falsifying records of an assisted living
31 facility; amending s. 409.908, F.S.; revising

1 provisions relating to Medicaid reimbursement
2 for long-term care; providing for direct care
3 and indirect care subcomponents; providing for
4 cost reporting; amending s. 415.1111, F.S.;
5 providing that provisions for civil actions
6 under ch. 415, F.S., shall not apply to civil
7 actions under pts. II and III of ch. 400, F.S.;
8 amending s. 430.708, F.S.; deleting a provision
9 relating to certificate-of-need calculations
10 for nursing home beds pursuant to Medicaid
11 community diversion pilot projects; amending s.
12 430.709, F.S.; providing requirements for
13 contracts for independent evaluation of
14 long-term care community diversion projects;
15 transferring responsibility from the Department
16 of Elderly Affairs to the agency; requiring
17 reports to the agency and Legislature; amending
18 s. 435.04, F.S.; deleting obsolete language;
19 amending s. 464.201, F.S.; revising definition
20 of "approved training program" for nursing
21 assistants; amending s. 464.2085, F.S.;
22 directing the Council on Certified Nursing
23 Assistants to develop advanced competency
24 designations for certified nursing assistants;
25 amending ss. 101.655, 397.405, and 400.0069,
26 F.S.; correcting cross references; requiring
27 the Auditor General develop a standard chart of
28 accounts for Medicaid long-term care provider
29 cost reporting; requiring implementation by the
30 agency by a specified date; requiring the
31 agency to amend the Medicaid Title XIX

1 Long-Term Care Reimbursement Plan to include
2 specified provisions; directing the Board of
3 Nursing to provide for commendation of certain
4 professional nurses; requiring wage and benefit
5 increases for nursing home direct care staff;
6 requiring a report; reenacting s. 400.021(11),
7 F.S., relating to the definition of "nursing
8 home bed"; reenacting s. 400.0225, F.S.,
9 relating to consumer satisfaction surveys;
10 reenacting s. 400.0255(3) and (8), F.S.,
11 relating to discharge or transfer of residents;
12 reenacting s. 400.141(4) and (5), F.S.,
13 relating to the repackaging of residents'
14 medication and access to other health-related
15 services; reenacting s. 400.191(2) and (6),
16 F.S., relating to requirements for providing
17 information to consumers; reenacting s.
18 400.23(5), F.S., relating to rules for
19 standards of care for persons under 21 years of
20 age residing in nursing home facilities;
21 reenacting s. 400.235(3)(a), (4), (5)(e), and
22 (9), F.S., and reenacting the repeal of s.
23 400.235(5)(h), F.S., 1999, relating to
24 designation under the nursing home Gold Seal
25 Program; reenacting s. 400.962(1), F.S.,
26 relating to requirement for licensure under pt.
27 XI of ch. 400, F.S.; reenacting s. 397.405(2),
28 F.S., relating to a cross reference; reenacting
29 s. 10 of ch. 2000-350, Laws of Florida,
30 relating to requirements for a study of the use
31 of automated medication dispensing machines in

1 nursing facilities and for demonstration
2 projects and a report; providing legislative
3 intent; providing appropriations; providing
4 effective dates.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Present subsection (6) of section 400.0073,
9 Florida Statutes, is amended, present subsections (5) and (6)
10 are renumbered as subsections (7) and (8), respectively, and
11 new subsections (5) and (6) are added to said section, to
12 read:

13 400.0073 State and local ombudsman council
14 investigations.--

15 (5) Each time a member of an ombudsman council is in a
16 nursing home facility to investigate a resident's complaint or
17 to conduct an inspection, the ombudsman shall verify, record,
18 and report to the Office of the State Long-Term Care Ombudsman
19 the number of certified nursing assistants, the number of
20 licensed practical nurses, and the number of registered nurses
21 on duty, the date and time of the visit, and the facility
22 census at that time. The Office of the State Long-Term Care
23 Ombudsman shall maintain a record of each such ombudsman
24 report in a database, which record shall be reported to the
25 Legislature quarterly beginning on October 1, 2001.

26 (6) Each time a member of an ombudsman council is in a
27 nursing home facility, the ombudsman shall determine whether
28 the facility is in compliance with s. 400.23(3)(a) relating to
29 daily posting of staff on duty. The ombudsman shall
30 immediately report to the agency failure by the nursing home
31 to comply with this requirement.

1 ~~(8)(6)~~ An inspection may not be accomplished by
2 forcible entry. Refusal of a long-term care facility to allow
3 entry of any ombudsman council member constitutes a violation
4 of part II, part III, or part VII of this chapter. Refusal to
5 allow entry to any ombudsman council member constitutes a
6 class I deficiency under part II or part III of this chapter.

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

9 400.021 Definitions.--When used in this part, unless
10 the context otherwise requires, the term:

11 (1) "Administrator" means the person licensed under
12 part II of chapter 468 ~~individual~~ who has the general
13 administrative charge of a facility.

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

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

23 (4) "Board" means the Board of Nursing Home
24 Administrators.

25 (5) "Controlling interest" means:

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

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

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

4
5 The term does not include a voluntary board member.

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

10 (7)~~(6)~~ "Department" means the Department of Children
11 and Family Services.

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

26 (9)~~(8)~~ "Geriatric outpatient clinic" means a site for
27 providing outpatient health care to persons 60 years of age or
28 older, which is staffed by a registered nurse or a physician
29 assistant.

30 (10)~~(9)~~ "Geriatric patient" means any patient who is
31 60 years of age or older.

1 (11)~~(10)~~ "Local ombudsman council" means a local
2 long-term care ombudsman council established pursuant to s.
3 400.0069, ~~located within the Older Americans Act planning and~~
4 ~~service areas.~~

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

8 (13)~~(11)~~ "Nursing home bed" or "bed" means an
9 accommodation which is ready for immediate occupancy, or is
10 capable of being made ready for occupancy within 48 hours,
11 excluding provision of staffing; and which conforms to minimum
12 space requirements, including the availability of appropriate
13 equipment and furnishings within the 48 hours, as specified by
14 rule of the agency, for the provision of services specified in
15 this part to a single resident.

16 (14)~~(13)~~ "Nursing service" means such services or acts
17 as may be rendered, directly or indirectly, to and in behalf
18 of a person by individuals licensed under part I of chapter
19 464 as defined in s. 464.003.

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

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

29 (17)~~(16)~~ "Resident care plan" means a written plan
30 developed, maintained, and reviewed not less than quarterly by
31 a registered nurse, with participation from other facility

1 staff and the resident or his or her designee or legal
2 representative, which includes a comprehensive assessment of
3 the needs of an individual resident, a listing of services
4 provided within or outside the facility to meet those needs,
5 and an explanation of service goals.

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

11 (19)~~(18)~~ "State ombudsman council" means the State
12 Long-Term Care Ombudsman Council established pursuant to s.
13 400.0067.

14 (20) "Voluntary board member" means a director of a
15 not-for-profit corporation or organization who serves solely
16 in a voluntary capacity for the corporation or organization,
17 receives no remuneration for his or her services on the board
18 of directors, and has no financial interest in the corporation
19 or organization. A person shall be recognized by the agency as
20 a voluntary board member upon submission of a statement, on a
21 form provided by the agency, affirming that the requirements
22 of this subsection are satisfied by the director and the
23 not-for-profit corporation or organization.

24 Section 3. Effective January 1, 2002, section
25 400.0223, Florida Statutes, is created to read:

26 400.0223 Resident's right to have electronic
27 monitoring devices; requirements; penalties.--

28 (1) A nursing home facility shall permit a resident or
29 legal representative of the resident to monitor the resident
30 through the use of electronic monitoring devices in the
31 resident's room. For the purposes of this section, "electronic

1 monitoring device" includes a video surveillance camera, an
2 audio device, a video telephone, and an Internet video
3 surveillance device.

4 (2) A nursing home facility shall require the resident
5 or legal representative to post a notice on the door of the
6 resident's room where an electronic monitoring device is in
7 use. The notice must state that the room is being monitored by
8 an electronic monitoring device.

9 (3) Monitoring conducted under this section shall:

10 (a) Be noncompulsory and at the election of the
11 resident or legal representative of the resident.

12 (b) Be funded by the resident or legal representative
13 of the resident.

14 (c) Protect the privacy rights of other residents and
15 visitors to the nursing home facility to the extent reasonably
16 possible.

17 (4) It shall be a violation of this part for a nursing
18 home facility to refuse to admit an individual to the facility
19 or to remove a resident from the facility because of a request
20 for electronic monitoring.

21 (5) A nursing home facility shall make reasonable
22 physical accommodation for electronic monitoring by providing
23 a reasonably secure place to mount the electronic monitoring
24 device and access to power sources.

25 (6) A nursing home facility shall inform a resident or
26 legal representative of the resident's right to electronic
27 monitoring.

28 (7) A nursing home facility may request a resident or
29 legal representative to conduct electronic monitoring within
30 plain view.

31

1 (8) The facility administrator may require a resident
2 or legal representative who wishes to install an electronic
3 monitoring device to make the request in writing.

4 (9) Subject to the Florida Rules of Evidence, a tape
5 created through the use of electronic monitoring shall be
6 admissible in either a civil or criminal action brought in a
7 Florida court.

8 (10)(a) A licensee who operates a nursing home
9 facility in violation of this section is subject to a fine not
10 exceeding \$500 per violation per day pursuant to s. 400.102.

11 (b) A person who willfully and without the consent of
12 a resident or legal representative hampers, obstructs, tampers
13 with, or destroys an electronic monitoring device or tape
14 commits a misdemeanor of the first degree, punishable as
15 provided in s. 775.082 or s. 775.083.

16 Section 4. Effective October 1, 2001, section 400.023,
17 Florida Statutes, is amended to read:

18 (Substantial rewording of section. See
19 s. 400.023, F.S., for present text.)

20 400.023 Civil actions to enforce nursing home
21 residents' rights.--

22 (1)(a) Sections 400.023-400.0242 provide the exclusive
23 remedy for any civil action against a nursing home licensee,
24 facility owner, facility administrator, or facility staff for
25 recovery of damages from personal injury to or death of a
26 nursing home resident arising out of negligence or deprivation
27 of rights specified in s. 400.022. This exclusivity applies to
28 and includes any claim against an employee, agent, or other
29 person for whose actions the licensee is alleged to be
30 vicariously liable and to any management company, parent
31 corporation, subsidiary, lessor, or other person alleged to be

1 directly liable to the resident or vicariously liable for the
2 actions of the licensee or its agent.

3 (b) However, ss. 400.023-400.0242 do not prohibit a
4 resident or a resident's legal guardian from pursuing any
5 administrative remedy or injunctive relief available to a
6 resident as a result of a deprivation of the rights specified
7 in s. 400.022, whether or not the deprivation of rights
8 resulted in personal injury to, or the death of, the resident.
9 In any case where there is a deprivation of rights that does
10 not involve personal injury or death, including any claim for
11 injunctive relief or an administrative remedy, the prevailing
12 party shall be entitled to recover reasonable attorney's fees,
13 not to exceed \$25,000, and costs from the nonprevailing party;
14 however, the joinder of a claim under this paragraph with a
15 claim under paragraph (a) shall not be the basis for an award
16 of fees or costs in such claim under paragraph (a). Except as
17 otherwise set forth in this paragraph, it is the intent of the
18 Legislature that this provision for attorney's fees be
19 interpreted in a manner consistent with federal case law
20 involving an action under Title VII of the Civil Rights Act.

21 (c) In addition to the remedies provided in ss.
22 400.023-400.0242, a resident, a resident's legal guardian, or
23 the personal representative of the estate of a deceased
24 resident may pursue an action under s. 415.1111. In addition,
25 a resident or a resident's legal guardian shall be entitled to
26 pursue a claim for damages or injunctive relief for those
27 violations of s. 400.022 that do not result in personal injury
28 or death.

29 (2) A claim pursuant to ss. 400.023-400.0242 may be
30 brought by the resident or his or her legal guardian, by a
31 person or organization acting on behalf of a resident with the

1 consent of the resident or his or her guardian, or, if the
2 resident has died, the personal representative of the estate
3 of the deceased resident.

4 (3) In any claim brought pursuant to ss.
5 400.023-400.0242, the claimant has the burden of proving by a
6 preponderance of the evidence that:

7 (a) Each defendant had an established duty to the
8 resident;

9 (b) Each defendant breached that duty;

10 (c) The breach of that duty is the proximate cause of
11 the personal injury to, or the death of, the resident, or the
12 proximate cause of the deprivation of the resident's rights
13 specified in s. 400.022; and

14 (d) The proximate cause of the personal injury, death,
15 or deprivation of the resident's rights resulted in damages.

16 (4) For purposes of ss. 400.023-400.0242, a licensee
17 breaches its established duty to the resident when it fails to
18 provide a standard of care that a reasonably prudent nursing
19 home would provide under the same or similar circumstances. A
20 deprivation of the rights specified in s. 400.022 or in any
21 other standard or guidelines specified in this part or in any
22 applicable administrative standard or guidelines of this state
23 or a federal regulatory agency shall be evidence of a breach
24 of duty by the licensee.

25 (5) A licensee shall not be liable for the medical
26 negligence of any physician rendering care or treatment to the
27 resident except for the services of a medical director as
28 required in this part. Nothing in this subsection shall be
29 construed to protect a licensee from liability for failure to
30 provide a resident with appropriate observation, assessment,
31

1 nursing diagnosis, planning, intervention, and evaluation of
2 care by nursing staff.

3 (6) An action for damages brought under ss.
4 400.023-400.0242 must be commenced within 2 years after the
5 date on which the incident giving rise to the action occurred
6 or within 2 years after the date on which the incident is
7 discovered, or should have been discovered with the exercise
8 of due diligence. However, the action may not be commenced
9 later than 4 years after the date of the incident or
10 occurrence out of which the cause of action accrued. In any
11 action covered by this subsection in which it is shown that
12 fraud, concealment, or intentional misrepresentation of fact
13 prevented the discovery of the injury, the period of
14 limitation is extended forward 2 years from the time that the
15 injury is discovered, or should have been discovered with the
16 exercise of due diligence, but such period may not in any
17 event exceed 7 years after the date that the incident giving
18 rise to the injury occurred.

19 (7) As used in ss. 400.023-400.0242, the term:

20 (a) "Claimant" means any person who is entitled to
21 recover damages under this part.

22 (b) "Licensee" means the legal entity identified in
23 the application for licensure under this part which entity is
24 the licensed operator of the facility.

25 (c) "Medical expert" means a person duly and regularly
26 engaged in the practice of his or her profession who holds a
27 health care professional degree from a university or college
28 and has had special professional training and experience, or a
29 person who possesses special health care knowledge or skill,
30 concerning the subject upon which he or she is called to
31 testify or provide an opinion.

1 (d) "Resident" means a person who occupies a licensed
2 bed in a facility licensed under this part.

3 (8) Sections 768.16-768.26 apply to a claim in which
4 the resident has died as a result of the facility's breach of
5 an established duty to the resident. In addition to any other
6 damages, the personal representative may recover on behalf of
7 the estate pursuant to ss. 768.16-768.26. The personal
8 representative may also recover on behalf of the estate
9 noneconomic damages for the resident's pain and suffering from
10 the time of injury until the time of death. The limitations
11 set forth in s. 768.21(8) do not apply to a claim maintained
12 under this section where a resident has died as a result of
13 the nursing home's breach of a duty to the resident.

14 (9) For the purpose of this section, punitive damages
15 may be awarded for conduct which is willful, wanton, gross or
16 flagrant, reckless, or consciously indifferent to the rights
17 of the resident.

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

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

28 (12) Any portion of an order, judgment, arbitration
29 decision, mediation agreement, or other type of agreement,
30 contract, or settlement that has the purpose or effect of
31 concealing information relating to the settlement or

1 resolution of any claim or action brought pursuant to this
2 part is void, contrary to public policy, and may not be
3 enforced. No court shall enter an order or judgment that has
4 the purpose or effect of concealing any information pertaining
5 to the resolution or settlement of any claim or action brought
6 pursuant to ss. 400.023-400.0242. Any person or governmental
7 entity has standing to contest an order, judgment, arbitration
8 decision, mediation agreement, or other type of agreement,
9 contract, or settlement that violates this subsection. A
10 contest pursuant to this subsection may be brought by a motion
11 or an action for a declaratory judgment filed in the circuit
12 court of the circuit where the violation of this subsection
13 occurred.

14 (13) The defendant must provide to the agency a copy
15 of any resolution of a claim or civil action brought pursuant
16 to ss. 400.023-400.0242 within 90 days after such resolution,
17 including, but not limited to, any final judgment, arbitration
18 decision, order, mediation agreement, or settlement. Failure
19 to provide the copy to the agency shall result in a fine of
20 \$500 for each day it is overdue. The agency shall develop
21 forms and adopt rules necessary to administer this subsection.

22 Section 5. Subsections (1) through (11) of section
23 400.023, Florida Statutes, as amended by this act, shall apply
24 to causes of action accruing on or after October 1, 2001.
25 Subsections (12) and (13) of section 400.023, Florida
26 Statutes, as amended by this act, shall apply to causes of
27 action in existence on October 1, 2001.

