

By the Fiscal Responsibility Council and Committee on
Elder & Long-Term Care and Representatives Green and Murman

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 s. 400.023, F.S.;
17 providing for election of survival damages,
18 wrongful death damages, or recovery for
19 negligence; providing for attorney's fees for
20 injunctive relief or administrative remedy;
21 providing that ch. 766, F.S., does not apply to
22 actions under this section; providing burden of
23 proof; providing that a violation of a right is
24 not negligence per se; prescribing the duty of
25 care; prescribing a nurse's duty of care;
26 eliminating presuit provisions; eliminating the
27 requirement for presuit mediation; requiring a
28 copy of complaint to be served to the Agency
29 for Health Care Administration; creating s.
30 400.0233, F.S.; providing for presuit notice;
31 prohibiting the filing of suit for a specified

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

1 negligence"; prescribing criteria governing
2 employers' liability for punitive damages;
3 providing for the remedial nature of
4 provisions; creating s. 400.0238, F.S.;
5 prescribing limits on the amount of punitive
6 damages; providing for the calculation of
7 attorney's fees; amending s. 768.735, F.S.;
8 providing that the section is inapplicable to
9 actions brought under ch. 400, F.S.; amending
10 s. 415.1111, F.S.; limiting actions against
11 nursing homes and assisted living facilities;
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; providing an
19 exemption from certain minimum staffing
20 requirements; requiring a report; amending s.
21 400.241, F.S.; providing a cross reference;
22 providing a penalty; amending s. 400.407, F.S.;
23 correcting a cross reference; amending s.
24 400.426, F.S.; requiring a daily record of care
25 of residents; providing for access to and
26 maintenance of such records; amending s.
27 400.428, F.S.; revising requirement for notice
28 of a resident's relocation or termination from
29 a facility; providing a penalty; amending s.
30 400.429, F.S.; providing for election of
31 survival damages, wrongful death damages, or

1 recovery for negligence; providing for
2 attorney's fees for injunctive relief or
3 administrative remedy; providing that ch. 766,
4 F.S., does not apply to actions under this
5 section; prescribing the burden of proof;
6 providing that a violation of a right is not
7 negligence per se; prescribing the duty of
8 care; prescribing a nurse's duty of care;
9 eliminating presuit provisions; eliminating the
10 requirement for presuit mediation; requiring a
11 copy of complaint to be served to the agency;
12 creating s. 400.4293, F.S.; providing for
13 presuit notice; prohibiting the filing of suit
14 for a specified time; requiring a response to
15 the notice; tolling the statute of limitations;
16 limiting the discovery of presuit investigation
17 documents; limiting liability of presuit
18 investigation participants; authorizing the
19 obtaining of opinions from a nurse or doctor;
20 authorizing the obtaining of unsworn
21 statements; authorizing discovery of relevant
22 documents; prescribing a time for acceptance of
23 settlement offers; requiring mediation;
24 prescribing the time to file suit; creating s.
25 400.4294, F.S.; requiring the availability of
26 facility records for presuit investigation;
27 specifying the records to be made available;
28 specifying what constitutes evidence of failure
29 to make records available in good faith;
30 specifying the consequences of such failure;
31 creating s. 400.4295, F.S.; providing that the

1 provisions of s. 768.21(8), F.S., do not apply
2 to actions under part III of ch. 400, F.S.;
3 creating s. 400.4296, F.S.; providing a statute
4 of limitations; providing a statute of
5 limitations when there is fraudulent
6 concealment or intentional misrepresentation of
7 fact; providing for application of the statute
8 of limitation to accrued actions; creating s.
9 400.4297, F.S.; requiring evidence of the basis
10 for punitive damages; prohibiting discovery
11 relating to financial worth; providing for
12 proof of punitive damages; defining the terms
13 "intentional misconduct" and "gross
14 negligence"; prescribing criteria governing
15 employers' liability for punitive damages;
16 providing for the remedial nature of
17 provisions; creating s. 400.4298, F.S.;
18 providing limits on the amount of punitive
19 damages; providing for the calculation of
20 attorney's fees; creating s. 400.449, F.S.;
21 providing penalties for altering, defacing, or
22 falsifying records of an assisted living
23 facility; amending s. 430.708, F.S.; deleting a
24 provision relating to certificate-of-need
25 calculations for nursing home beds pursuant to
26 Medicaid community diversion pilot projects;
27 amending s. 430.709, F.S.; providing
28 requirements for contracts for independent
29 evaluation of long-term care community
30 diversion projects; transferring responsibility
31 from the Department of Elderly Affairs to the