28 Section 6. Effective October 1, 2001, and applicable
29 to causes of action accruing on or after that date, section
30 400.0235, Florida Statutes, is created to read:

31

1 400.0235 Requirements of the presuit process.--Before
2 filing an action in circuit court under this part, the
3 claimant must engage in the presuit screening process
4 prescribed in s. 400.0236. If the claim meets the requirements
5 of s. 400.0236, the claimant must notify each potential
6 defendant of the claimant's intent to initiate litigation
7 under this part, at which time the claimant and each potential
8 defendant must engage in the presuit investigation process
9 prescribed in s. 400.0237. Upon completion of the presuit
10 investigation process, either party may offer to engage in
11 binding arbitration as described in s. 400.0238. If the
12 parties do not engage in binding arbitration, the claimant may
13 file an action in circuit court and the provisions of s.
14 400.0238 shall apply at trial.

15 Section 7. Effective October 1, 2001, and applicable
16 to causes of action accruing on or after that date, section
17 400.0236, Florida Statutes, is created to read:

18 400.0236 Presuit screening.--Before issuing a
19 notification of intent to initiate litigation under s.
20 400.0237, the claimant must engage in presuit screening to
21 ascertain that there are reasonable grounds for believing that
22 a defendant violated the provisions of s. 400.022. If the
23 claim involves personal injury to, or death of, the resident,
24 the claimant must obtain a verified written medical opinion
25 from a medical expert which provides corroboration of
26 reasonable grounds to initiate litigation under ss.
27 400.023-400.0242.

28 Section 8. Effective October 1, 2001, and applicable
29 to causes of action accruing on or after that date, section
30 400.0237, Florida Statutes, is created to read:

31 400.0237 Presuit investigation.--

1 (1) Upon completing the presuit requirements in s.
2 400.0236, the claimant shall notify each prospective defendant
3 by certified mail, return receipt requested, of the claimant's
4 intent to initiate litigation. If the claim involves personal
5 injury to, or death of, the resident, the notice of intent to
6 initiate litigation must contain the verified written medical
7 opinion described in s. 400.0236. Upon receipt of the
8 claimant's notice of intent to initiate litigation, the
9 defendant, the defendant's insurer, or the defendant's
10 self-insurer must conduct a review to determine the liability
11 of the defendant. The review must be completed within 90 days
12 after receipt of the notice to initiate litigation and the
13 suit may not be filed until at least 90 days after the date
14 the defendant receives notice.

15 (2) The notice of intent to initiate litigation must
16 be served during the time limits set forth in s. 400.023(6);
17 however, during the 90-day period the statute of limitations
18 is tolled as to all potential defendants and, upon written
19 stipulation by the parties, the 90-day period may be extended,
20 and the statute of limitations is tolled during any such
21 extension. Upon completion of the 90-day period, or upon
22 receiving notice of termination of negotiations during an
23 extended period, the claimant has 60 days or the remainder of
24 the period of the statute of limitations, whichever is
25 greater, within which to file suit.

26 (3) Each defendant, and each insurer or self-insurer
27 of each defendant, must have a procedure for promptly
28 investigating, reviewing, and evaluating a claim during the
29 90-day period. If the defendant rejects the claim and the
30 claim involves personal injury to, or death of, the resident,
31 corroboration of lack of reasonable grounds for litigation

1 under ss. 400.023-400.0242 must be provided by submitting a
2 verified written medical opinion from a medical expert at the
3 time the response rejecting the claim is mailed.

4 (4) During the 90-day investigation period, each party
5 shall provide to the other party reasonable access to
6 information within its possession or control in order to
7 facilitate evaluation of the claim. Such access shall be
8 provided without formal discovery, pursuant to s.
9 766.106(5)-(9), and failure to provide such information is
10 grounds for dismissal of any applicable claim or defense
11 ultimately asserted.

12 Section 9. Effective October 1, 2001, and applicable
13 to causes of action accruing on or after that date, section
14 400.0238, Florida Statutes, is created to read:

15 400.0238 Voluntary binding arbitration.--

16 (1)(a) Upon the completion of presuit investigation
17 with preliminary reasonable grounds for a claim intact, the
18 parties may elect to have damages determined by an arbitration
19 panel. Such election may be initiated by either party by
20 -serving a request for voluntary binding arbitration of damages
21 within 90 days after service of the complaint upon the
22 defendant. The evidentiary standards for voluntary binding
23 arbitration as authorized herein shall be as provided in ss.
24 120.569(2)(g) and 120.57(1)(c).

25 (b) Upon receipt of a party's request for such
26 arbitration, the opposing party may accept the offer of
27 voluntary binding arbitration within 30 days. However, in no
28 event shall the defendant be required to respond to the
29 request for arbitration sooner than 90 days after service of
30 the complaint. Such acceptance within the time period
31

1 provided by this paragraph shall be a binding commitment to
2 comply with the decision of the arbitration panel.

3 (c) The arbitration panel shall be composed of three
4 arbitrators, one selected by the claimant, one selected by the
5 defendant, and one an administrative law judge furnished by
6 the Division of Administrative Hearings who shall serve as the
7 chief arbitrator. In the event of multiple plaintiffs or
8 multiple defendants, the arbitrator selected by the side with
9 multiple parties shall be the choice of those parties. If the
10 multiple parties cannot reach agreement as to their
11 arbitrator, each of the multiple parties shall submit a
12 nominee, and the director of the Division of Administrative
13 Hearings shall appoint the arbitrator from among such
14 nominees.

15 (d) The arbitrators shall be independent of all
16 parties, witnesses, and legal counsel, and no officer,
17 director, affiliate, subsidiary, or employee of a party,
18 witness, or legal counsel may serve as an arbitrator in the
19 proceeding.

20 (e) The rate of compensation for arbitrators other
21 than the administrative law judge shall be set by the chief
22 judge of the appropriate circuit court by schedule or as
23 agreed by the parties. In setting the schedule, the chief
24 judge shall consider the prevailing rates charged for the
25 delivery of professional services in the community.

26 (f) Arbitration pursuant to this section shall
27 preclude recourse to any other remedy by the claimant against
28 any participating defendant, and shall be undertaken with the
29 understanding that:

30 1. Net economic damages shall be awardable, including,
31 but not limited to, past and future medical expenses and 80

1 percent of wage loss and loss of earning capacity, offset by
2 any collateral source payments.

3 2. Noneconomic damages shall be limited to a maximum
4 of \$500,000 per incident.

5 3. Damages for future economic losses shall be awarded
6 to be paid by periodic payments pursuant to s. 766.202(8) and
7 shall be offset by future collateral source payments.

8 4. Punitive damages may be awarded by the arbitration
9 panel for conduct which is willful, wanton, gross or flagrant,
10 reckless, or consciously indifferent to the rights of the
11 resident. Upon such finding, the judgment for the total amount
12 of punitive damages awarded to a claimant may not exceed three
13 times the amount of compensatory damages awarded to each
14 person entitled thereto by the arbitrators. Any award of
15 punitive damages shall be equally divided between the claimant
16 and the Quality Care Improvement Fund and awarded pursuant to
17 paragraphs (3)(b)-(e).

18 5. The defendant shall be responsible for the payment
19 of interest on all accrued damages with respect to which
20 interest would be awarded at trial.

21 6. The defendant shall pay the claimant's reasonable
22 attorney's fees and costs, as determined by the arbitration
23 panel, but in no event more than 15 percent of the award,
24 reduced to present value.

25 7. The defendant shall pay all the costs of the
26 arbitration proceeding and the fees of all the arbitrators
27 other than the administrative law judge.

28 8. Each defendant who submits to arbitration under
29 this section shall be jointly and severally liable for all
30 damages assessed pursuant to this section.

31

1 9. The defendant's obligation to pay the claimant's
2 damages shall be for the purpose of arbitration under this
3 section only. A defendant's or claimant's offer to arbitrate
4 shall not be used in evidence or in argument during any
5 subsequent litigation of the claim following the rejection
6 thereof. Once arbitration has been selected by the parties, it
7 shall be with the understanding and agreement that the
8 defendants do not contest liability, and the issue to be
9 determined in this regard shall be the amount of compensatory
10 damages to be awarded to the claimant. The defendant may fully
11 contest liability regarding punitive damages and shall not be
12 deemed to have admitted liability for, or the amount of, any
13 punitive damages.

14 10. The fact of making or accepting an offer to
15 arbitrate shall not be admissible as evidence of liability in
16 any collateral or subsequent proceeding on the claim.

17 11. Any offer by a claimant to arbitrate must be made
18 to each defendant against whom the claimant has made a claim.
19 Any offer by a defendant to arbitrate must be made to each
20 claimant who has joined in the litigation. A defendant who
21 rejects a claimant's offer to arbitrate shall be subject to
22 the provisions of paragraph (2)(c). A claimant who rejects a
23 defendant's offer to arbitrate shall be subject to the
24 provisions of paragraph (2)(d).

25 12. The hearing shall be conducted by all of the
26 arbitrators, but a majority may determine any question of fact
27 and render a final decision. The chief arbitrator shall
28 decide all evidentiary matters.

29
30 The provisions of this paragraph shall not preclude settlement
31 at any time by mutual agreement of the parties.

1 (g) Any issue between the defendant and the
2 defendant's insurer or self-insurer as to who shall control
3 the defense of the claim and any responsibility for payment of
4 an arbitration award shall be determined under existing
5 principles of law; provided that the insurer or self-insurer
6 shall not offer to arbitrate or accept a claimant's offer to
7 arbitrate without the written consent of the defendant.

8 (h) The Division of Administrative Hearings is
9 authorized to promulgate rules to effect the orderly and
10 efficient processing of the arbitration procedures of this
11 section.

12 (i) Rules promulgated by the Division of
13 Administrative Hearings pursuant to this section, s. 120.54,
14 or s. 120.65 may authorize any reasonable sanctions except
15 contempt for violation of the rules of the division or failure
16 to comply with a reasonable order issued by an administrative
17 law judge, which is not under judicial review.

18 (2) The following provisions shall govern when
19 voluntary binding arbitration is not offered or accepted:

20 (a) A proceeding for voluntary binding arbitration is
21 an alternative to judicial proceedings once agreed to by the
22 parties. If not offered or accepted, however, the provisions
23 of paragraph (b) shall apply.

24 (b) If neither party requests voluntary binding
25 arbitration, the claim shall proceed in the judicial process.
26 In such judicial process, the provisions of s. 768.79 shall
27 apply.

28 (c) If the defendant refuses a claimant's offer of
29 voluntary binding arbitration under this section:

30 1. The claim shall proceed in the judicial process
31 without limitation upon damages.

1 2. The claimant's award shall be reduced by any
2 damages recovered by the claimant from arbitrating
3 codefendants following arbitration.

4 (d) If the claimant rejects a defendant's offer to
5 enter voluntary binding arbitration under this section:

6 1. The claim shall proceed in the judicial process
7 without limitation upon damages.

8 2. The claimant's award shall be reduced by any
9 damages recovered by the claimant from arbitrating
10 codefendants following arbitration.

11 3. Notwithstanding any other law to the contrary,
12 punitive damages may not exceed three times the amount of
13 compensatory damages awarded to each person entitled thereto
14 by the trier of fact and the amount shall be divided equally
15 between the claimant and the Quality of Long-Term Care
16 Facility Improvement Trust Fund, in accordance with the
17 following provisions:

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

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

31

1 c. The Department of Banking and Finance shall collect
2 or cause to be collected all payments due the state under this
3 section. Such payments are made to the Comptroller and
4 deposited in the appropriate fund specified in this
5 subsection.

6 d. If the full amount of punitive damages awarded
7 cannot be collected, the claimant and the other recipient
8 designated pursuant to this subsection are each entitled to a
9 proportionate share of the punitive damages collected.

10 (3)(a)1. In the event that neither the claimant nor
11 the defendant request arbitration under this section, then
12 notwithstanding any other provision of law to the contrary, in
13 any actions arising under this part and involving the award of
14 punitive damages, the judgment for the total amount of
15 punitive damages awarded to a claimant may not exceed three
16 times the amount of compensatory damages awarded to each
17 person entitled thereto by the trier of fact, except as
18 provided in subparagraph 2. This paragraph does not apply to
19 any class action.

20 2. If any award for punitive damages exceeds the
21 limitation specified in subparagraph 1., the award is presumed
22 to be excessive and the defendant is entitled to remittitur of
23 the amount in excess of the limitation unless the claimant
24 demonstrates to the court by clear and convincing evidence
25 that the award is not excessive in light of the facts and
26 circumstances that were presented to the trier of fact. The
27 court shall give great weight as a mitigating factor to the
28 infrequency or lack of severity of prior claims against the
29 defendant.

30 3. The jury may not be instructed or informed as to
31 the provisions of this subsection.

1 (b) The amount of punitive damages awarded to each
2 claimant shall be equally divided between the claimant and the
3 Quality of Long-Term Care Facility Improvement Trust Fund, in
4 accordance with the following:

5 1. The clerk of the court shall transmit a copy of the
6 jury verdict to the State Treasurer by certified mail. In the
7 final judgment the court shall order the percentages of the
8 award, payable as provided herein.

9 2. A settlement agreement entered into between the
10 original parties to the action after a verdict has been
11 returned must provide a proportionate share payable to the
12 fund specified herein. Such proportionate share shall be
13 determined by prorating the amount of the settlement between
14 compensatory and punitive damages in the same ratio as the
15 respective portions of the damages awarded in the verdict.
16 That portion of the prorated punitive damages that exceeds
17 three times the prorated compensatory damages shall be the
18 amount of the proportionate share to be divided as provided
19 herein.

20 3. The Department of Banking and Finance shall collect
21 or cause to be collected all payments due the state under this
22 section. Such payments shall be made to the Comptroller and
23 deposited in the appropriate fund specified in this
24 subsection.

25 4. If the full amount of punitive damages awarded
26 cannot be collected, the claimant and the other recipient
27 designated pursuant to this subsection are each entitled to a
28 proportional share of the punitive damages collected.

29 Section 10. Effective October 1, 2001, and applicable
30 to causes of action accruing on or after that date, section
31 400.0239, Florida Statutes, is created to read:

1 400.0239 Arbitration to allocate responsibility.--
2 (1) This section applies when more than one defendant
3 has participated in voluntary binding arbitration pursuant to
4 s. 400.0238.
5 (2) Within 20 days after the determination of damages
6 by the arbitration panel in the first arbitration proceeding,
7 those defendants who have agreed to voluntary binding
8 arbitration shall submit any dispute among them regarding the
9 apportionment of financial responsibility to a separate
10 binding arbitration proceeding. Such proceeding shall be with
11 a panel of three arbitrators, which panel shall consist of the
12 chief arbitrator who presided in the first arbitration
13 proceeding, who shall serve as the chief arbitrator, and two
14 arbitrators appointed by the defendants. If the defendants
15 cannot agree on their selection of arbitrators within 20 days
16 after the determination of damages by the arbitration panel in
17 the first arbitration proceeding, selection of the arbitrators
18 shall be in accordance with chapter 682.
19 (3) The chief arbitrator shall convene the arbitrators
20 for the purpose of determining allocation of responsibility
21 among multiple defendants within 65 days after the
22 determination of damages by the arbitration panel in the first
23 arbitration proceeding.
24 (4) The arbitration panel shall allocate financial
25 responsibility among all defendants named in the notice of
26 intent to initiate litigation, regardless of whether the
27 defendant has submitted to arbitration. The defendants in the
28 arbitration proceeding shall pay their proportionate share of
29 the economic and noneconomic damages awarded by the
30 arbitration panel. All defendants in the arbitration
31 proceeding shall be jointly and severally liable for any

1 damages assessed in arbitration. The determination of the
2 percentage of fault of any defendant not in the arbitration
3 proceeding is not binding against the plaintiff or that
4 defendant, and is not admissible in any subsequent legal
5 proceeding.

6 (5) Payment by the defendants of the damages awarded
7 by the arbitration panel in the first arbitration proceeding
8 shall extinguish those defendants' liability to the claimant
9 and shall also extinguish those defendants' liability for
10 contribution to any defendants who did not participate in
11 arbitration.

12 (6) Any defendant paying damages assessed under this
13 section or s. 400.0238 shall have an action for contribution
14 against any nonarbitrating person whose negligence contributed
15 to the injury.

16 Section 11. Effective October 1, 2001, and applicable
17 to causes of action accruing on or after that date, section
18 400.024, Florida Statutes, is created to read:

19 400.024 Misarbitration.--

20 (1) At any time during the course of voluntary binding
21 arbitration of a claim under s. 400.0238, the chief arbitrator
22 on the arbitration panel, if he or she determines that
23 agreement cannot be reached, may dissolve the arbitration
24 panel and appoint two new arbitrators from lists of three to
25 five names provided by each party to the arbitration. Not more
26 than one arbitrator shall be appointed from the list provided
27 by any party.

28 (2) Upon appointment of the new arbitrators,
29 arbitration shall proceed at the direction of the chief
30 arbitrator in accordance with ss. 400.0238-400.0242.

31

1 (3) At any time after the allocation arbitration
2 hearing under s. 400.0239 has concluded, the chief arbitrator
3 on the arbitration panel may dissolve the arbitration panel
4 and declare the proceedings concluded if he or she determines
5 that agreement cannot be reached.