1 agency; requiring reports to the agency and
2 Legislature; amending s. 435.04, F.S.; deleting
3 obsolete language; amending s. 464.201, F.S.;
4 revising definition of "approved training
5 program" for nursing assistants; amending s.
6 464.2085, F.S.; directing the Council on
7 Certified Nursing Assistants to develop
8 advanced competency designations for certified
9 nursing assistants; amending ss. 101.655,
10 397.405, and 400.0069, F.S.; correcting cross
11 references; requiring the Auditor General
12 develop a standard chart of accounts for
13 Medicaid long-term care provider cost
14 reporting; requiring implementation by the
15 agency by a specified date; requiring the
16 agency to amend the Medicaid Title XIX
17 Long-Term Care Reimbursement Plan to include
18 specified provisions; directing the Board of
19 Nursing to provide for commendation of certain
20 professional nurses; requiring wage and benefit
21 increases for nursing home direct care staff;
22 requiring a report; reenacting s. 400.021(11),
23 F.S., relating to the definition of "nursing
24 home bed"; reenacting s. 400.0225, F.S.,
25 relating to consumer satisfaction surveys;
26 reenacting s. 400.0255(3) and (8), F.S.,
27 relating to discharge or transfer of residents;
28 reenacting s. 400.141(4) and (5), F.S.,
29 relating to the repackaging of residents'
30 medication and access to other health-related
31 services; reenacting s. 400.191(2) and (6),

1 F.S., relating to requirements for providing
2 information to consumers; reenacting s.
3 400.23(5), F.S., relating to rules for
4 standards of care for persons under 21 years of
5 age residing in nursing home facilities;
6 reenacting s. 400.235(3)(a), (4), (5)(e), and
7 (9), F.S., and reenacting the repeal of s.
8 400.235(5)(h), F.S., 1999, relating to
9 designation under the nursing home Gold Seal
10 Program; reenacting s. 400.962(1), F.S.,
11 relating to requirement for licensure under pt.
12 XI of ch. 400, F.S.; reenacting s. 397.405(2),
13 F.S., relating to a cross reference; reenacting
14 s. 10 of ch. 2000-350, Laws of Florida,
15 relating to requirements for a study of the use
16 of automated medication dispensing machines in
17 nursing facilities and for demonstration
18 projects and a report; providing legislative
19 intent; repealing subsection (1) of section 71
20 of chapter 98-171, Laws of Florida; abrogating
21 repeal of certain background screening
22 requirements; providing for implementation
23 contingent on specific appropriations in the
24 General Appropriations Act for such purposes;
25 providing effective dates.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Present subsection (6) of section 400.0073,
30 Florida Statutes, is amended, present subsections (5) and (6)
31 are renumbered as subsections (7) and (8), respectively, and

1 new subsections (5) and (6) are added to said section, to
2 read:

3 400.0073 State and local ombudsman council
4 investigations.--

5 (5) Each time a member of an ombudsman council is in a
6 nursing home facility to investigate a resident's complaint or
7 to conduct an inspection, the ombudsman shall verify, record,
8 and report to the Office of the State Long-Term Care Ombudsman
9 the number of certified nursing assistants, the number of
10 licensed practical nurses, and the number of registered nurses
11 on duty, the date and time of the visit, and the facility
12 census at that time. The Office of the State Long-Term Care
13 Ombudsman shall maintain a record of each such ombudsman
14 report in a database, which record shall be reported to the
15 Legislature quarterly beginning on October 1, 2001.

16 (6) Each time a member of an ombudsman council is in a
17 nursing home facility, the ombudsman shall determine whether
18 the facility is in compliance with s. 400.23(3)(a) relating to
19 daily posting of staff on duty. The ombudsman shall
20 immediately report to the agency failure by the nursing home
21 to comply with this requirement.