6 Section 12. Effective October 1, 2001, and applicable
7 to causes of action accruing on or after that date, section
8 400.0241, Florida Statutes, is created to read:

9 400.0241 Payment of arbitration award.--

10 (1) Within 20 days after the determination of damages
11 by the arbitration panel pursuant to s. 400.0238, the
12 defendant shall:

13 (a) Pay the arbitration award, including interest at
14 the legal rate, to the claimant; or

15 (b) Submit any dispute among multiple defendants to
16 arbitration as provided in s. 400.0239.

17 (2) Commencing 90 days after the award rendered in the
18 arbitration procedure under s. 400.0238, such award shall
19 accrue interest at the rate of 18 percent per year.

20 Section 13. Effective October 1, 2001, and applicable
21 to causes of action accruing on or after that date, section
22 400.0242, Florida Statutes, is created to read:

23 400.0242 Appeal of arbitration award.--

24 (1) An arbitration award and an allocation of
25 financial responsibility are final agency action for purposes
26 of s. 120.68. Any appeal must be filed in the district court
27 of appeal for the district in which the arbitration took
28 place, is limited to review of the record, and must otherwise
29 proceed in accordance with s. 120.68. The amount of an
30 arbitration award or an order allocating financial
31 responsibility, the evidence in support of either, and the

1 procedure by which either is determined are subject to
2 judicial scrutiny only in a proceeding instituted under this
3 subsection.

4 (2) An appeal does not operate to stay an arbitration
5 award, and an arbitration panel, member of an arbitration
6 panel, or circuit court shall not stay an arbitration award.
7 The district court of appeal may order a stay to prevent
8 manifest injustice, but the court shall not abrogate the
9 provisions of s. 400.0241(2).

10 (3) Any party to an arbitration proceeding may enforce
11 an arbitration award or an allocation of financial
12 responsibility by filing a petition in the circuit court for
13 the circuit in which the arbitration took place. A petition
14 may not be granted unless the time for appeal has expired. If
15 an appeal has been taken, a petition may not be granted with
16 respect to an arbitration award or an allocation of financial
17 responsibility which has been stayed.

18 (4) If the petitioner establishes the authenticity of
19 the arbitration award or the allocation of financial
20 responsibility, shows that the time for appeal has expired,
21 and demonstrates that no stay is in place, the court shall
22 enter such orders and judgments as are required to carry out
23 the terms of the arbitration award or allocation of financial
24 responsibility. Such orders are enforceable by the contempt
25 powers of the court, and execution will issue, upon the
26 request of a party, for such judgments.

27 Section 14. Section 400.0245, Florida Statutes, is
28 created to read:

29 400.0245 Adverse action against employee for
30 disclosing information of specified nature prohibited;
31 employee remedy and relief.--

1 (1) SHORT TITLE.--This section may be cited as the
2 "Nursing Home Facility Whistleblower's Act."

3 (2) LEGISLATIVE INTENT.--It is the intent of the
4 Legislature to prevent nursing home facilities or independent
5 contractors from taking retaliatory action against an employee
6 who reports to an appropriate person or agency violations of
7 law on the part of a facility or independent contractor that
8 create a substantial and specific danger to a nursing home
9 facility resident's health, safety, or welfare. It is further
10 the intent of the Legislature to prevent nursing home
11 facilities or independent contractors from taking retaliatory
12 action against any person who discloses information to an
13 appropriate agency alleging improper use of or gross waste of
14 governmental funds, or any other abuse or gross neglect of
15 duty on the part of a nursing home facility.

16 (3) DEFINITIONS.--As used in this section, unless
17 otherwise specified, the following words or terms shall have
18 the meanings indicated:

19 (a) "Adverse personnel action" means the discharge,
20 suspension, transfer, or demotion of any employee or the
21 withholding of bonuses, the reduction in salary or benefits,
22 or any other adverse action taken against an employee within
23 the terms and conditions of employment by a nursing home
24 facility or independent contractor.

25 (b) "Agency" means any state, regional, county, local,
26 or municipal government entity, whether executive, judicial,
27 or legislative; or any official, officer, department,
28 division, bureau, commission, authority, or political
29 subdivision thereof.

30 (c) "Employee" means a person who performs services
31 for, and under the control and direction of, or contracts

1 with, a nursing home facility or independent contractor for
2 wages or other remuneration.

3 (d) "Gross mismanagement" means a continuous pattern
4 of managerial abuses, wrongful or arbitrary and capricious
5 actions, or fraudulent or criminal conduct which may have a
6 substantial adverse economic impact.

7 (e) "Independent contractor" means a person who is
8 engaged in any business and enters into a contract with a
9 nursing home facility.

10 (4) ACTIONS PROHIBITED.--

11 (a) A nursing home facility or an independent
12 contractor shall not dismiss, discipline, or take any other
13 adverse personnel action against an employee for disclosing
14 information pursuant to the provisions of this section.

15 (b) A nursing home facility or an independent
16 contractor shall not take any adverse action that affects the
17 rights or interests of a person in retaliation for the
18 person's disclosure of information under this section.

19 (c) The provisions of this subsection shall not be
20 applicable when an employee or person discloses information
21 known by the employee or person to be false.

22 (5) NATURE OF INFORMATION DISCLOSED.--The information
23 disclosed under this section must include:

24 (a) Any violation or suspected violation of any
25 federal, state, or local law, rule, or regulation committed by
26 an employee or agent of a nursing home facility or independent
27 contractor which creates and presents a substantial and
28 specific danger to the nursing home facility resident's
29 health, safety, or welfare.

30 (b) Any act or suspected act of gross mismanagement,
31 malfeasance, misfeasance, gross waste of public funds, or

1 gross neglect of duty committed by an employee or agent of a
2 nursing home facility or independent contractor.

3 (6) TO WHOM INFORMATION DISCLOSED.--The information
4 disclosed under this section must be disclosed to any agency
5 or Federal Government entity or person designated in s.
6 400.022(1)(c) having the authority to investigate, police,
7 manage, or otherwise remedy the violation or act.

8 (7) EMPLOYEES AND PERSONS PROTECTED.--This section
9 protects employees and persons who disclose information on
10 their own initiative in a written and signed complaint; who
11 are requested to participate in an investigation, hearing, or
12 other inquiry conducted by any agency or Federal Government
13 entity; who refuse to participate in any adverse action
14 prohibited by this section; or who initiate a complaint
15 through any appropriate complaint hotline. No remedy or other
16 protection under this section applies to any person who has
17 committed or intentionally participated in committing the
18 violation or suspected violation for which protection under
19 this section is being sought.

20 (8) REMEDIES.--Any person protected by this section
21 may bring a civil action in any court of competent
22 jurisdiction against a nursing home facility for any action
23 prohibited by this section.

24 (9) RELIEF.--In any action brought under this section,
25 the relief may include the following:

26 (a) Reinstatement of the employee to the same position
27 held before the adverse action was commenced or to an
28 equivalent position, or reasonable front pay as alternative
29 relief.

30 (b) Reinstatement of the employee's full fringe
31 benefits and seniority rights, as appropriate.

1 (c) Compensation, if appropriate, for lost wages, lost
2 benefits, or other lost remuneration caused by the adverse
3 action.

4 (d) Payment of reasonable costs, including attorney's
5 fees, to a substantially prevailing employee, or to the
6 prevailing employer if the employee filed a frivolous action
7 in bad faith.

8 (e) Issuance of an injunction, if appropriate, by a
9 court of competent jurisdiction.

10 (f) Temporary reinstatement to the employee's former
11 position or to an equivalent position, pending the final
12 outcome on the complaint, if an employee complains of being
13 discharged in retaliation for a protected disclosure and if a
14 court of competent jurisdiction determines that the disclosure
15 was not made in bad faith or for a wrongful purpose or
16 occurred after a nursing home facility's or independent
17 contractor's initiation of a personnel action against the
18 employee which includes documentation of the employee's
19 violation of a disciplinary standard or performance
20 deficiency.

21 (10) PENALTIES.--

22 (a) A nursing home facility determined by the agency
23 to have committed an action prohibited under subsection (4) is
24 subject to the penalties set forth in s. 400.23(8)(a).

25 (b) In addition, a violation of subsection (4)
26 constitutes a felony of the third degree, punishable as
27 provided in s. 775.082 and s. 775.083.

28 (11) REWARD.--Any person protected by this section who
29 discloses information as provided in paragraph (5)(b) related
30 to gross waste of public funds shall be awarded \$10,000, which
31 sum shall be paid from the Resident Protection Trust Fund.

1 (12) POSTING OF NOTICE.--Each facility licensed under
2 this part shall prominently post notice of the protections,
3 rewards, and remedies provided under this section, along with
4 the telephone numbers for making reports, and shall provide
5 such notice to all employees of the facility within 30 days
6 after the effective date of this section and to all new
7 employees hired subsequent to that date.

8 (13) DEFENSES.--It shall be an affirmative defense to
9 any action brought pursuant to this section that the adverse
10 action was predicated upon grounds other than, and would have
11 been taken absent, the employee's or person's exercise of
12 rights protected by this section.

13 (14) EXISTING RIGHTS.--This section does not diminish
14 the rights, privileges, or remedies of an employee under any
15 other law or rule or under any collective bargaining agreement
16 or employment contract.

17 Section 15. Subsections (2) and (5) of section
18 400.071, Florida Statutes, are amended, subsections (9) and
19 (10) are renumbered as subsections (10) and (11),
20 respectively, and a new subsection (9) is added to said
21 section, to read:

22 400.071 Application for license.--

23 (2) The application shall be under oath and shall
24 contain the following:

25 (a) The name, address, and social security number of
26 the applicant if an individual; if the applicant is a firm,
27 partnership, or association, its name, address, and employer
28 identification number (EIN), and the name and address of any
29 controlling interest ~~every member; if the applicant is a~~
30 ~~corporation, its name, address, and employer identification~~
31 ~~number (EIN), and the name and address of its director and~~

1 ~~officers and of each person having at least a 5 percent~~
2 ~~interest in the corporation; and the name by which the~~
3 ~~facility is to be known.~~

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

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

15 (d) The name of the person or persons under whose
16 management or supervision the facility will be conducted and
17 the name of its licensed administrator.

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

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

30 ~~(g)(f)~~ Information relating to the number, experience,
31 and training of the employees of the facility ~~and of the moral~~

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

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

25 (5) The applicant shall furnish satisfactory proof of
26 financial ability to operate ~~and conduct~~ the nursing home in
27 accordance with the requirements of this part and all rules
28 adopted under this part, and the agency shall establish
29 standards for this purpose, including standards for the
30 information required to be reported pursuant to paragraph
31 (2)(e). The agency also shall establish documentation

1 requirements, to be completed by each applicant, that show
2 anticipated facility revenues and expenditures, the basis for
3 financing the anticipated cash-flow requirements of the
4 facility, and an applicant's access to contingency financing.

5 (9) Effective on the effective date of this section,
6 as a condition of licensure, each facility must establish and
7 submit with its application a plan for quality assurance and
8 for conducting risk management.

9 Section 16. Section 400.102, Florida Statutes, is
10 amended to read:

11 400.102 Action by agency against licensee; grounds.--

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

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

16 (b) Misappropriation or conversion of the property of
17 a resident of the facility;

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

22 (d) Violation of provisions of this part or rules
23 adopted under this part; ~~or~~

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

27 (f) A demonstrated pattern of deficient practice.
28 Deficiencies found during the first 6 months after a change of
29 ownership to an unrelated party shall not be counted toward a
30 pattern of deficient practice under this paragraph. The agency
31 may adopt rules to implement this paragraph.

1 (g) Failure to pay any outstanding fines assessed by
2 final agency order or fines assessed by the Health Care
3 Financing Administration pursuant to requirements for federal
4 Medicare certification;

5 (h) Exclusion from the Medicare or Medicaid programs;
6 or

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

9 (2) If the agency has reasonable belief that any of
10 such conditions exist, it shall take the following action:

11 (a) In the case of an applicant for original
12 licensure, denial action as provided in s. 400.121.

13 (b) In the case of an applicant for relicensure or a
14 current licensee, administrative action as provided in s.
15 400.121 or injunctive action as authorized by s. 400.125.

16 (c) In the case of a facility operating without a
17 license, injunctive action as authorized in s. 400.125.

18

19 Agency action for violations of this section shall not
20 preclude agency action under s. 400.23(8).

21 Section 17. Subsections (4) through (10) are added to
22 section 400.118, Florida Statutes, to read:

23 400.118 Quality assurance; early warning system;
24 monitoring; rapid response teams; verification of nursing
25 staff; provision of care and services.--

26 (4) Each time a staff person of the agency conducting
27 an inspection, an investigation of a complaint, an unannounced
28 facility review, or a monitoring visit under this part is in a
29 nursing home facility, the staff person shall verify, record,
30 and report to the agency the number of certified nursing
31 assistants, the number of licensed practical nurses, and the

1 number of registered nurses on duty. The staff person shall
2 report the date and time of the visit, and the facility census
3 at that time, to the agency.

4 (5) Each resident must receive and the facility must
5 provide the necessary care and services to attain or maintain
6 the highest practicable physical, mental, and psychosocial
7 well-being, in accordance with the comprehensive assessment
8 and plan of care.

9 (a) Activities of daily living.--Based on the
10 comprehensive assessment of a resident, the facility must
11 ensure that:

12 1. The resident's abilities in activities of daily
13 living do not diminish unless circumstances of the
14 individual's clinical condition demonstrate that diminution
15 was unavoidable. These abilities include the resident's
16 ability to bathe, dress, and groom; transfer and ambulate;
17 toilet; eat; and use speech, language, or other functional
18 communication systems.

19 2. The resident is given the appropriate treatment and
20 services to maintain or improve his or her abilities specified
21 in subparagraph 1.

22 3. A resident who is unable to carry out activities of
23 daily living receives the necessary services to maintain good
24 nutrition, grooming, and personal and oral hygiene.

25 (b) Vision and hearing.--To ensure that residents
26 receive proper treatment and assistive devices to maintain
27 vision and hearing abilities, the facility must, if necessary,
28 assist the resident in making appointments with, and by
29 arranging for transportation to and from, the office of a
30 practitioner specializing in the treatment of vision or
31 hearing impairment or the office of a professional

1 specializing in the provision of vision or hearing assistive
2 devices.

3 (c) Pressure sores.--Based on the comprehensive
4 assessment of a resident, the facility must ensure that a
5 resident who enters the facility without pressure sores does
6 not develop pressure sores unless the individual's clinical
7 condition demonstrates that they were unavoidable; and a
8 resident having pressure sores receives necessary treatment
9 and services to promote healing, prevent infection, and
10 prevent new sores from developing.

11 (d) Urinary incontinence.--Based on the comprehensive
12 assessment of a resident, the facility must ensure that a
13 resident who enters the facility without an indwelling
14 catheter is not catheterized unless the resident's clinical
15 condition demonstrates that catheterization was necessary; and
16 a resident who is incontinent of bladder receives appropriate
17 treatment and services to prevent urinary tract infections and
18 to restore as much normal bladder function as possible.

19 (e) Range of motion.--Based on the comprehensive
20 assessment of a resident, the facility must ensure that a
21 resident who enters the facility without a limited range of
22 motion does not experience reduction in range of motion unless
23 the resident's clinical condition demonstrates that a
24 reduction in range of motion is unavoidable; and a resident
25 with a limited range of motion receives appropriate treatment
26 and services to increase range of motion or to prevent further
27 decrease in range of motion.

28 (f) Mental and psychosocial functioning.--Based on the
29 comprehensive assessment of a resident, the facility must
30 ensure that a resident who displays mental or psychosocial
31 adjustment difficulty receives appropriate treatment and

1 services to correct the assessed problem; and a resident whose
2 assessment did not reveal a mental or psychosocial adjustment
3 difficulty does not display a pattern of decreased social
4 interaction or increased withdrawn, angry, or depressive
5 behaviors, unless the resident's clinical condition
6 demonstrates that such a pattern was unavoidable.

7 (g) Nasogastric tubes.--Based on the comprehensive
8 assessment of a resident, the facility must ensure that a
9 resident who has been able to eat enough alone or with
10 assistance is not fed by a nasogastric tube unless the
11 resident's clinical condition demonstrates that use of a
12 nasogastric or gastrostomy tube was unavoidable; and the
13 resident receives the appropriate treatment and services to
14 prevent aspiration pneumonia, diarrhea, vomiting, dehydration,
15 metabolic abnormalities, and nasal-pharyngeal ulcers and to
16 restore, if possible, normal eating skills.

17 (h) Accidents.--The facility must ensure that the
18 residents' environment remains as free of accident hazards as
19 is possible and that each resident receives adequate
20 supervision and assistance devices to prevent accidents.

21 (i) Nutrition.--Based on the comprehensive assessment
22 of a resident, the facility must ensure that a resident
23 maintains acceptable parameters of nutritional status, such as
24 body weight and protein levels, unless the resident's clinical
25 condition demonstrates that this is not possible, and receives
26 a therapeutic diet when there is a nutritional problem.

27 (j) Hydration.--The facility must provide each
28 resident with sufficient fluid intake to maintain proper
29 hydration and health.

30 (k) Special needs.--The facility must ensure that
31 residents receive proper treatment and care for the following

1 special services: injections; parenteral and enteral fluids;
2 colostomy, ureterostomy, or ileostomy care; tracheostomy care;
3 tracheal suctioning; respiratory care; foot care; and
4 prostheses.