22 ~~(8)(6)~~ An inspection may not be accomplished by
23 forcible entry. Refusal of a long-term care facility to allow
24 entry of any ombudsman council member constitutes a violation
25 of part II, part III, or part VII of this chapter. Refusal to
26 allow entry to any ombudsman council member constitutes a
27 class I deficiency under part II or part III of this chapter.

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

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

- 1 (1) "Administrator" means the person licensed under
2 part II of chapter 468 individual who has the general
3 administrative charge of a facility.
- 4 (2) "Agency" means the Agency for Health Care
5 Administration, which is the licensing agency under this part.
- 6 (3) "Bed reservation policy" means the number of
7 consecutive days and the number of days per year that a
8 resident may leave the nursing home facility for overnight
9 therapeutic visits with family or friends or for
10 hospitalization for an acute condition before the licensee may
11 discharge the resident due to his or her absence from the
12 facility.
- 13 (4) "Board" means the Board of Nursing Home
14 Administrators.
- 15 (5) "Controlling interest" means:
16 (a) The applicant for licensure or a licensee;
17 (b) A person or entity that serves as an officer of,
18 is on the board of directors of, or has a 5-percent or greater
19 ownership interest in the management company or other entity,
20 related or unrelated, which the applicant or licensee may
21 contract with to operate the facility; or
22 (c) A person or entity that serves as an officer of,
23 is on the board of directors of, or has a 5-percent or greater
24 ownership interest in the applicant or licensee.
25
- 26 The term does not include a voluntary board member.
- 27 ~~(6)~~(5) "Custodial service" means care for a person
28 which entails observation of diet and sleeping habits and
29 maintenance of a watchfulness over the general health, safety,
30 and well-being of the aged or infirm.
31

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

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

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

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

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

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

30 (13)~~(11)~~ "Nursing home bed" or "bed" means an
31 accommodation which is ready for immediate occupancy, or is

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

7 (14)~~(13)~~ "Nursing service" means such services or acts
8 as may be rendered, directly or indirectly, to and in behalf
9 of a person by individuals licensed under part I of chapter
10 464 ~~as defined in s. 464.003.~~

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

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

20 (17)~~(16)~~ "Resident care plan" means a written plan
21 developed, maintained, and reviewed not less than quarterly by
22 a registered nurse, with participation from other facility
23 staff and the resident or his or her designee or legal
24 representative, which includes a comprehensive assessment of
25 the needs of an individual resident, a listing of services
26 provided within or outside the facility to meet those needs,
27 and an explanation of service goals.

28 (18)~~(17)~~ "Resident designee" means a person, other
29 than the owner, administrator, or employee of the facility,
30 designated in writing by a resident or a resident's guardian,
31

1 if the resident is adjudicated incompetent, to be the
2 resident's representative for a specific, limited purpose.

3 ~~(19)(18)~~ "State ombudsman council" means the State
4 Long-Term Care Ombudsman Council established pursuant to s.
5 400.0067.

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

16 Section 3. Effective January 1, 2002, section
17 400.0223, Florida Statutes, is created to read:

18 400.0223 Resident's right to have electronic
19 monitoring devices; requirements; penalties.--

20 (1) A nursing home facility shall permit a resident or
21 legal representative of the resident to monitor the resident
22 through the use of electronic monitoring devices in the
23 resident's room. For the purposes of this section, "electronic
24 monitoring device" includes a video surveillance camera, an
25 audio device, a video telephone, and an Internet video
26 surveillance device.

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

- 1 (3) Monitoring conducted under this section shall:
2 (a) Be noncompulsory and at the election of the
3 resident or legal representative of the resident.
4 (b) Be funded by the resident or legal representative
5 of the resident.
6 (c) Protect the privacy rights of other residents and
7 visitors to the nursing home facility to the extent reasonably
8 possible.
9 (4) It shall be a violation of this part for a nursing
10 home facility to refuse to admit an individual to the facility
11 or to remove a resident from the facility because of a request
12 for electronic monitoring.
13 (5) A nursing home facility shall make reasonable
14 physical accommodation for electronic monitoring by providing
15 a reasonably secure place to mount the electronic monitoring
16 device and access to power sources.
17 (6) A nursing home facility shall inform a resident or
18 legal representative of the resident's right to electronic
19 monitoring.
20 (7) A nursing home facility may request a resident or
21 legal representative to conduct electronic monitoring within
22 plain view.
23 (8) The facility administrator may require a resident
24 or legal representative who wishes to install an electronic
25 monitoring device to make the request in writing.
26 (9) Subject to the Florida Rules of Evidence, a tape
27 created through the use of electronic monitoring shall be
28 admissible in either a civil or criminal action brought in a
29 Florida court.
30
31

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

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

9 Section 4. Effective July 1, 2001, and applying to
10 causes of action accruing on or after that date, section
11 400.023, Florida Statutes, is amended to read:

12 400.023 Civil enforcement.--

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

1 enforce such rights and to recover actual and punitive damages
2 for any violation of deprivation or infringement on the rights
3 of a resident or for negligence. Any resident who prevails in
4 seeking injunctive relief or a claim for an administrative
5 remedy is entitled to recover the costs of the action, and a
6 reasonable attorney's fee assessed against the defendant not
7 to exceed \$25,000. Fees shall be awarded solely for the
8 injunctive or administrative relief and not for any claim or
9 action for damages, whether such claim or action is brought
10 together with a request for an injunction or administrative
11 relief or as a separate action, except as provided under s.
12 768.79 or the Florida Rules of Civil Procedure. Sections
13 400.023-400.0238 provide the exclusive remedy for a cause of
14 action for recovery of damages for the personal injury or
15 death of a nursing home resident arising out of negligence or
16 violation of rights specified in s. 400.022. This section
17 shall not be construed as precluding theories of recovery not
18 arising out of negligence or s. 400.022 that are available to
19 a resident or to the agency. The provisions of chapter 766 do
20 not apply to any cause of action brought under ss.
21 400.023-400.0238. Any plaintiff who prevails in any such
22 action may be entitled to recover reasonable attorney's fees,
23 costs of the action, and damages, unless the court finds that
24 the plaintiff has acted in bad faith, with malicious purpose,
25 and that there was a complete absence of a justiciable issue
26 of either law or fact. Prevailing defendants may be entitled
27 to recover reasonable attorney's fees pursuant to s. 57.105.
28 The remedies provided in this section are in addition to and
29 cumulative with other legal and administrative remedies
30 available to a resident and to the agency.
31

1 (2) In any claim for long-term care facility
2 negligence causing injury to or the death of a resident, the
3 claimant shall have the burden of proving, by a preponderance
4 of the evidence, that:

- 5 (a) The defendant owed a duty to the resident;
6 (b) The defendant breached the duty to the resident;
7 (c) The breach of the duty is a legal cause of loss,
8 injury, death, or damage to the resident; and
9 (d) The resident sustained loss, injury, death, or
10 damage as a result of the breach.

11
12 Nothing in this part shall be interpreted to create strict
13 liability. A violation of the rights set forth in s. 400.022
14 or in any other standard or guidelines specified in this part
15 or in any applicable administrative standard or guidelines of
16 this state or a federal regulatory agency shall be evidence of
17 negligence but shall not be considered negligence per se.

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

- 20 ~~(a) The time and labor required;~~
21 ~~(b) The novelty and difficulty of the questions;~~
22 ~~(c) The skill requisite to perform the legal service~~
23 ~~properly;~~
24 ~~(d) The preclusion of other employment by the attorney~~
25 ~~due to the acceptance of the case;~~
26 ~~(e) The customary fee;~~
27 ~~(f) Whether the fee is fixed or contingent;~~
28 ~~(g) The amount involved or the results obtained;~~
29 ~~(h) The experience, reputation, and ability of the~~
30 ~~attorneys;~~
31 ~~(i) The costs expended to prosecute the claim;~~

1 ~~(j) The type of fee arrangement between the attorney~~
2 ~~and the client;~~

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

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

7 (3) In any claim for long-term care facility
8 negligence, a licensee, person, or entity shall have a duty to
9 exercise reasonable care. Reasonable care is that degree of
10 care which a reasonably careful licensee, person, or entity
11 would use under like circumstances.