5 (1) Drug regimen.--

6 1. The facility must ensure that a resident's drug
7 regimen is free from unnecessary drugs. An unnecessary drug is
8 any drug when used in excessive doses, including duplicate
9 drug therapy; or for excessive duration; or without adequate
10 monitoring; or without adequate indications for its use; or in
11 the presence of adverse consequences which indicate the dose
12 should be reduced or discontinued; or any combination of such
13 uses.

14 2. Based on a comprehensive assessment of a resident,
15 the facility must ensure that residents who have not used
16 antipsychotic drugs are not given these drugs unless
17 antipsychotic drug therapy is necessary to treat a specific
18 condition as diagnosed and documented in the clinical record;
19 and residents who use antipsychotic drugs receive gradual dose
20 reductions, and behavioral interventions, unless clinically
21 contraindicated, in an effort to discontinue these drugs.

22 3. The facility must ensure that a resident's drug
23 regimen is free of any significant medication errors. The
24 facility must ensure that the facility medication error rate
25 is less than 5 percent.

26 (6) A resident who has not been adjudged incapacitated
27 shall be assisted to participate in the planning of all
28 medical treatment and in the development of the plan of care.

29 (7) A resident who refuses medication, treatment, or
30 other components of the plan of care shall be advised of the

31

1 potential consequences of such actions. The resident's refusal
2 shall be documented in the medical record.

3 (8) The legal representative of a resident who has
4 been adjudged incapacitated and unable to make decisions about
5 medication, treatment, or other components of the plan of care
6 must be informed in writing of the resident's proposed plan of
7 care and the consequences of refusal of medication, treatment,
8 or other components of the plan of care.

9 (9) If a resident refuses medication, treatment, or
10 other components of the plan of care, the nursing home
11 facility must continue to provide other services that the
12 resident agrees to, in accordance with the resident's plan of
13 care.

14 (10) All refusals of medication, treatment, or other
15 components of the plan of care by the resident or his or her
16 legal representative shall be acknowledged in writing and
17 signed by the resident's physician.

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

20 400.1183 Resident grievance and complaint procedures.--

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

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

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

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

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

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

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

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

13 (4) The agency shall investigate any complaint or
14 grievance at any time.

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

18 Section 19. Subsections (2) and (5) of section
19 400.121, Florida Statutes, are amended, and subsections (7)
20 and (8) are added to said section, to read:

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

24 (1) The agency may deny, revoke, or suspend a license
25 or impose an administrative fine, not to exceed \$500 per
26 violation per day, for a violation of any provision of s.
27 400.102(1). All hearings shall be held within the county in
28 which the licensee or applicant operates or applies for a
29 license to operate a facility as defined herein.

30 (2) Except as provided in s. 400.23(8), a \$500 fine
31 shall be imposed for each violation of this part ~~The agency,~~

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

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

24 (7) The agency may deny an application based on the
25 disclosure of information required in s. 400.07(2)(e) if such
26 information demonstrates that any controlling interest has
27 been the subject of an adverse action by a regulatory
28 authority of any jurisdiction, including its agencies or
29 subdivisions, for a violation that would constitute a
30 violation under Florida law. The licensing authority's
31 acceptance of a relinquishment of licensure, stipulation,

1 consent order, or other settlement, offered in response to or
2 in anticipation of the filing of charges against the license,
3 shall be construed as an adverse action against the license.
4 If the adverse action solely involves the management company,
5 the applicant or licensee shall be given 30 days to replace
6 the management company with a company that has not been the
7 subject of an adverse action as described in this subsection.
8 The agency may adopt rules as necessary to implement this
9 subsection.

10 (8) Administrative proceedings challenging agency
11 licensure enforcement actions shall be reviewed on the basis
12 of the facts and conditions that resulted in the initial
13 agency action.

14 Section 20. Section 400.141, Florida Statutes, is
15 amended to read:

16 400.141 Administration and management of nursing home
17 facilities.--Every licensed facility shall comply with all
18 applicable standards and rules of the agency and shall:

19 (1) Be under the administrative direction and charge
20 of a licensed administrator.

21 (2) Appoint a medical director licensed pursuant to
22 chapter 458 or chapter 459 who meets the criteria established
23 by the Florida Medical Directors Association adopted by agency
24 rule. The agency may establish by rule more specific criteria
25 for the appointment of a medical director.

26 (3) Have available the regular, consultative, and
27 emergency services of physicians licensed by the state.

28 (4) Have sufficient nursing staff, on a 24-hour basis,
29 to provide nursing and related services to residents in order
30 to maintain the highest practicable physical, mental, and
31

1 psychosocial well-being of each resident, as determined by
2 resident assessments and plans of care.

3 (5) Conduct initially and periodically a
4 comprehensive, accurate, standardized, reproducible assessment
5 of each resident's functional capacity and care plans in
6 conformance with the federal regulations contained in Title 42
7 of the Code of Federal Regulation. Each assessment must be
8 conducted or coordinated by a registered nurse who signs and
9 certifies the accuracy of the assessment.

10 (6) Employ registered nurses and licensed practical
11 nurses who are responsible for the proper practice of
12 professional nursing and practical nursing, respectively, in
13 accordance with chapter 464.

14 (7) Designate as the director of nursing or the
15 assistant director of nursing persons who have had a least 12
16 months of experience in nursing service supervision or
17 administration, and education or work experience beyond the
18 minimum required for licensure in rehabilitative or geriatric
19 nursing, before assuming responsibility for the total nursing
20 service program in a nursing home.

21 (8) Designate as the charge nurse on duty a person who
22 has the ability to recognize and respond to significant
23 changes in a resident's condition.

24 (9)~~(4)~~ Provide for resident use of a community
25 pharmacy as specified in s. 400.022(1)(q). Any other law to
26 the contrary notwithstanding, a registered pharmacist licensed
27 in Florida, that is under contract with a facility licensed
28 under this chapter, shall repackage a nursing facility
29 resident's bulk prescription medication which has been
30 packaged by another pharmacist licensed in any state in the
31 United States into a unit dose system compatible with the

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

23 (10)~~(5)~~ Provide for the access of the facility
24 residents to dental and other health-related services,
25 recreational services, rehabilitative services, and social
26 work services appropriate to their needs and conditions and
27 not directly furnished by the licensee. When a geriatric
28 outpatient nurse clinic is conducted in accordance with rules
29 adopted by the agency, outpatients attending such clinic shall
30 not be counted as part of the general resident population of
31 the nursing home facility, nor shall the nursing staff of the

1 geriatric outpatient clinic be counted as part of the nursing
2 staff of the facility, until the outpatient clinic load
3 exceeds 15 a day.

4 (11)~~(6)~~ Be allowed and encouraged by the agency to
5 provide other needed services under certain conditions. If the
6 facility has a standard licensure status, and has had no class
7 I or class II deficiencies during the past 2 years or has been
8 awarded a Gold Seal under the program established in s.
9 400.235, it may be encouraged by the agency to provide
10 services, including, but not limited to, respite and adult day
11 services, which enable individuals to move in and out of the
12 facility. A facility is not subject to any additional
13 licensure requirements for providing these services. Respite
14 care may be offered to persons in need of short-term or
15 temporary nursing home services. Respite care must be provided
16 in accordance with this part and rules adopted by the agency.
17 However, the agency shall, by rule, adopt modified
18 requirements for resident assessment, resident care plans,
19 resident contracts, physician orders, and other provisions, as
20 appropriate, for short-term or temporary nursing home
21 services. The agency shall allow for shared programming and
22 staff in a facility which meets minimum standards and offers
23 services pursuant to this subsection, but, if the facility is
24 cited for deficiencies in patient care, may require additional
25 staff and programs appropriate to the needs of service
26 recipients. A person who receives respite care may not be
27 counted as a resident of the facility for purposes of the
28 facility's licensed capacity unless that person receives
29 24-hour respite care. A person receiving either respite care
30 for 24 hours or longer or adult day services must be included
31 when calculating minimum staffing for the facility. Any costs

1 and revenues generated by a nursing home facility from
2 nonresidential programs or services shall be excluded from the
3 calculations of Medicaid per diems for nursing home
4 institutional care reimbursement.

5 (12)~~(7)~~ If the facility has a standard licensure
6 status or is a Gold Seal facility, exceeds minimum staffing
7 standards, and is part of a retirement community that offers
8 other services pursuant to part III, part IV, or part V, be
9 allowed to share programming and staff. At the time of
10 relicensure, a retirement community that uses this option must
11 demonstrate through staffing records that minimum staffing
12 requirements for the facility were exceeded.

13 (13)~~(8)~~ Maintain the facility premises and equipment
14 and conduct its operations in a safe and sanitary manner.

15 (14)~~(9)~~ If the licensee furnishes food service,
16 provide a wholesome and nourishing diet sufficient to meet
17 generally accepted standards of proper nutrition for its
18 residents and provide such therapeutic diets as may be
19 prescribed by attending physicians. In making rules to
20 implement this subsection, the agency shall be guided by
21 standards recommended by nationally recognized professional
22 groups and associations with knowledge of dietetics.

23 (15)~~(10)~~ Keep full records of resident admissions and
24 discharges; medical and general health status, including
25 medical records, personal and social history, and identity and
26 address of next of kin or other persons who may have
27 responsibility for the affairs of the residents; and
28 individual resident care plans including, but not limited to,
29 prescribed services, service frequency and duration, and
30 service goals. The records shall be open to inspection by the
31 agency.

1 (16) Maintain in the medical record for each resident
2 a daily chart of certified nursing assistant services provided
3 to the resident. This record must be completed
4 contemporaneously with the delivery of care, by the certified
5 nursing assistant caring for the resident. This record must
6 indicate assistance with activities of daily living,
7 assistance with eating, and assistance with drinking, and must
8 record each offering of nutrition and hydration for those
9 residents whose plan of care or assessment indicates a risk
10 for malnutrition or dehydration.

11 ~~(17)(11)~~ Keep such fiscal records of its operations
12 and conditions as may be necessary to provide information
13 pursuant to this part.

14 ~~(18)(12)~~ Furnish copies of personnel records for
15 employees affiliated with such facility, to any other facility
16 licensed by this state requesting this information pursuant to
17 this part. Such information contained in the records may
18 include, but is not limited to, disciplinary matters and any
19 reason for termination. Any facility releasing such records
20 pursuant to this part shall be considered to be acting in good
21 faith and may not be held liable for information contained in
22 such records, absent a showing that the facility maliciously
23 falsified such records.

24 ~~(19)(13)~~ Publicly display a poster provided by the
25 agency containing the names, addresses, and telephone numbers
26 for the state's abuse hotline, the State Long-Term Care
27 Ombudsman, the Agency for Health Care Administration consumer
28 hotline, the Advocacy Center for Persons with Disabilities,
29 the Florida Statewide Advocacy Council, and the Medicaid Fraud
30 Control Unit, with a clear description of the assistance to be
31 expected from each.

1 (20) Submit to the agency information specified in s.
2 400.071(2) relating to management companies within 30 days
3 after the effective date of a management agreement.

4 (21) Submit to the agency by February 1 and August 1
5 of each year and as otherwise requested by the agency
6 information regarding staff-to-resident ratios, staff
7 turnover, and staff stability of the facility, with respect to
8 certified nursing assistants, registered nurses, licensed
9 nurses, the director of nursing, and the facility
10 administrator. For purposes of this reporting:

11 (a) Staff-to-resident ratio is based on the
12 requirements established pursuant to s. 400.23(3)(a) and
13 applicable rules.

14 (b) Staff turnover shall be calculated from the most
15 recent 12-month period ending on the 1st workday of the most
16 recent calendar quarter prior to submission of the
17 information. The turnover rate must be computed quarterly,
18 with the annual rate being the cumulative sum of the quarterly
19 rates. The formula to determine the turnover rate shall be the
20 total number of terminations or separations of nonprobationary
21 employees from employment divided by the total number of staff
22 employed at the end of the period for which the rate is
23 computed, expressed as a percent.

24 (c) Staff turnover shall be reported as one total
25 figure including staff of all classes and shall be reported by
26 the following categories: certified nursing assistants,
27 dietitians, licensed practical nurses, registered nurses,
28 noncertified nursing assistants working for the allowed 4
29 months before certification, therapists, social services
30 staff, recreation staff, activity staff, administrative
31 support personnel, managers, dietary aides, cooks, maintenance

1 personnel, custodial personnel, and any other category of
2 staff necessary for the facility.

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

8 (22) Report monthly the number of vacant beds in the
9 facility that are available for resident occupancy on the day
10 the information is reported.

11 (23) Submit to the agency copies of any settlement,
12 civil verdict, or judgment relating to medical negligence,
13 violation of residents' rights, or wrongful death. Copies must
14 be submitted to the agency within 30 days after the filing
15 with the clerk of the court. The information required in this
16 subsection shall be maintained in the facility's licensure
17 file and in an agency database which is available as a public
18 record.

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

25 Section 21. Section 400.1413, Florida Statutes, is
26 created to read:

27 400.1413 Internal risk management and quality
28 assurance program.--

29 (1) Every licensed facility shall, as part of its
30 administrative functions, establish an internal risk
31 management and quality assurance program, the purpose of which

1 is to assess patient care practices, review and act on
2 facility quality indicators, maintain and review facility
3 incident reports, correct deficiencies cited by the agency,
4 resolve resident grievances, and develop plans of action to
5 correct and respond quickly to identified quality
6 deficiencies.

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

9 (3) The owner of the nursing home shall establish
10 policies and procedures to implement the internal risk
11 management and quality assurance program, which includes:

12 (a) The investigation and analysis of the frequency
13 and causes of general categories and specific types of adverse
14 incidents involving or affecting residents.

15 (b) The development of appropriate measures to
16 minimize the risk of adverse incidents to residents,
17 including, but not limited to:

18 1. Risk management and risk prevention education and
19 training of all nonphysician personnel as follows:

20 a. Such education and training of all nonphysician
21 personnel as part of their initial orientation; and

22 b. At least 3 hours of such education and training
23 annually for all nonphysician personnel in both clinical areas
24 and provision of resident care.

25 2. The analysis of resident grievances that relate to
26 resident care and the quality of clinical services.

27 3. The development and implementation of an incident
28 reporting system based upon the affirmative duty of all health
29 care providers and all agents and employees of the facility to
30 report adverse incidents to the risk manager.

31

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

6 (5) Each internal risk management and quality
7 assurance program shall include the use of incident reports to
8 be filed with the risk manager and the facility administrator.
9 The risk manager shall have free access to all medical records
10 of the licensed facility. As a part of each internal risk
11 management and quality assurance program, the incident reports
12 shall be used to develop categories of incidents which
13 identify problem areas. Once identified, procedures shall be
14 adjusted to correct the problem areas.

15 (6) The nursing home shall report adverse incidents to
16 the agency in a timely manner.

17 (7) For purposes of report to the agency pursuant to
18 this section, the term "adverse incident" means:

19 (a) An event over which facility personnel could
20 exercise control and which is associated in whole or in part
21 with clinical intervention, rather than the condition for
22 which such intervention occurred, and which results in one of
23 the following injuries:

- 24 1. Death.
- 25 2. Brain or spinal damage.
- 26 3. Permanent disfigurement.
- 27 4. Fracture or dislocation of bones or joints.
- 28 5. A resulting limitation of neurological, physical,
29 or sensory function.

1 6. Any condition that required medical attention to
2 which the patient has not given his or her informed consent,
3 including failure to honor advanced directives.

4 7. Any condition that required the transfer of the
5 patient, within or outside the facility, to a unit providing a
6 more acute level of care due to the adverse incident, rather
7 than the resident's condition prior to the adverse incident.

8 (b) Abuse, neglect, or exploitation as defined in s.
9 415.102.

10 (c) Abuse, neglect, or harm as defined in s. 39.01.

11 (d) Resident elopement.

12 (e) Events reported to law enforcement.

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

18 1. The total number of adverse incidents.

19 2. A listing, by category, of the types of adverse
20 incidents and the number of incidents occurring within each
21 category.

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

24 4. Disciplinary action taken against staff,
25 categorized by type of staff involved.

26 5. The facility's failure to comply with state minimum
27 staffing requirements.

28 (b) The information reported to the agency pursuant to
29 paragraph (a) which relates to persons licensed under chapter
30 458, chapter 459, chapter 461, chapter 464, or chapter 466
31 shall be reviewed by the agency. The agency shall determine

1 whether any of the incidents potentially involved conduct by a
2 health care professional who is subject to disciplinary
3 action, in which case the provisions of s. 456.073 shall
4 apply.

5 (c) The report submitted to the agency shall also
6 contain the name of the person responsible for risk management
7 in the facility.

8 (9)(a) The licensed facility shall notify the agency
9 within 1 business day after the occurrence of any of the
10 following:

11 1. The death of a patient.

12 2. Alleged mistreatment of a patient by a certified
13 nursing assistant or licensed nurse.

14 3. Resident elopement.

15 4. Events reported to law enforcement.

16 5. The facility's failure to comply with state minimum
17 staffing requirements.

18 (b) The notification must be made in writing and be
19 provided by facsimile device or overnight mail delivery. The
20 notification must include information regarding the identity
21 of the affected resident, the type of adverse incident, the
22 initiation of an investigation by the facility, and whether
23 the events causing or resulting in the adverse incident
24 represent a potential risk to other residents.