12 (4) In any claim for long-term care facility
13 negligence, a nurse licensed under part I of chapter 464 shall
14 have the duty to exercise care consistent with the prevailing
15 professional standard of care for a nurse. The prevailing
16 professional standard of care for a nurse shall be that level
17 of care, skill, and treatment which, in light of all relevant
18 surrounding circumstances, is recognized as acceptable and
19 appropriate by reasonably prudent similar nurses.

20 ~~(5)~~(3) A licensee shall not be liable for the medical
21 negligence of any physician rendering care or treatment to the
22 resident except for the administrative services of a medical
23 director as required in this part. Nothing in this subsection
24 shall be construed to protect a licensee, person, or entity
25 from liability for failure to provide a resident with
26 appropriate observation, assessment, nursing diagnosis,
27 planning, intervention, and evaluation of care by nursing
28 staff.

29 (6) The resident or the resident's legal
30 representative shall serve a copy of any complaint alleging,
31 in whole or in part, the violation of any rights specified in

1 this part to the Agency for Health Care Administration at the
2 time of filing the initial complaint with the clerk of the
3 court for the county in which the action is pursued.

4 ~~(4) Claimants alleging a deprivation or infringement~~
5 ~~of adequate and appropriate health care pursuant to s.~~
6 ~~400.022(1)(k) which resulted in personal injury to or the~~
7 ~~death of a resident shall conduct an investigation which shall~~
8 ~~include a review by a licensed physician or registered nurse~~
9 ~~familiar with the standard of nursing care for nursing home~~
10 ~~residents pursuant to this part. Any complaint alleging such~~
11 ~~a deprivation or infringement shall be accompanied by a~~
12 ~~verified statement from the reviewer that there exists reason~~
13 ~~to believe that a deprivation or infringement occurred during~~
14 ~~the resident's stay at the nursing home. Such opinion shall~~
15 ~~be based on records or other information available at the time~~
16 ~~that suit is filed. Failure to provide records in accordance~~
17 ~~with the requirements of this chapter shall waive the~~
18 ~~requirement of the verified statement.~~

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

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

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

31

1 1. ~~Within 60 days after the filing of the responsive~~
2 ~~pleading or defensive motion, the parties shall:~~
3 a. ~~Agree on a mediator. If the parties cannot agree on~~
4 ~~a mediator, the defendant shall immediately notify the court,~~
5 ~~which shall appoint a mediator within 10 days after such~~
6 ~~notice.~~
7 b. ~~Set a date for mediation.~~
8 c. ~~Prepare an order for the court that identifies the~~
9 ~~mediator, the scheduled date of the mediation, and other terms~~
10 ~~of the mediation. Absent any disagreement between the parties,~~
11 ~~the court may issue the order for the mediation submitted by~~
12 ~~the parties without a hearing.~~
13 2. ~~The mediation must be concluded within 120 days~~
14 ~~after the filing of a responsive pleading or defensive motion.~~
15 ~~The date may be extended only by agreement of all parties~~
16 ~~subject to mediation under this subsection.~~
17 3. ~~The mediation shall be conducted in the following~~
18 ~~manner:~~
19 a. ~~Each party shall ensure that all persons necessary~~
20 ~~for complete settlement authority are present at the~~
21 ~~mediation.~~
22 b. ~~Each party shall mediate in good faith.~~
23 4. ~~All aspects of the mediation which are not~~
24 ~~specifically established by this subsection must be conducted~~
25 ~~according to the rules of practice and procedure adopted by~~
26 ~~the Supreme Court of this state.~~
27 (b) ~~If the parties do not settle the case pursuant to~~
28 ~~mediation, the last offer of the defendant made at mediation~~
29 ~~shall be recorded by the mediator in a written report that~~
30 ~~states the amount of the offer, the date the offer was made in~~
31 ~~writing, and the date the offer was rejected. If the matter~~

1 ~~subsequently proceeds to trial under this section and the~~
2 ~~plaintiff prevails but is awarded an amount in damages,~~
3 ~~exclusive of attorney's fees, which is equal to or less than~~
4 ~~the last offer made by the defendant at mediation, the~~
5 ~~plaintiff is not entitled to recover any attorney's fees.~~

6 ~~(c) This subsection applies only to claims for~~
7 ~~liability and damages and does not apply to actions for~~
8 ~~injunctive relief.~~

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

11 ~~(7) Discovery of financial information for the purpose~~
12 ~~of determining the value of punitive damages may not be had~~
13 ~~unless the plaintiff shows the court by proffer or evidence in~~
14 ~~the record that a reasonable basis exists to support a claim~~
15 ~~for punitive damages.~~

16 ~~(8) In addition to any other standards for punitive~~
17 ~~damages, any award of punitive damages must be reasonable in~~
18 ~~light of the actual harm suffered by the resident and the~~
19 ~~egregiousness of the conduct that caused the actual harm to~~
20 ~~the resident.~~

21 Section 5. Effective July 1, 2001, and applying to
22 causes of action accruing on or after that date, section
23 400.0233, Florida Statutes, is created to read:

24 400.0233 Presuit notice; investigation; notification
25 of violation of resident's rights or alleged negligence;
26 claims evaluation procedure; informal discovery; review.--

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

28 (a) "Claim for long-term care facility negligence"
29 means a negligence claim alleging injury to or the death of a
30 resident arising out of an asserted violation of the rights of
31

1 a resident under s. 400.022 or an asserted deviation from the
2 applicable standard of care.

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

6 (2) Prior to filing a claim for long-term care
7 facility negligence, a claimant alleging injury to or the
8 death of a resident shall notify each prospective defendant by
9 certified mail, return receipt requested, of an asserted
10 violation of a resident's rights provided in s. 400.022 or
11 deviation from the standard of care. Such notification shall
12 include an identification of the rights the prospective
13 defendant has violated and the negligence alleged to have
14 caused the incident or incidents and a brief description of
15 the injuries sustained by the resident which are reasonably
16 identifiable at the time of notice. If the claimant is
17 represented by counsel, the notice shall contain a certificate
18 of counsel that counsel's reasonable investigation gave rise
19 to a good-faith belief that grounds exist for an action
20 against each prospective defendant.

21 (3)(a) No suit may be filed for a period of 75 days
22 after notice is mailed to any prospective defendant. During
23 the 75-day period, the prospective defendants or their
24 insurers shall conduct an evaluation of the claim to determine
25 the liability of each defendant and to evaluate the damages of
26 the claimants. Each defendant or insurer of the defendant
27 shall have a procedure for the prompt evaluation of claims
28 during the 75-day period. The procedure shall include one or
29 more of the following:

30 1. Internal review by a duly qualified facility risk
31 manager or claims adjuster.

1 2. Internal review by counsel for each prospective
2 defendant.

3 3. A quality assurance committee authorized under any
4 applicable state or federal statutes, rules, or regulations.

5 4. Any other similar procedure that fairly and
6 promptly evaluates the claims.

7
8 Each defendant or insurer of the defendant shall evaluate the
9 claim in good faith.

10 (b) At or before the end of the 75 days, the defendant
11 or insurer of the defendant shall provide the claimant with a
12 written response:

13 1. Rejecting the claim; or

14 2. Making a settlement offer.

15 (c) The response shall be delivered to the claimant if
16 not represented by counsel or to the claimant's attorney, by
17 certified mail, return receipt requested. Failure of the
18 prospective defendant or insurer of the defendant to reply to
19 the notice within 75 days after receipt shall be deemed a
20 rejection of the claim for purposes of this section.

21 (4) The notification of a claim for long-term care
22 facility negligence shall be served within the applicable
23 statute of limitations period; however, during the 75-day
24 period, the statute of limitations is tolled as to all
25 prospective defendants. Upon stipulation by the parties, the
26 75-day period may be extended and the statute of limitations
27 is tolled during any such extension. Upon receiving written
28 notice by certified mail, return receipt requested, of
29 termination of negotiations in an extended period, the
30 claimant shall have 60 days or the remainder of the period of
31

1 the statute of limitations, whichever is greater, within which
2 to file suit.

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

16 (6) Upon receipt by a prospective defendant of a
17 notice of claim, the parties shall make discoverable
18 information available without formal discovery as provided in
19 subsection (7).