25 (c) The agency may investigate, as it deems
26 appropriate, any such incident and prescribe measures that
27 must or may be taken in response to the incident. The agency
28 shall review each incident and determine whether it
29 potentially involved conduct by the health care professional
30 who is subject to disciplinary action, in which case the
31 provisions of s. 456.073 shall apply.

1 (10) The agency shall have access to all licensed
2 facility records necessary to carry out the provisions of this
3 section.

4 (11) The agency shall review, as part of its licensure
5 inspection process, the internal risk management and quality
6 assurance program at each licensed facility regulated by this
7 section to determine whether the program meets standards
8 established in statutes and rules, whether the program is
9 being conducted in a manner designed to reduce the incidence
10 and severity of adverse incidents, and whether the facility is
11 reporting adverse incidents as required.

12 (12) There shall be no monetary liability on the part
13 of, and no cause of action for damages shall arise against,
14 any risk manager licensed under s. 395.10974, for the
15 implementation and oversight of the internal risk management
16 and quality assurance program in a facility licensed under
17 this chapter as required by this section, or for any act or
18 proceeding undertaken or performed within the scope of the
19 functions of such internal risk management and quality
20 assurance program, if the risk manager acts without
21 intentional fraud.

22 (13) If the agency, through its receipt of the annual
23 reports prescribed in this chapter or through any
24 investigation, has a reasonable belief that conduct by a staff
25 member or employee of a licensed facility is grounds for
26 disciplinary action by the appropriate regulatory board, the
27 agency shall report this fact to such regulatory board.

28 Section 22. Section 400.1415, Florida Statutes, is
29 amended to read:

30 400.1415 Patient records; penalties for alteration.--
31

1 (1) Any person who fraudulently alters, defaces, or
2 falsifies any medical or other nursing home record, or causes
3 or procures any of these offenses to be committed, commits a
4 misdemeanor of the second degree, punishable as provided in s.
5 775.082 or 775.083. Any such offense at a facility shall be
6 subject to a class I citation and fine pursuant to s.
7 400.23(8). Any person authorized under s. 400.19 to enter a
8 nursing home facility who detects or reasonably suspects such
9 offense has occurred must immediately report such information
10 to the local law enforcement agency and state attorney.

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

14 (3) The director of nursing and the licensed nursing
15 home administrator at the facility shall be referred to their
16 respective licensure boards for disciplinary review when a
17 staff person is convicted under subsection (1).

18 (4) A conviction or finding by the agency under
19 subsection (1) is also grounds for an immediate moratorium on
20 admissions.

21 Section 23. Subsection (4) of section 400.19, Florida
22 Statutes, is amended to read:

23 400.19 Right of entry and inspection.--

24 (4) The agency shall conduct unannounced onsite
25 facility reviews following written verification of licensee
26 noncompliance in instances in which a long-term care ombudsman
27 council, pursuant to ss. 400.0071 and 400.0075, has received a
28 complaint and has documented deficiencies in resident care or
29 in the physical plant of the facility that threaten the
30 health, safety, or security of residents, or when the agency
31 documents through inspection that conditions in a facility

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

10 Section 24. Paragraph (a) of subsection (5) of section
11 400.191, Florida Statutes, is amended to read:

12 400.191 Availability, distribution, and posting of
13 reports and records.--

14 (5) Every nursing home facility licensee shall:

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

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

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

27 Section 25. Subsection (2) of section 400.211, Florida
28 Statutes, is amended, and subsection (4) is added to section,
29 to read:

30 400.211 Persons employed as nursing assistants;
31 certification requirement.--

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

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

7 (b) Persons who have been positively verified as
8 actively certified and on the registry in another state and
9 who have not been found to have been convicted of or entered a
10 plea of nolo contendere or guilty to abuse, neglect, or
11 exploitation in another state, regardless of adjudication with
12 ~~no findings of abuse; or~~

13 (c) Persons who have preliminarily passed the state's
14 certification exam.

15
16 The certification requirement must be met within 4 months
17 after initial employment as a nursing assistant in a licensed
18 nursing facility.

19 (4) When employed in a nursing home facility for a
20 12-month period or longer, a certified nursing assistant, to
21 maintain certification, shall submit to a performance review
22 every 12 months and shall be given regular inservice education
23 based on the outcome of such review. The inservice training
24 shall be provided by the facility and must:

25 (a) Be sufficient to ensure the continuing competence
26 of the certified nursing assistant, but must be no less than
27 18 hours per year.

28 (b) Include, at a minimum:

29 1. Assisting residents with eating and proper feeding
30 techniques.

31 2. Principles of adequate hydration.

1 3. Assisting and responding to the cognitively
2 impaired residents or residents with difficult behaviors.

3 4. Caring for resident at the end of life.

4 5. Recognizing changes that place a resident at risk
5 for pressure ulcers and falls.

6 (c) Address areas of weakness as determined in the
7 certified nursing assistant's performance reviews and may
8 address the special needs of residents as determined by the
9 nursing home facility staff.

10 Section 26. Subsections (2), (3), (7), and (8) of
11 section 400.23, Florida Statutes, are amended, and subsection
12 (10) is added to said section, to read:

13 400.23 Rules; evaluation and deficiencies; licensure
14 status.--

15 (2) Pursuant to the intention of the Legislature, the
16 agency, in consultation with the Department of Health and the
17 Department of Elderly Affairs, shall adopt and enforce rules
18 to implement this part, which shall include reasonable and
19 fair standards and procedures relating ~~criteria in relation~~
20 to:

21 (a) The location and construction of the facility;
22 including fire and life safety, plumbing, heating, cooling,
23 lighting, ventilation, and other housing conditions which will
24 ensure the health, safety, and comfort of residents, including
25 an adequate call system. The agency shall establish standards
26 for facilities and equipment to increase the extent to which
27 new facilities and a new wing or floor added to an existing
28 facility after July 1, 1999, are structurally capable of
29 serving as shelters only for residents, staff, and families of
30 residents and staff, and equipped to be self-supporting during
31 and immediately following disasters. ~~The agency shall work~~

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

19 (b) The number and qualifications of all personnel,
20 including management, medical, nursing, and other professional
21 personnel, and nursing assistants, orderlies, and support
22 personnel, having responsibility for any part of the care
23 given residents.

24 (c) All sanitary conditions within the facility and
25 its surroundings, including water supply, sewage disposal,
26 food handling, and general hygiene which will ensure the
27 health and comfort of residents.

28 (d) The equipment essential to the health and welfare
29 of the residents.

30 (e) A uniform accounting system.

31

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

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

30 (h) The implementation of the consumer satisfaction
31 surveys required under s. 400.0225; the availability,

1 distribution, and posting of reports and records required
2 under s. 400.191; and the Gold Seal program established under
3 s. 400.235.

4 (i) An adequate quality assurance process and risk
5 management procedure.

6 ~~(3)(a)1. The agency shall adopt rules providing for~~
7 ~~the minimum staffing requirements for direct care staff~~
8 ~~nursing homes. These requirements shall include, for each~~
9 ~~nursing home facility, a minimum certified nursing assistant~~
10 ~~staffing of 2.9 hours per resident per day, with no single~~
11 ~~shift having less than one certified nursing assistant per 15~~
12 ~~residents; and a minimum licensed nursing staffing of 1.0 hour~~
13 ~~per resident per day, with no single shift having less than~~
14 ~~one licensed nurse per 40 residents and 0.5 hours of~~
15 ~~registered nurse staffing per resident per day. Each nursing~~
16 ~~home shall document, including evening and night shifts and~~
17 ~~weekends. Agency rules shall specify requirements for~~
18 ~~documentation of compliance with staffing standards and post~~
19 ~~daily, sanctions for violation of such standards, and~~
20 ~~requirements for daily posting of the names of staff on duty~~
21 ~~for the benefit of facility residents and the public. Failure~~
22 ~~to provide such posting daily constitutes a class III~~
23 ~~deficiency.~~

24 2. The agency shall recognize the use of licensed
25 nurses for compliance with minimum staffing requirements for
26 certified nursing assistants, provided that the facility
27 otherwise meets the minimum staffing requirements for licensed
28 nurses and that the licensed nurses so recognized are
29 performing the duties of a certified nursing assistant. Unless
30 otherwise approved by the agency, licensed nurses counted
31 towards the minimum staffing requirements for certified

1 nursing assistants must exclusively perform the duties of a
2 certified nursing assistant for the entire shift and shall not
3 also be counted towards the minimum staffing requirements for
4 licensed nurses.

5 3. If the agency approved a facility's request to use
6 a licensed nurse to perform both licensed nursing and
7 certified nursing assistant duties, the facility must allocate
8 the amount of staff time specifically spent on certified
9 nursing assistant duties for the purpose of documenting
10 compliance with minimum staffing requirements for certified
11 and licensed nursing staff. In no event may the hours of a
12 licensed nurse with dual job responsibilities be counted
13 twice.

14 4. A nursing facility that has failed to comply with
15 state minimum staffing requirements 2 days out of any 7-day
16 period shall be prohibited from accepting new admissions until
17 such time as the facility has achieved the minimum staffing
18 requirements for a period of 7 consecutive days. For purposes
19 of this subparagraph, any person who was a resident of the
20 facility and was absent from the facility for the purpose of
21 receiving medical care at a separate location or was on a
22 leave of absence shall not be considered a new admission.
23 Failure to impose such an admissions moratorium constitutes a
24 class I deficiency.

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

1 Nonnursing staff providing eating assistance to residents
2 under the provisions of this subsection shall not count
3 towards compliance with minimum staffing standards.

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

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

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

31

1 (b) A conditional licensure status means that a
2 facility, due to the presence of one or more class I or class
3 II deficiencies, or class III deficiencies not corrected
4 within the time established by the agency, is not in
5 substantial compliance at the time of the survey with criteria
6 established under this part, with rules adopted by the agency,
7 ~~or, if applicable, with rules adopted under the Omnibus Budget~~
8 ~~Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,~~
9 ~~1987), Title IV (Medicare, Medicaid, and Other Health-Related~~
10 ~~Programs), Subtitle C (Nursing Home Reform), as amended. If~~
11 the facility has no class I, class II, or class III
12 deficiencies ~~comes into substantial compliance~~ at the time of
13 the followup survey, a standard licensure status may be
14 assigned.

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

24 (d) The current licensure status of each facility must
25 be indicated in bold print on the face of the license. A list
26 of the deficiencies of the facility shall be posted in a
27 prominent place that is in clear and unobstructed public view
28 at or near the place where residents are being admitted to
29 that facility. Licensees receiving a conditional licensure
30 status for a facility shall prepare, within 10 working days
31 after receiving notice of deficiencies, a plan for correction

1 of all deficiencies and shall submit the plan to the agency
2 for approval. ~~Correction of all deficiencies, within the~~
3 ~~period approved by the agency, shall result in termination of~~
4 ~~the conditional licensure status. Failure to correct the~~
5 ~~deficiencies within a reasonable period approved by the agency~~
6 ~~shall be grounds for the imposition of sanctions pursuant to~~
7 ~~this part.~~

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

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

14 1. Establish uniform procedures for the evaluation of
15 facilities.

16 2. Provide criteria in the areas referenced in
17 paragraph (c).

18 3. Address other areas necessary for carrying out the
19 intent of this section.

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

1 been affected by repeated occurrences of the same deficient
2 practice, or a situation that has occurred in several
3 locations; provided that the effect of the deficient practice
4 is not found to be pervasive throughout the facility. A
5 widespread deficiency is a deficiency in which the problems
6 causing the deficiency are pervasive throughout the facility
7 or represent systemic failure that affected or has the
8 potential to affect a large portion of all of the facility's
9 residents.The agency shall indicate the classification on the
10 face of the notice of deficiencies as follows:

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

29 (b) Class II deficiencies are those which the agency
30 determines have compromised the resident's ability to maintain
31 or reach his or her highest practicable physical, mental, and

1 psychosocial well-being as defined by an accurate and
2 comprehensive resident assessment, plan of care, and provision
3 of services ~~have a direct or immediate relationship to the~~
4 ~~health, safety, or security of the nursing home facility~~
5 ~~residents, other than class I deficiencies.~~ A class II
6 deficiency is subject to a civil penalty of \$2,500 for an
7 isolated deficiency, \$5,000 for a patterned deficiency, and
8 \$7,500 for a widespread deficiency ~~in an amount not less than~~
9 ~~\$1,000 and not exceeding \$10,000 for each and every~~
10 ~~deficiency.~~ A citation for a class II deficiency shall
11 ~~specify the time within which the deficiency is required to be~~
12 ~~corrected.~~ ~~If a class II deficiency is corrected within the~~
13 ~~time specified, no civil penalty shall be imposed, unless it~~
14 ~~is a repeated offense.~~ A fine shall be levied notwithstanding
15 the correction of the deficiency.

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

1 corrected. If a class III deficiency is corrected within the
2 time specified, no civil penalty shall be imposed, unless it
3 is a repeated offense.

4 (d) Class IV deficiencies are those which the agency
5 determines involve no actual harm but do not constitute a
6 class III deficiency. A class IV deficiency shall be
7 documented in the agency's survey results and may be required
8 to be corrected within a time specified by the agency. No
9 civil penalty shall be imposed. If the class IV deficiency is
10 an isolated deficiency, no plan of correction is required.

11
12 The fine amount shall be doubled for each class I or class II
13 deficiency if the facility was previously cited for one or
14 more class I or class II deficiencies during or since its last
15 annual inspection.

16 (10) The agency must submit a report annually to the
17 Legislature that summarizes the information regarding
18 staff-to-resident ratios, staff turnover, and staff stability
19 reported by nursing home facilities pursuant to s.
20 400.141(21).

21 Section 27. Subsection (3) of section 400.241, Florida
22 Statutes, is amended to read:

23 400.241 Prohibited acts; penalties for violations.--

24 (3) It is unlawful for any person, long-term care
25 facility, or other entity to willfully interfere with the
26 unannounced inspections mandated by s. 400.0073 or s.
27 400.19(3). Alerting or advising a facility of the actual or
28 approximate date of such inspection shall be a per se
29 violation of this subsection.

30 (4) A violation of any provision of this part or of
31 any minimum standard, rule, or regulation adopted pursuant

1 thereto constitutes a misdemeanor of the second degree,
2 punishable as provided in s. 775.082 or s. 775.083. Each day
3 of a continuing violation shall be considered a separate
4 offense.

5 Section 28. Paragraph (b) of subsection (3) of section
6 400.407, Florida Statutes, is 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 (b) An extended congregate care license shall be
17 issued to facilities providing, directly or through contract,
18 services beyond those authorized in paragraph (a), including
19 acts performed pursuant to part I of chapter 464 by persons
20 licensed thereunder, and supportive services defined by rule
21 to persons who otherwise would be disqualified from continued
22 residence in a facility licensed under this part.

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

1 of such request shall be made within 90 days after receipt of
2 such request and all necessary documentation. Existing
3 facilities qualifying to provide extended congregate care
4 services must have maintained a standard license and may not
5 have been subject to administrative sanctions during the
6 previous 2 years, or since initial licensure if the facility
7 has been licensed for less than 2 years, for any of the
8 following reasons:

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

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

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

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

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

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

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

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

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

15 f. Implement the concept of managed risk.

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

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

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

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

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

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

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

23 9. No later than January 1 of each year, the
24 department, in consultation with the agency, shall prepare and
25 submit to the Governor, the President of the Senate, the
26 Speaker of the House of Representatives, and the chairs of
27 appropriate legislative committees, a report on the status of,
28 and recommendations related to, extended congregate care
29 services. The status report must include, but need not be
30 limited to, the following information:
31

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

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

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

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

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

13 f. Recommendations for statutory or regulatory
14 changes.

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

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

22 Section 29. Subsections (4) through (11) of section
23 400.426, Florida Statutes, are renumbered as subsections (5)
24 through (12), respectively, and a new subsection (4) is added
25 to said section to read:

26 400.426 Appropriateness of placements; daily record of
27 care;examinations of residents.--

28 (4) Each facility shall maintain in the care records
29 for each resident a daily chart of activities of daily living
30 care provided to a resident. This record must be completed
31 contemporaneously with the delivery of care by the caregiver

1 and include the date of care and the initials or signature of
2 the caregiver. These records shall be made available to the
3 resident or his or her guardian upon request within 7 days of
4 the request. These records shall be maintained by the facility
5 for a period of not less than 5 years.

6 Section 30. Paragraph (k) of subsection (1) of section
7 400.428, Florida Statutes, is amended to read:

8 400.428 Resident bill of rights.--

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

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

27 Section 31. Effective October 1, 2001, section
28 400.429, Florida Statutes, is amended to read:

29 (Substantial rewording of section. See
30 s. 400.429, F.S., for present text.)

31

1 400.429 Civil actions to enforce assisted living
2 facility residents' rights.--

3 (1)(a) Sections 400.429-400.430 provide the exclusive
4 remedy for any civil action against an assisted living
5 facility licensee, facility owner, facility administrator, or
6 facility staff for recovery of damages from personal injury to
7 or death of an assisted living facility resident arising out
8 of negligence or deprivation of the rights specified in s.
9 400.428. This exclusivity applies to and includes any claim
10 against an employee, agent, or other person for whose actions
11 the licensee is alleged to be vicariously liable and to any
12 management company, parent corporation, subsidiary, lessor, or
13 other person alleged to be directly liable to the resident or
14 vicariously liable for the actions of the licensee or its
15 agent.