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

23 (a) Unsworn statements.--Any party may require other
24 parties to appear for the taking of an unsworn statement.
25 Such statements may be used only for the purpose of claims
26 evaluation and are not discoverable or admissible in any civil
27 action for any purpose by any party. A party seeking to take
28 the unsworn statement of any party must give reasonable notice
29 in writing to all parties. The notice must state the time and
30 place for taking the statement and the name and address of the
31 party to be examined. Unless otherwise impractical, the

1 examination of any party must be done at the same time by all
2 other parties. Any party may be represented by counsel at the
3 taking of an unsworn statement. An unsworn statement may be
4 recorded electronically, stenographically, or on videotape.
5 The taking of unsworn statements is subject to the provisions
6 of the Florida Rules of Civil Procedure and may be terminated
7 for abuses.

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

16 (8) Each request for and notice concerning informal
17 discovery pursuant to this section must be in writing, and a
18 copy thereof must be sent to all parties. Such a request or
19 notice must bear a certificate of service identifying the name
20 and address of the person to whom the request or notice is
21 served, the date of the request or notice, and the manner of
22 service thereof.

23 (9) If a prospective defendant makes a written
24 settlement offer, the claimant shall have 15 days from the
25 date of receipt to accept the offer. An offer shall be deemed
26 rejected unless accepted by delivery of a written notice of
27 acceptance.

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

31

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

12 Section 6. Effective July 1, 2001, and applying to
13 causes of action accruing on or after that date, section
14 400.0234, Florida Statutes, is created to read:

15 400.0234 Availability of facility records for
16 investigation of resident's rights violations and defenses;
17 penalty.--

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

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

28 Section 7. Effective July 1, 2001, and applying to
29 causes of action accruing on or after that date, section
30 400.0235, Florida Statutes, is created to read:

31

1 400.0235 Certain provisions not applicable to claims
2 for long-term care facility negligence.--A claim for long-term
3 care facility negligence is not a claim for medical
4 malpractice, and the provisions of s. 768.21(8) do not apply
5 to a claim alleging death of the resident.

6 Section 8. Effective July 1, 2001, section 400.0236,
7 Florida Statutes, is created to read:

8 400.0236 Statute of limitations.--

9 (1) Any claim for long-term care facility negligence
10 shall be commenced within 2 years from the time the incident
11 giving rise to the action occurred or within 2 years from the
12 time the incident is discovered or should have been discovered
13 with the exercise of due diligence; however, in no event shall
14 the action be commenced later than 4 years from the date of
15 the incident or occurrence out of which the cause of action
16 accrued.

17 (2) In those actions covered by this section in which
18 it can be shown that fraudulent concealment or intentional
19 misrepresentation of fact prevented the discovery of the
20 injury, the period of limitations is extended forward 2 years
21 from the time that the injury is discovered with the exercise
22 of due diligence, but in no event for more than 6 years from
23 the date the incident giving rise to the injury occurred.

24 (3) This section shall apply to causes of action that
25 have accrued prior to the effective date of this section;
26 however, any such cause of action that would not have been
27 barred under prior law may be brought within the time allowed
28 by prior law or within 2 years after the effective date of
29 this section, whichever is earlier, and will be barred
30 thereafter. In actions where it can be shown that fraudulent
31 concealment or intentional misrepresentation of fact prevented

1 the discovery of the injury, the period of limitations is
2 extended forward 2 years from the time that the injury is
3 discovered with the exercise of due diligence but in no event
4 more than 4 years from the effective date of this section.

5 Section 9. Section 400.0237, Florida Statutes, is
6 created to read:

7 400.0237 Punitive damages; pleading; burden of
8 proof.--

9 (1) In any claim for long-term care facility
10 negligence, no claim for punitive damages shall be permitted
11 unless there is a reasonable showing by evidence in the record
12 or proffered by the claimant which would provide a reasonable
13 basis for recovery of such damages. The claimant may move to
14 amend her or his complaint to assert a claim for punitive
15 damages as allowed by the rules of civil procedure. The rules
16 of civil procedure shall be liberally construed so as to allow
17 the claimant discovery of evidence which appears reasonably
18 calculated to lead to admissible evidence on the issue of
19 punitive damages. No discovery of financial worth shall
20 proceed until after the pleading concerning punitive damages
21 is permitted.