16 (b) However, ss. 400.429-400.430 do not prohibit a
17 resident or a resident's legal guardian from pursuing any
18 administrative remedy or injunctive relief available to a
19 resident as a result of a deprivation of the rights specified
20 in s. 400.028, whether or not the deprivation of rights
21 resulted in personal injury to, or the death of, the resident.
22 In any case where there is a deprivation of rights that does
23 not involve personal injury or death, including any claim for
24 injunctive relief or an administrative remedy, the prevailing
25 party shall be entitled to recover reasonable attorney's fees,
26 not to exceed \$25,000, and costs from the nonprevailing party;
27 however, the joinder of a claim under this paragraph with a
28 claim under paragraph (a) shall not be the basis for an award
29 of fees or costs in such claim under paragraph (a). Except as
30 otherwise set forth in this paragraph, it is the intent of the
31 Legislature that this provision for attorney's fees be

1 interpreted in a manner consistent with federal case law
2 involving an action under Title VII of the Civil Rights Act.

3 (c) In addition to the remedies provided in ss.
4 400.429-400.430, a resident, a resident's legal guardian, or
5 the personal representative of the estate of a deceased
6 resident may pursue an action under s. 415.1111. In addition,
7 a resident or a resident's legal guardian shall be entitled to
8 pursue a claim for damages or injunctive relief for those
9 violations of s. 400.428 that do not result in personal injury
10 or death.

11 (2) A claim pursuant to ss. 400.429-400.430 may be
12 brought by the resident or his or her legal guardian, by a
13 person or organization acting on behalf of a resident with the
14 consent of the resident or his or her guardian or, if the
15 resident has died, the personal representative of the estate
16 of the deceased resident.

17 (3) In any claim brought pursuant to this ss.
18 400.429-400.430, the claimant has the burden of proving by a
19 preponderance of the evidence that:

20 (a) Each defendant had an established duty to the
21 resident;

22 (b) Each defendant breached that duty;

23 (c) The breach of that duty is the proximate cause of
24 the personal injury to, or the death of, the resident, or the
25 proximate cause of the deprivation of the resident's rights
26 specified in s. 400.428; and

27 (d) The proximate cause of the personal injury, death,
28 or deprivation of the resident's rights resulted in damages.

29 (4) For purposes of ss. 400.429-400.430, a licensee
30 breaches its established duty to the resident when it fails to
31 provide a standard of care that a reasonably prudent assisted

1 living facility would provide under the same or similar
2 circumstances. A deprivation of the rights specified in s.
3 400.428 or in any other standard or guidelines specified in
4 this part or in any applicable administrative standard or
5 guidelines of this state or a federal regulatory agency shall
6 be evidence of a breach of duty by the licensee.

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

15 (6) An action for damages brought under ss.
16 400.429-400.430 must be commenced within 2 years after the
17 date on which the incident giving rise to the action occurred
18 or within 2 years after the date on which the incident is
19 discovered, or should have been discovered with the exercise
20 of due diligence. However, the action may not be commenced
21 later than 4 years after the date of the incident or
22 occurrence out of which the cause of action accrued. In any
23 action covered by this subsection in which it is shown that
24 fraud, concealment, or intentional misrepresentation of fact
25 prevented the discovery of the injury, the period of
26 limitation is extended forward 2 years from the time that the
27 injury is discovered, or should have been discovered with the
28 exercise of due diligence, but such period may not in any
29 event exceed 7 years after the date that the incident giving
30 rise to the injury occurred.

31 (7) As used in ss. 400.429-400.430, the term:

1 (a) "Claimant" means any person who is entitled to
2 recover damages under this part.

3 (b) "Licensee" means the legal entity identified in
4 the application for licensure under this part which entity is
5 the licensed operator of the facility.

6 (c) "Medical expert" means a person duly and regularly
7 engaged in the practice of his or her profession who holds a
8 health care professional degree from a university or college
9 and has had special professional training and experience, or a
10 person who possesses special health care knowledge or skill,
11 concerning the subject upon which he or she is called to
12 testify or provide an opinion.

13 (d) "Resident" means a person who occupies a licensed
14 bed in a facility licensed under this part.

15 (8) Sections 768.16-768.26 apply to a claim in which
16 the resident has died as a result of the facility's breach of
17 an established duty to the resident. In addition to any other
18 damages, the personal representative may recover on behalf of
19 the estate pursuant to ss. 768.16-768.26. The personal
20 representative may also recover on behalf of the estate
21 noneconomic damages for the resident's pain and suffering from
22 the time of injury until the time of death. The limitations
23 set forth in s. 768.21(8) do not apply to a claim maintained
24 under this section where a resident has died as a result of
25 the assisted living facility's breach of a duty to the
26 resident.

27 (9) For the purpose of this section, punitive damages
28 may be awarded for conduct which is willful, wanton, gross or
29 flagrant, reckless, or consciously indifferent to the rights
30 of the resident.

31

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

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

11 (12) Any portion of an order, judgment, arbitration
12 decision, mediation agreement, or other type of agreement,
13 contract, or settlement that has the purpose or effect of
14 concealing information relating to the settlement or
15 resolution of any claim or action brought pursuant to ss.
16 400.429-400.430 is void, contrary to public policy, and may
17 not be enforced. No court shall enter an order or judgment
18 that has the purpose or effect of concealing any information
19 pertaining to the resolution or settlement of any claim or
20 action brought pursuant to ss. 400.429-400.430. Any person or
21 governmental entity has standing to contest an order,
22 judgment, arbitration decision, mediation agreement, or other
23 type of agreement, contract, or settlement that violates this
24 subsection. A contest pursuant to this subsection may be
25 brought by a motion or an action for a declaratory judgment
26 filed in the circuit court of the circuit where the violation
27 of this subsection occurred.

28 (13) The defendant must provide to the agency a copy
29 of any resolution of a claim or civil action brought pursuant
30 to ss. 400.429-400.430 within 90 days after such resolution,
31 including, but not limited to, any final judgment, arbitration

1 decision, order, mediation agreement, or settlement. Failure
2 to provide the copy to the agency shall result in a fine of
3 \$500 for each day it is overdue. The agency shall develop
4 forms and adopt rules necessary to administer this subsection.
5 Section 32. Subsections (1) through (11) of section
6 400.429, Florida Statutes, as amended by this act, shall apply
7 to causes of action accruing on or after October 1, 2001.
8 Subsections (12) and (13) of section 400.429, Florida
9 Statutes, as amended by this act, shall apply to causes of
10 action in existence on October 1, 2001.
11 Section 33. Section 400.430, Florida Statutes, is
12 created to read:
13 400.430 Voluntary binding arbitration.--
14 (1) Causes of action pursuant to this section shall be
15 governed by the requirements for presuit process, screening,
16 and investigation provided in ss. 400.0235-400.0237.
17 (2)(a) Upon the completion of presuit investigation
18 with preliminary reasonable grounds for a claim intact, the
19 parties may elect to have damages determined by an arbitration
20 panel. Such election may be initiated by either party by
21 -serving a request for voluntary binding arbitration of damages
22 within 90 days after service of the complaint upon the
23 defendant. The evidentiary standards for voluntary binding
24 arbitration as authorized herein shall be as provided in ss.
25 120.569(2)(g) and 120.57(1)(c).
26 (b) Upon receipt of a party's request for such
27 arbitration, the opposing party may accept the offer of
28 voluntary binding arbitration within 30 days. However, in no
29 event shall the defendant be required to respond to the
30 request for arbitration sooner than 90 days after service of
31 the complaint. Such acceptance within the time period

1 provided by this paragraph shall be a binding commitment to
2 comply with the decision of the arbitration panel.

3 (c) The arbitration panel shall be composed of three
4 arbitrators, one selected by the claimant, one selected by the
5 defendant, and one an administrative law judge furnished by
6 the Division of Administrative Hearings who shall serve as the
7 chief arbitrator. In the event of multiple plaintiffs or
8 multiple defendants, the arbitrator selected by the side with
9 multiple parties shall be the choice of those parties. If the
10 multiple parties cannot reach agreement as to their
11 arbitrator, each of the multiple parties shall submit a
12 nominee, and the director of the Division of Administrative
13 Hearings shall appoint the arbitrator from among such
14 nominees.

15 (d) The arbitrators shall be independent of all
16 parties, witnesses, and legal counsel, and no officer,
17 director, affiliate, subsidiary, or employee of a party,
18 witness, or legal counsel may serve as an arbitrator in the
19 proceeding.

20 (e) The rate of compensation for arbitrators other
21 than the administrative law judge shall be set by the chief
22 judge of the appropriate circuit court by schedule or as
23 agreed by the parties. In setting the schedule, the chief
24 judge shall consider the prevailing rates charged for the
25 delivery of professional services in the community.

26 (f) Arbitration pursuant to this section shall
27 preclude recourse to any other remedy by the claimant against
28 any participating defendant, and shall be undertaken with the
29 understanding that:

30 1. Net economic damages shall be awardable, including,
31 but not limited to, past and future medical expenses and 80

1 percent of wage loss and loss of earning capacity, offset by
2 any collateral source payments.

3 2. Noneconomic damages shall be limited to a maximum
4 of \$500,000 per incident.

5 3. Damages for future economic losses shall be awarded
6 to be paid by periodic payments pursuant to s. 766.202(8) and
7 shall be offset by future collateral source payments.

8 4. Punitive damages may be awarded by the arbitration
9 panel for conduct which is willful, wanton, gross or flagrant,
10 reckless, or consciously indifferent to the rights of the
11 resident. Upon such finding, the judgment for the total amount
12 of punitive damages awarded to a claimant may not exceed three
13 times the amount of compensatory damages awarded to each
14 person entitled thereto by the arbitrators. Any award of
15 punitive damages shall be equally divided between the claimant
16 and the Quality of Long-Term Care Facility Improvement Trust
17 Fund and awarded pursuant to paragraphs (4)(b)-(e).

18 5. The defendant shall be responsible for the payment
19 of interest on all accrued damages with respect to which
20 interest would be awarded at trial.

21 6. The defendant shall pay the claimant's reasonable
22 attorney's fees and costs, as determined by the arbitration
23 panel, but in no event more than 15 percent of the award,
24 reduced to present value.

25 7. The defendant shall pay all the costs of the
26 arbitration proceeding and the fees of all the arbitrators
27 other than the administrative law judge.

28 8. Each defendant who submits to arbitration under
29 this section shall be jointly and severally liable for all
30 damages assessed pursuant to this section.

31

1 9. The defendant's obligation to pay the claimant's
2 damages shall be for the purpose of arbitration under this
3 section only. A defendant's or claimant's offer to arbitrate
4 shall not be used in evidence or in argument during any
5 subsequent litigation of the claim following the rejection
6 thereof. Once arbitration has been selected by the parties, it
7 shall be with the understanding and agreement that the
8 defendants do not contest liability, and the issue to be
9 determined in this regard shall be the amount of compensatory
10 damages to be awarded to the claimant. The defendant may fully
11 contest liability regarding punitive damages and shall not be
12 deemed to have admitted liability for, or the amount of, any
13 punitive damages.

14 10. The fact of making or accepting an offer to
15 arbitrate shall not be admissible as evidence of liability in
16 any collateral or subsequent proceeding on the claim.

17 11. Any offer by a claimant to arbitrate must be made
18 to each defendant against whom the claimant has made a claim.
19 Any offer by a defendant to arbitrate must be made to each
20 claimant who has joined in the litigation. A defendant who
21 rejects a claimant's offer to arbitrate shall be subject to
22 the provisions of paragraph (3)(c). A claimant who rejects a
23 defendant's offer to arbitrate shall be subject to the
24 provisions of paragraph (3)(d).

25 12. The hearing shall be conducted by all of the
26 arbitrators, but a majority may determine any question of fact
27 and render a final decision. The chief arbitrator shall
28 decide all evidentiary matters.

29
30 The provisions of this paragraph shall not preclude settlement
31 at any time by mutual agreement of the parties.

1 (g) Any issue between the defendant and the
2 defendant's insurer or self-insurer as to who shall control
3 the defense of the claim and any responsibility for payment of
4 an arbitration award, shall be determined under existing
5 principles of law; provided that the insurer or self-insurer
6 shall not offer to arbitrate or accept a claimant's offer to
7 arbitrate without the written consent of the defendant.

8 (h) The Division of Administrative Hearings is
9 authorized to promulgate rules to effect the orderly and
10 efficient processing of the arbitration procedures of this
11 section.

12 (i) Rules promulgated by the Division of
13 Administrative Hearings pursuant to this section, s. 120.54,
14 or s. 120.65 may authorize any reasonable sanctions except
15 contempt for violation of the rules of the division or failure
16 to comply with a reasonable order issued by an administrative
17 law judge, which is not under judicial review.

18 (3) The following provisions shall govern when
19 voluntary binding arbitration is not offered or accepted:

20 (a) A proceeding for voluntary binding arbitration is
21 an alternative to judicial proceedings once agreed to by the
22 parties. If not offered or accepted, however, the provisions
23 of paragraph (b) shall apply.

24 (b) If neither party requests voluntary binding
25 arbitration, the claim shall proceed in the judicial process.
26 In such judicial process, the provisions of s. 768.79 shall
27 apply.

28 (c) If the defendant refuses a claimant's offer of
29 voluntary binding arbitration under this section:

30 1. The claim shall proceed in the judicial process
31 without limitation upon damages.

1 2. The claimant's award shall be reduced by any
2 damages recovered by the claimant from arbitrating
3 codefendants following arbitration.

4 (d) If the claimant rejects a defendant's offer to
5 enter voluntary binding arbitration under this section:

6 1. The claim shall proceed in the judicial process
7 without limitation upon damages.

8 2. The claimant's award shall be reduced by any
9 damages recovered by the claimant from arbitrating
10 codefendants following arbitration.

11 3. Notwithstanding any other law to the contrary,
12 punitive damages may not exceed three times the amount of
13 compensatory damages awarded to each person entitled thereto
14 by the trier of fact and the amount shall be divided equally
15 between the claimant and the Quality of Long-Term Care
16 Facility Improvement Trust Fund, in accordance with the
17 following provisions:

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

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

31

1 c. The Department of Banking and Finance shall collect
2 or cause to be collected all payments due the state under this
3 section. Such payments are made to the Comptroller and
4 deposited in the appropriate fund specified in this
5 subsection.

6 d. If the full amount of punitive damages awarded
7 cannot be collected, the claimant and the other recipient
8 designated pursuant to this subsection are each entitled to a
9 proportionate share of the punitive damages collected.

10 (4)(a)1. In the event that neither the claimant nor
11 the defendant request arbitration under this section, then
12 notwithstanding any other provision of law to the contrary, in
13 any action arising under this part and involving the award of
14 punitive damages, the judgment for the total amount of
15 punitive damages awarded to a claimant may not exceed three
16 times the amount of compensatory damages awarded to each
17 person entitled thereto by the trier of fact, except as
18 provided in subparagraph 2. This paragraph does not apply to
19 any class action.

20 2. If any award for punitive damages exceeds the
21 limitation specified in subparagraph 1., the award is presumed
22 to be excessive and the defendant is entitled to remittitur of
23 the amount in excess of the limitation unless the claimant
24 demonstrates to the court by clear and convincing evidence
25 that the award is not excessive in light of the facts and
26 circumstances that were presented to the trier of fact. The
27 court shall give great weight as a mitigating factor to the
28 infrequency or lack of severity of prior claims against the
29 defendant.

30 3. The jury may not be instructed or informed as to
31 the provisions of this subsection.

1 (b) The amount of punitive damages awarded to each
2 claimant shall be equally divided between the claimant and the
3 Quality of Long-Term Care Facility Improvement Trust Fund, in
4 accordance with the following:

5 1. The clerk of the court shall transmit a copy of the
6 jury verdict to the State Treasurer by certified mail. In the
7 final judgment, the court shall order the percentages of the
8 award, payable as provided herein.

9 2. A settlement agreement entered into between the
10 original parties to the action after a verdict has been
11 returned must provide a proportionate share payable to the
12 Quality of Long-Term Care Facility Improvement Trust Fund
13 specified herein. Such proportionate share shall be determined
14 by prorating the amount of the settlement between compensatory
15 and punitive damages in the same ratio as the respective
16 portions of the damages awarded in the verdict. That portion
17 of the prorated punitive damages that exceeds three times the
18 prorated compensatory damages shall be the amount of the
19 proportionate share to be divided as provided herein.

20 3. The Department of Banking and Finance shall collect
21 or cause to be collected all payments due the state under this
22 section. Such payments shall be made to the Comptroller and
23 deposited in the appropriate fund specified in this
24 subsection.

25 4. If the full amount of punitive damages awarded
26 cannot be collected, the claimant and the other recipient
27 designated pursuant to this subsection are each entitled to a
28 proportionate share of the punitive damages collected.

29 (5) Arbitration to allocate responsibility when more
30 than one defendant has participated in voluntary binding
31 arbitration, procedures involving misarbitration, payment of

1 an arbitration award, and appeal of an arbitration award shall
2 be governed by the requirements provided in ss.
3 400.0239-400.0242.

4 Section 34. Subsection (5) of section 400.431, Florida
5 Statutes, is amended to read:

6 400.431 Closing of facility; notice; penalty.--

7 (5) The agency may levy a fine in an amount no greater
8 than \$5,000 upon each person or business entity that owns any
9 interest in a facility that terminates operation without
10 providing notice to the agency and the residents of the
11 facility at least 45 ~~30~~ days before operation ceases. This
12 fine shall not be levied against any facility involuntarily
13 closed at the initiation of the agency. The agency shall use
14 the proceeds of the fines to operate the facility until all
15 residents of the facility are relocated and shall deposit any
16 balance of the proceeds into the Health Care Trust Fund
17 established pursuant to s. 400.418.

18 Section 35. Section 400.455, Florida Statutes, is
19 created to read:

20 400.455 Adverse action against employee for disclosing
21 information of specified nature prohibited; employee remedy
22 and relief.--

23 (1) SHORT TITLE.--This section may be cited as the
24 "Assisted Living Facility Whistleblower's Act."

25 (2) LEGISLATIVE INTENT.--It is the intent of the
26 Legislature to prevent assisted living facilities or
27 independent contractors from taking retaliatory action against
28 an employee who reports to an appropriate person or agency
29 violations of law on the part of a facility or independent
30 contractor that create a substantial and specific danger to an
31 assisted living facility resident's health, safety, or

1 welfare. It is further the intent of the Legislature to
2 prevent assisted living facilities or independent contractors
3 from taking retaliatory action against any person who
4 discloses information to an appropriate agency alleging
5 improper use of or gross waste of governmental funds, or any
6 other abuse or gross neglect of duty on the part of an
7 assisted living facility.

8 (3) DEFINITIONS.--As used in this section, unless
9 otherwise specified, the following words or terms shall have
10 the meanings indicated:

11 (a) "Adverse personnel action" means the discharge,
12 suspension, transfer, or demotion of any employee or the
13 withholding of bonuses, the reduction in salary or benefits,
14 or any other adverse action taken against an employee within
15 the terms and conditions of employment by an assisted living
16 facility or independent contractor.

17 (b) "Agency" means any state, regional, county, local,
18 or municipal government entity, whether executive, judicial,
19 or legislative; or any official, officer, department,
20 division, bureau, commission, authority, or political
21 subdivision thereof.

22 (c) "Employee" means a person who performs services
23 for, and under the control and direction of, or contracts
24 with, an assisted living facility or independent contractor
25 for wages or other remuneration.

26 (d) "Gross mismanagement" means a continuous pattern
27 of managerial abuses, wrongful or arbitrary and capricious
28 actions, or fraudulent or criminal conduct which may have a
29 substantial adverse economic impact.

30
31

1 (e) "Independent contractor" means a person who is
2 engaged in any business and enters into a contract with an
3 assisted living facility.

4 (4) ACTIONS PROHIBITED.--

5 (a) An assisted living facility or an independent
6 contractor shall not dismiss, discipline, or take any other
7 adverse personnel action against an employee for disclosing
8 information pursuant to the provisions of this section.

9 (b) An assisted living facility or an independent
10 contractor shall not take any adverse action that affects the
11 rights or interests of a person in retaliation for the
12 person's disclosure of information under this section.

13 (c) The provisions of this subsection shall not be
14 applicable when an employee or person discloses information
15 known by the employee or person to be false.

16 (5) NATURE OF INFORMATION DISCLOSED.--The information
17 disclosed under this section must include:

18 (a) Any violation or suspected violation of any
19 federal, state, or local law, rule, or regulation committed by
20 an employee or agent of an assisted living facility or
21 independent contractor which creates and presents a
22 substantial and specific danger to the assisted living
23 facility resident's health, safety, or welfare.

24 (b) Any act or suspected act of gross mismanagement,
25 malfeasance, misfeasance, gross waste of public funds, or
26 gross neglect of duty committed by an employee or agent of an
27 assisted living facility or independent contractor.

28 (6) TO WHOM INFORMATION DISCLOSED.--The information
29 disclosed under this section must be disclosed to any agency
30 or Federal Government entity or person designated in s.

31

1 400.022(1)(c) having the authority to investigate, police,
2 manage, or otherwise remedy the violation or act.

3 (7) EMPLOYEES AND PERSONS PROTECTED.--This section
4 protects employees and persons who disclose information on
5 their own initiative in a written and signed complaint; who
6 are requested to participate in an investigation, hearing, or
7 other inquiry conducted by any agency or Federal Government
8 entity; who refuse to participate in any adverse action
9 prohibited by this section; or who initiate a complaint
10 through any appropriate complaint hotline. No remedy or other
11 protection under this section applies to any person who has
12 committed or intentionally participated in committing the
13 violation or suspected violation for which protection under
14 this section is being sought.

15 (8) REMEDIES.--Any person protected by this section
16 may bring a civil action in any court of competent
17 jurisdiction against an assisted living facility for any
18 action prohibited by this section.

19 (9) RELIEF.--In any action brought under this section,
20 the relief may include the following:

21 (a) Reinstatement of the employee to the same position
22 held before the adverse action was commenced or to an
23 equivalent position, or reasonable front pay as alternative
24 relief.

25 (b) Reinstatement of the employee's full fringe
26 benefits and seniority rights, as appropriate.

27 (c) Compensation, if appropriate, for lost wages, lost
28 benefits, or other lost remuneration caused by the adverse
29 action.

30 (d) Payment of reasonable costs, including attorney's
31 fees, to a substantially prevailing employee, or to the

1 prevailing employer if the employee filed a frivolous action
2 in bad faith.

3 (e) Issuance of an injunction, if appropriate, by a
4 court of competent jurisdiction.

5 (f) Temporary reinstatement to the employee's former
6 position or to an equivalent position, pending the final
7 outcome on the complaint, if an employee complains of being
8 discharged in retaliation for a protected disclosure and if a
9 court of competent jurisdiction determines that the disclosure
10 was not made in bad faith or for a wrongful purpose or
11 occurred after an assisted living facility's or independent
12 contractor's initiation of a personnel action against the
13 employee which includes documentation of the employee's
14 violation of a disciplinary standard or performance
15 deficiency.

16 (10) DEFENSES.--It shall be an affirmative defense to
17 any action brought pursuant to this section that the adverse
18 action was predicated upon grounds other than, and would have
19 been taken absent, the employee's or person's exercise of
20 rights protected by this section.

21 (11) EXISTING RIGHTS.--This section does not diminish
22 the rights, privileges, or remedies of an employee under any
23 other law or rule or under any collective bargaining agreement
24 or employment contract.

25 Section 36. Section 400.449, Florida Statutes, is
26 created to read:

27 400.449 Altering, defacing, or falsifying records;
28 penalties.--

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

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 such person's
5 license or certification privileges.

6 Section 37. Paragraph (b) of subsection (2) of section
7 409.908, Florida Statutes, is amended to read:

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

29 (2)

30 (b) Subject to any limitations or directions provided
31 for in the General Appropriations Act, the agency shall

1 establish and implement a Florida Title XIX Long-Term Care
2 Reimbursement Plan (Medicaid) for nursing home care in order
3 to provide care and services in conformance with the
4 applicable state and federal laws, rules, regulations, and
5 quality and safety standards and to ensure that individuals
6 eligible for medical assistance have reasonable geographic
7 access to such care. The agency shall amend the long-term care
8 reimbursement plan to create a direct care and indirect care
9 patient component. These two subcomponents together shall
10 equal the patient care component of the per diem rate. The
11 direct care subcomponent shall include only the salaries and
12 employee benefits of direct care staff who provide nursing
13 services to the residents of the nursing facility. "Direct
14 care staff" is defined for this purpose as registered nurses,
15 licensed practical nurses, and certified nurse assistants who
16 deliver care directly to residents in nursing home facilities.
17 There shall be no cost directly or indirectly allocated to the
18 direct care subcomponent from a home office or management
19 company. Separate cost-based class ceilings shall be
20 calculated for each patient care subcomponent, and the direct
21 care subcomponent shall be limited by the cost-based class
22 ceiling and the indirect care subcomponent shall be limited by
23 the individual provider target, target rate class ceiling, or
24 the cost-based ceiling. The agency shall make the required
25 changes to the nursing home cost reporting forms to implement
26 this requirement effective January 1, 2002.~~Under the plan,~~
27 ~~interim rate adjustments shall not be granted to reflect~~
28 ~~increases in the cost of general or professional liability~~
29 ~~insurance for nursing homes unless the following criteria are~~
30 ~~met: have at least a 65 percent Medicaid utilization in the~~
31 ~~most recent cost report submitted to the agency, and the~~

1 ~~increase in general or professional liability costs to the~~
2 ~~facility for the most recent policy period affects the total~~
3 ~~Medicaid per diem by at least 5 percent. This rate adjustment~~
4 ~~shall not result in the per diem exceeding the class ceiling.~~
5 ~~This provision shall apply only to fiscal year 2000-2001 and~~
6 ~~shall be implemented to the extent existing appropriations are~~
7 ~~available. The agency shall report to the Governor, the~~
8 ~~Speaker of the House of Representatives, and the President of~~
9 ~~the Senate by December 31, 2000, on the cost of liability~~
10 ~~insurance for Florida nursing homes for fiscal years 1999 and~~
11 ~~2000 and the extent to which these costs are not being~~
12 ~~compensated by the Medicaid program. Medicaid-participating~~
13 ~~nursing homes shall be required to report to the agency~~
14 ~~information necessary to compile this report. Effective no~~
15 ~~earlier than the rate-setting period beginning April 1, 1999,~~
16 ~~the agency shall establish a case-mix reimbursement~~
17 ~~methodology for the rate of payment for long-term care~~
18 ~~services for nursing home residents. The agency shall compute~~
19 ~~a per diem rate for Medicaid residents, adjusted for case mix,~~
20 ~~which is based on a resident classification system that~~
21 ~~accounts for the relative resource utilization by different~~
22 ~~types of residents and which is based on level-of-care data~~
23 ~~and other appropriate data. The case-mix methodology developed~~
24 ~~by the agency shall take into account the medical, behavioral,~~
25 ~~and cognitive deficits of residents. In developing the~~
26 ~~reimbursement methodology, the agency shall evaluate and~~
27 ~~modify other aspects of the reimbursement plan as necessary to~~
28 ~~improve the overall effectiveness of the plan with respect to~~
29 ~~the costs of patient care, operating costs, and property~~
30 ~~costs. In the event adequate data are not available, the~~
31 ~~agency is authorized to adjust the patient's care component or~~

1 ~~the per diem rate to more adequately cover the cost of~~
2 ~~services provided in the patient's care component. The agency~~
3 ~~shall work with the Department of Elderly Affairs, the Florida~~
4 ~~Health Care Association, and the Florida Association of Homes~~
5 ~~for the Aging in developing the methodology. It is the intent~~
6 ~~of the Legislature that the reimbursement plan achieve the~~
7 ~~goal of providing access to health care for nursing home~~
8 ~~residents who require large amounts of care while encouraging~~
9 ~~diversion services as an alternative to nursing home care for~~
10 ~~residents who can be served within the community. The agency~~
11 ~~shall base the establishment of any maximum rate of payment,~~
12 ~~whether overall or component, on the available moneys as~~
13 ~~provided for in the General Appropriations Act. The agency may~~
14 ~~base the maximum rate of payment on the results of~~
15 ~~scientifically valid analysis and conclusions derived from~~
16 ~~objective statistical data pertinent to the particular maximum~~
17 ~~rate of payment.~~

18 Section 38. Section 415.1111, Florida Statutes, is
19 amended to read:

20 415.1111 Civil actions.--A vulnerable adult who has
21 been abused, neglected, or exploited as specified in this
22 chapter has a cause of action against any perpetrator and may
23 recover actual and punitive damages for such abuse, neglect,
24 or exploitation. The action may be brought by the vulnerable
25 adult, or that person's guardian, by a person or organization
26 acting on behalf of the vulnerable adult with the consent of
27 that person or that person's guardian, or by the personal
28 representative of the estate of a deceased victim without
29 regard to whether the cause of death resulted from the abuse,
30 neglect, or exploitation. The action may be brought in any
31 court of competent jurisdiction to enforce such action and to

1 recover actual and punitive damages for any deprivation of or
2 infringement on the rights of a vulnerable adult. A party who
3 prevails in any such action may be entitled to recover
4 reasonable attorney's fees, costs of the action, and damages.
5 The remedies provided in this section are in addition to and
6 cumulative with other legal and administrative remedies
7 available to a vulnerable adult. This section shall not apply
8 to civil actions for damages against licensees under parts II
9 and III of chapter 400.

10 Section 39. Subsection (3) of section 430.708, Florida
11 Statutes, is amended to read:

12 430.708 Certificate of need.--To ensure that Medicaid
13 community diversion pilot projects result in a reduction in
14 the projected average monthly nursing home caseload, the
15 agency shall, in accordance with the provisions of s.
16 408.034(4):

17 ~~(3) Adopt rules to reduce the number of beds in~~
18 ~~Medicaid-participating nursing homes eligible for Medicaid,~~
19 ~~through a Medicaid-selective contracting process or some other~~
20 ~~appropriate method.~~

21 Section 40. Subsections (2) and (3) of section
22 430.709, Florida Statutes, are amended to read:

23 430.709 Reports and evaluations.--

24 (2) The agency, in consultation with the department,
25 shall contract for an independent evaluation of the community
26 diversion pilot projects. Such evaluation must include a
27 careful review and assessment of the actual cost for the
28 provision of services to enrollees participants. No later than
29 120 days after the effective date of this section, the agency
30 shall select a contractor with experience and expertise in
31 evaluating capitation rates for managed care organizations

1 serving a disabled or frail elderly population to conduct the
2 evaluation of the community diversion pilot project as defined
3 in s. 430.703. The contractor shall demonstrate the capacity
4 to evaluate managed care arrangements that seek to test the
5 blending of Medicaid and Medicare capitation as a strategy to
6 provide efficient, cost-effective care. The contractor shall
7 report to the agency and the Legislature the specific array of
8 services provided to each enrollee, the average number of
9 times per week each service was provided, the unit cost and
10 total cost per week to provide the service, the total cost of
11 all services provided to the enrollee, and the enrollment
12 period for which total costs were calculated. In addition, the
13 contractor shall report to the agency and the Legislature the
14 total number of enrollees to date; the total payment to the
15 managed care organization for enrollees; the number of
16 enrollees who have been admitted to a nursing facility; the
17 total number of days enrollees have spent in nursing home
18 facilities; the number of enrollees who have disenrolled from
19 the project; the average length of time participants were
20 enrolled, expressed as the mean number of days and standard
21 deviation; the number of persons who disenrolled and
22 subsequently became a nursing home resident; the number of
23 enrollees who have died while enrolled in the project and the
24 mean number of days enrolled prior to death; the list of
25 available services delivered in-home by percentage of
26 enrollees receiving the service; the list of available
27 services delivered out-of-home by percentage of enrollees
28 receiving the service. The evaluation contractor shall analyze
29 and report the individual services and the array of services
30 most associated with effective diversion of frail elderly
31 enrollees from nursing home placement. Further, the contractor

- 1 will evaluate the project responses to at least the following
2 questions:
- 3 (a) Was the cost of the diversion project per person
4 less than the cost of providing services through
5 fee-for-service Medicaid?
- 6 (b) Did the diversion project increase access to
7 physical health care, mental health care, and social services?
- 8 (c) Did the diversion project maintain or improve the
9 quality of care and quality of life of the participants?
- 10 (d) What was the functional status of participants
11 before enrolling in the diversion project, and what was the
12 functional status at various points during and after
13 enrollment?
- 14 (e) How many participants disenrolled and at what
15 point after enrolling?
- 16 (f) Why did participants disenroll?
- 17 (g) Did the department develop specialized contract
18 standards and quality assurance measures?
- 19 (h) Did the department assess quality of care,
20 appropriateness of care claims data analysis and consumer
21 self-report data?
- 22 (i) Does the cost analysis show savings to the state?
- 23 (j) What were the results of recipient profile and
24 enrollment analyses?
- 25 (k) What were the results of the family satisfaction
26 and consumer outcome analyses?
- 27 (l) How did hospital admissions and preventable
28 readmissions differ among nursing home enrollees in the
29 diversion project, nursing home residents not in the project,
30 and frail elders living in the community? Did payer or
31

1 provider type have a significant relationship to the number of
2 hospital admissions?

3 (m) What agencies or providers did the diversion
4 project contractor engage to provide noninstitutional
5 services?

6 (n) Was there a volume-outcome or dose-response
7 relationship between the utilization rate of noninstitutional
8 services, functional assessment, and the ability of the
9 enrollee to remain in the community?

10 (3) Subsequent to the completion of the evaluation and
11 submission of the evaluation report to the Legislature, the
12 agency, in consultation with the department, ~~in consultation~~
13 ~~with the agency,~~ shall assess and make specific
14 recommendations to the Legislature as to the feasibility of
15 implementing a managed long-term care system throughout the
16 state to serve appropriate Medicaid-eligible long-term care
17 recipients age 60 years and older.

18 Section 41. Subsection (3) of section 435.04, Florida
19 Statutes, is amended to read:

20 435.04 Level 2 screening standards.--

21 (3) Standards must also ensure that the person+

22 ~~(a) For employees or employers licensed or registered~~
23 ~~pursuant to chapter 400, does not have a confirmed report of~~
24 ~~abuse, neglect, or exploitation as defined in s. 415.102(6),~~
25 ~~which has been uncontested or upheld under s. 415.103.~~

26 ~~(b)~~ has not committed an act that constitutes domestic
27 violence as defined in s. 741.30.

28 Section 42. Paragraph (a) of subsection (1) of section
29 464.201, Florida Statutes, is amended to read:

30 464.201 Definitions.--As used in this part, the term:

31 (1) "Approved training program" means:

1 (a) A program offered by Enterprise Florida Jobs and
2 Education Partnership Grant or a course of training conducted
3 by a public sector or private sector educational center
4 licensed by the Department of Education to implement the basic
5 curriculum for nursing assistants which is approved by the
6 Department of Education. Beginning October 1, 2000, the board
7 shall assume responsibility for approval of training programs
8 under this paragraph.

9 Section 43. Paragraph (e) is added to subsection (2)
10 of section 464.2085, Florida Statutes, to read:

11 464.2085 Council on Certified Nursing Assistants.--The
12 Council on Certified Nursing Assistants is created within the
13 department, under the Board of Nursing.

14 (2) The council shall:

15 (e) Develop special certifications or other
16 designations that indicate a certified nursing assistant's
17 advanced competence in significant areas of nursing home
18 practice including: care for persons with dementia, care at
19 the end of life, care for the mentally ill, care for persons
20 at risk of malnutrition or dehydration, transfer and movement
21 of persons with special needs, training as a mentor or coach
22 for newly hired certified nursing assistants, and such other
23 areas as determined by the council.

24 Section 44. Subsection (1) of section 101.655, Florida
25 Statutes, is amended to read:

26 101.655 Supervised voting by absent electors in
27 certain facilities.--

28 (1) The supervisor of elections of a county shall
29 provide supervised voting for absent electors residing in any
30 assisted living facility, as defined in s. 400.402, or nursing
31 home ~~facility~~, as defined in s. 400.021, within that county at

1 the request of any administrator of such a facility. Such
2 request for supervised voting in the facility shall be made by
3 submitting a written request to the supervisor of elections no
4 later than 21 days prior to the election for which that
5 request is submitted. The request shall specify the name and
6 address of the facility and the name of the electors who wish
7 to vote absentee in that election. If the request contains
8 the names of fewer than five voters, the supervisor of
9 elections is not required to provide supervised voting.

10 Section 45. Subsection (2) of section 397.405, Florida
11 Statutes, is amended to read:

12 397.405 Exemptions from licensure.--The following are
13 exempt from the licensing provisions of this chapter:

14 (2) A nursing home ~~facility~~ as defined in s.
15 400.021~~(12)~~.

16
17 The exemptions from licensure in this section do not apply to
18 any facility or entity which receives an appropriation, grant,
19 or contract from the state to operate as a service provider as
20 defined in this chapter or to any substance abuse program
21 regulated pursuant to s. 397.406. No provision of this
22 chapter shall be construed to limit the practice of a
23 physician licensed under chapter 458 or chapter 459, a
24 psychologist licensed under chapter 490, or a psychotherapist
25 licensed under chapter 491, providing outpatient or inpatient
26 substance abuse treatment to a voluntary patient, so long as
27 the physician, psychologist, or psychotherapist does not
28 represent to the public that he or she is a licensed service
29 provider under this act. Failure to comply with any
30 requirement necessary to maintain an exempt status under this
31

1 section is a misdemeanor of the first degree, punishable as
2 provided in s. 775.082 or s. 775.083.

3 Section 46. Subsection (3) of section 400.0069,
4 Florida Statutes, is amended to read:

5 400.0069 Local long-term care ombudsman councils;
6 duties; membership.--

7 (3) In order to carry out the duties specified in
8 subsection (2), the local ombudsman council is authorized,
9 pursuant to ss. 400.19(1) and 400.434, to enter any long-term
10 care facility without notice or first obtaining a warrant,
11 subject to the provisions of s. 400.0073~~(7)~~(5).

12 Section 47. The Auditor General shall develop a
13 standard chart of accounts to govern the content and manner of
14 presentation of financial information to be submitted by
15 Medicaid long-term care providers in their cost reports. The
16 Auditor General shall submit the standard chart of accounts to
17 the Agency for Health Care Administration not later than
18 December 31, 2001. The agency shall amend the Florida Title
19 XIX Long-Term Care Reimbursement Plan to incorporate this
20 standard chart of accounts and shall implement use of this
21 standard chart of accounts effective January 1, 2002. The
22 standard chart of accounts shall include specific accounts for
23 each component of direct care staff by type of personnel and
24 may not be revised without the written consent of the Auditor
25 General.

26 Section 48. The Agency for Health Care Administration
27 shall amend the Medicaid Title XIX Long-Term Care
28 Reimbursement Plan effective December 31, 2001, to include the
29 following provisions:

30 (1) COST REPORT FILING.--
31

1 (a) Effective December 31, 2001, cost reports shall be
2 submitted electronically in a format and manner prescribed by
3 the agency.

4 (b) Effective with nursing facility cost reports filed
5 for the period ended December 31, 2001, or after, the cost
6 report shall contain detailed information on the salary,
7 benefits, agency, and overtime costs and corresponding hours
8 for direct care staffing for registered nurses, licensed
9 practical nurses, and certified nursing assistants.

10 (2) LIMITATIONS ON ALLOWABLE COSTS.--

11 (a) Costs attributable to the membership in a nursing
12 home industry trade association shall be limited to a maximum
13 amount of \$5 per bed per year prorated based on the percentage
14 of Medicaid patient days to total patient days for the
15 facility as an allowable Medicaid cost. Individual member dues
16 are not an allowable Medicaid cost.

17 (b) Executive compensation included in home office
18 costs shall be limited to a maximum allowable per person
19 annual amount of \$250,000 of compensation per year. A list of
20 executive compensation shall be included in the information
21 filing of the home office cost reports for any individual
22 whose total compensation exceeds \$250,000 per year.

23 (c) Costs attributable to legal settlements and jury
24 verdicts where there has been a finding or admission of
25 liability by the nursing home, or its owners, operators,
26 management companies, or employees, shall not be allowable
27 costs for Medicaid reimbursement purposes. Such costs include
28 legal costs, accounting fees, administrative costs,
29 investigative costs, travel costs, court costs, expert witness
30 costs, compensatory damage costs, punitive damage costs,
31

1 records and transcription costs, or any other cost associated
2 with the settlement or verdict.

3 (3) RECOUPMENT.--Any provider participating in the
4 Florida Medicaid nursing home program who has failed to
5 provide the goods and services in accordance with federal and
6 state requirements may be subject to recoupment of costs by
7 the agency.

8 Section 49. The Board of Nursing is directed to
9 develop standards and procedures for recognizing professional
10 nurses whose commitment to the practice of nursing in
11 long-term care settings is worthy of commendation.

12 Section 50. The Agency for Health Care Administration
13 shall require that a portion of each nursing facility's
14 Medicaid rate be used exclusively for wage and benefit
15 increases for nursing home direct care staff. Such funds shall
16 be used only for actual wage or benefit improvements. Eligible
17 staff members include all direct care workers (including RNs,
18 LPNs, and CNAs) and all dietary, housekeeping, laundry, and
19 maintenance workers. Temporary, contract, agency, and pool
20 employees are excluded. The agency shall develop
21 cost-reporting systems to ensure that the funds the agency has
22 required to be used for wage and benefit increases for direct
23 care staff are used for this purpose. On January 1 of each
24 year, the agency shall report to the Legislature the effect of
25 such wage and benefit increases for employees in nursing
26 facilities in this state.

27 Section 51. Subsection (11) of section 400.021,
28 Florida Statutes, as created by section 1 of chapter 2000-350,
29 Laws of Florida, is reenacted to read:

30 400.021 Definitions.--When used in this part, unless
31 the context otherwise requires, the term:

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

9 Section 52. Section 400.0225, Florida Statutes, as
10 amended by section 2 of chapter 2000-350, Laws of Florida, is
11 reenacted to read:

12 400.0225 Consumer satisfaction surveys.--The agency,
13 or its contractor, in consultation with the nursing home
14 industry and consumer representatives, shall develop an
15 easy-to-use consumer satisfaction survey, shall ensure that
16 every nursing facility licensed pursuant to this part
17 participates in assessing consumer satisfaction, and shall
18 establish procedures to ensure that, at least annually, a
19 representative sample of residents of each facility is
20 selected to participate in the survey. The sample shall be of
21 sufficient size to allow comparisons between and among
22 facilities. Family members, guardians, or other resident
23 designees may assist the resident in completing the survey.
24 Employees and volunteers of the nursing facility or of a
25 corporation or business entity with an ownership interest in
26 the facility are prohibited from assisting a resident with or
27 attempting to influence a resident's responses to the consumer
28 satisfaction survey. The agency, or its contractor, shall
29 survey family members, guardians, or other resident designees.
30 The agency, or its contractor, shall specify the protocol for
31 conducting and reporting the consumer satisfaction surveys.

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

7 Section 53. Subsections (3) and (8) of section
8 400.0255, Florida Statutes, as amended by section 138 of
9 chapter 2000-349, section 3 of chapter 2000-350, and section
10 58 of chapter 2000-367, Laws of Florida, are reenacted to
11 read:

12 400.0255 Resident transfer or discharge; requirements
13 and procedures; hearings.--

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

27 (8) The notice required by subsection (7) must be in
28 writing and must contain all information required by state and
29 federal law, rules, or regulations applicable to Medicaid or
30 Medicare cases. The agency shall develop a standard document
31 to be used by all facilities licensed under this part for

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

21 Section 54. Subsections (4) and (5) of section
22 400.141, Florida Statutes, as renumbered and amended by
23 section 4 of chapter 2000-350, Laws of Florida, are reenacted
24 to read:

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

28 (4) Provide for resident use of a community pharmacy
29 as specified in s. 400.022(1)(q). Any other law to the
30 contrary notwithstanding, a registered pharmacist licensed in
31 Florida, that is under contract with a facility licensed under

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

26 (5) Provide for the access of the facility residents
27 to dental and other health-related services, recreational
28 services, rehabilitative services, and social work services
29 appropriate to their needs and conditions and not directly
30 furnished by the licensee. When a geriatric outpatient nurse
31 clinic is conducted in accordance with rules adopted by the

1 agency, outpatients attending such clinic shall not be counted
2 as part of the general resident population of the nursing home
3 facility, nor shall the nursing staff of the geriatric
4 outpatient clinic be counted as part of the nursing staff of
5 the facility, until the outpatient clinic load exceeds 15 a
6 day.

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

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

18 400.191 Availability, distribution, and posting of
19 reports and records.--

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

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

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

30 2. Whether such nursing home facilities are
31 proprietary or nonproprietary.

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

1 the federal Health Care Financing Administration, including
2 annual survey, revisit, and complaint survey information, for
3 each facility for the past 45 months. For noncertified
4 nursing homes, state survey and deficiency information,
5 including annual survey, revisit, and complaint survey
6 information for the past 45 months shall be provided.

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

17 (b) The agency shall provide the following information
18 in printed form:

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

21 2. Whether such nursing home facilities are
22 proprietary or nonproprietary.

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

26 4. The total number of beds, and of private and
27 semiprivate rooms, in each facility.

28 5. The religious affiliation, if any, of each
29 facility.

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

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

3 7. The languages spoken by the administrator and staff
4 of each facility.

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

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

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

16 11. The Internet address for the site where more
17 detailed information can be seen.

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

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

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

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

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

17 (6) The agency may adopt rules as necessary to
18 administer this section.

19 Section 56. Subsection (5) of section 400.23, Florida
20 Statutes, as amended by section 6 of chapter 2000-350, Laws of
21 Florida, is reenacted to read:

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

24 (5) The agency, in collaboration with the Division of
25 Children's Medical Services of the Department of Health, must,
26 no later than December 31, 1993, adopt rules for minimum
27 standards of care for persons under 21 years of age who reside
28 in nursing home facilities. The rules must include a
29 methodology for reviewing a nursing home facility under ss.
30 408.031-408.045 which serves only persons under 21 years of
31 age. A facility may be exempt from these standards for

1 specific persons between 18 and 21 years of age, if the
2 person's physician agrees that minimum standards of care based
3 on age are not necessary.

4 Section 57. Paragraph (a) of subsection (3),
5 subsection (4), and paragraph (e) of subsection (5) of section
6 400.235, Florida Statutes, as amended by section 12 of chapter
7 2000-305 and section 7 of chapter 2000-350, Laws of Florida,
8 and subsection (9) of section 400.235, Florida Statutes, as
9 created by section 7 of chapter 2000-350, are reenacted to
10 read:

11 400.235 Nursing home quality and licensure status;
12 Gold Seal Program.--

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

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

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

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

13
14 A facility assigned a conditional licensure status may not
15 qualify for consideration for the Gold Seal Program until
16 after it has operated for 30 months with no class I or class
17 II deficiencies and has completed a regularly scheduled
18 relicensure survey.

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

21 Section 58. The repeal of paragraph (h) of subsection
22 (5) of section 400.235, Florida Statutes, 1999, by section 7
23 of chapter 2000-350, Laws of Florida, is reenacted.

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

27 400.962 License required; license application.--

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

30
31

1 Section 60. Subsection (2) of section 397.405, Florida
2 Statutes, as amended by section 9 of chapter 2000-350, Laws of
3 Florida, is reenacted to read:

4 397.405 Exemptions from licensure.--The following are
5 exempt from the licensing provisions of this chapter:

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

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

25 Section 61. Section 10 of chapter 2000-350, Laws of
26 Florida, is reenacted to read:

27 Section 10. The Board of Pharmacy, in cooperation with
28 the Agency for Health Care Administration, shall undertake a
29 study of the feasibility, efficiency, cost-effectiveness, and
30 safety of using automated medication dispensing machines in
31 nursing facilities. The board and the agency may authorize the

1 establishment of demonstration projects in up to five nursing
2 facilities with a class I institutional pharmacy as part of
3 the study. Demonstration projects may be allowed to continue
4 for up to 12 months. A report summarizing the results of the
5 study shall be submitted by the board and the agency to the
6 Speaker of the House of Representatives and the President of
7 the Senate by January 1, 2001. If the study determines that
8 such dispensing machines would benefit residents of nursing
9 facilities and should be allowed, the report shall identify
10 those specific statutory changes necessary to allow nursing
11 facilities to use automated medication dispensing machines.

12 Section 62. It is the intent of the Legislature that
13 the reenactment of statutes provided in this act is remedial
14 in nature and is not intended to conflict with any amendment
15 provided in this act to any of the statutes reenacted, but
16 merely serves to settle and provide relief from uncertainty
17 with respect to the provisions of chapter 2000-350, Laws of
18 Florida, relating to nursing homes and related health care
19 facilities, which chapter law may contain more than one
20 subject.

21 Section 63. Effective July 1, 2001, the sum of
22 \$948,782 is appropriated from the General Revenue Fund to the
23 Department of Elderly Affairs for the purpose of paying the
24 salaries and other administrative expenses of the Office of
25 State Long-Term Care Ombudsman to carry out the provisions of
26 this act during the 2001-2002 fiscal year.

27 Section 64. Effective July 1, 2001, there is
28 appropriated from the General Revenue Fund for the Statewide
29 Public Guardianship Office established in part II, chapter
30 744, Florida Statutes, the sum of \$100,000. The office shall
31 use the funds for training and for costs associated with

1 providing assistance to judicial circuits in development of
2 local public guardianship programs, including public
3 guardianship services for residents of long-term care
4 facilities licensed under chapter 400, Florida Statutes.

5 Section 65. Except as otherwise provided herein, this
6 act shall take effect upon becoming a law.

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HOUSE SUMMARY

Provides requirements and procedures for civil actions to enforce the rights of nursing home and assisted living facility residents, including requirements for notice, investigation, arbitration, and appeal. Establishes "whistleblower" protections prohibiting retaliatory action against an employee who discloses certain information concerning a nursing home or assisted living facility, and provides rewards and penalties. Requires nursing homes to allow residents to install electronic monitoring devices in their rooms, and provides requirements and penalties. Revises requirements for nursing home license applications and grounds for denial. Provides or expands requirements relating to staff on duty, assessment and care of residents, resident grievance procedures, recordkeeping, and reporting to the Agency for Health Care Administration. Revises qualifications for nursing home personnel, including medical directors, nursing personnel, and temporary nursing assistants. Provides for competency review, inservice training, and competency designations for certified nursing assistants. Directs the Board of Nursing to provide for commendations for professional nurses. Requires wage and benefit increases for nursing home direct care staff. Expands grounds for administrative and other actions against a nursing home, revises classifications of deficient practices, and revises penalties. Requires nursing homes to establish internal risk management programs, and provides requirements for implementation, including reporting of adverse incidents and access to and review of records. Provides penalties for altering, defacing, or falsifying assisted living facility records. Revises Medicaid long-term care reimbursement requirements to provide for direct care and indirect care subcomponents and cost reporting. Provides requirements for contracts for independent evaluation of long-term care community diversion projects, and transfers contract responsibility from the Department of Elderly Affairs to the agency. Requires the Auditor General to develop a standard chart of accounts for Medicaid long-term care cost reporting. Requires the agency to amend the Medicaid Long-Term Care Reimbursement Plan to include specified provisions. Reenacts nursing home law enacted by ch. 2000-350, Laws of Florida, to settle a constitutional question. Provides appropriations. See bill for details.