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

27 (a) "Intentional misconduct" means that the defendant
28 had actual knowledge of the wrongfulness of the conduct and
29 the high probability that injury or damage to the claimant
30 would result and, despite that knowledge, intentionally
31 pursued that course of conduct, resulting in injury or damage.

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

5 (3) In the case of an employer, principal,
6 corporation, or other legal entity, punitive damages may be
7 imposed for the conduct of an employee or agent only if the
8 conduct of the employee or agent meets the criteria specified
9 in subsection (2) and:

10 (a) The employer, principal, corporation, or other
11 legal entity actively and knowingly participated in such
12 conduct;

13 (b) The officers, directors, or managers of the
14 employer, principal, corporation, or other legal entity
15 knowingly condoned, ratified, or consented to such conduct; or

16 (c) The employer, principal, corporation, or other
17 legal entity engaged in conduct that constituted gross
18 negligence and that contributed to the loss, damages, or
19 injury suffered by the claimant.

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

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

26 Section 10. Section 400.0238, Florida Statutes, is
27 created to read:

28 400.0238 Punitive damages; limitation.--

29 (1)(a) Except as provided in paragraph (b), an award
30 of punitive damages may not exceed the greater of:

31

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

4 2. The sum of \$1 million.

5 (b) Where the fact finder determines beyond a
6 reasonable doubt that at the time of injury the wrongful
7 conduct proven under this section was motivated primarily by
8 unreasonable financial gain and determines that the
9 unreasonably dangerous nature of the conduct, together with
10 the high likelihood of injury resulting from the conduct, was
11 actually known by the managing agent, director, officer, or
12 other person responsible for making policy decisions on behalf
13 of the defendant, or at the time of injury the defendant had a
14 specific intent to harm the claimant and the finder of fact
15 determines by clear and convincing evidence that the
16 defendant's conduct did in fact harm the claimant, there shall
17 be no cap on punitive damages.

18 (c) This subsection is not intended to prohibit an
19 appropriate court from exercising its jurisdiction under s.
20 768.74 in determining the reasonableness of an award of
21 punitive damages that is less than three times the amount of
22 compensatory damages.

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

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

31

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

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

6 768.735 Punitive damages; exceptions; limitation.--

7 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
8 apply to any civil action based upon child abuse, abuse of the
9 elderly under chapter 415, or abuse of the developmentally
10 disabled ~~or any civil action arising under chapter 400~~. Such
11 actions are governed by applicable statutes and controlling
12 judicial precedent. This section does not apply to claims for
13 long-term care facility negligence.

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

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

25 Section 12. Section 415.1111, Florida Statutes, is
26 amended to read:

27 415.1111 Civil actions.--A vulnerable adult who has
28 been abused, neglected, or exploited as specified in this
29 chapter has a cause of action against any perpetrator and may
30 recover actual and punitive damages for such abuse, neglect,
31 or exploitation. The action may be brought by the vulnerable

1 adult, or that person's guardian, by a person or organization
2 acting on behalf of the vulnerable adult with the consent of
3 that person or that person's guardian, or by the personal
4 representative of the estate of a deceased victim without
5 regard to whether the cause of death resulted from the abuse,
6 neglect, or exploitation. The action may be brought in any
7 court of competent jurisdiction to enforce such action and to
8 recover actual and punitive damages for any deprivation of or
9 infringement on the rights of a vulnerable adult. A party who
10 prevails in any such action may be entitled to recover
11 reasonable attorney's fees, costs of the action, and damages.
12 The remedies provided in this section are in addition to and
13 cumulative with other legal and administrative remedies
14 available to a vulnerable adult. Notwithstanding the
15 foregoing, any civil action for damages against any licensee
16 or entity who establishes, controls, conducts, manages, or
17 operates a facility licensed under part II of chapter 400
18 relating to its operation of the licensed facility shall be
19 brought as a claim for long-term care facility negligence, or
20 against any licensee or entity who establishes, controls,
21 conducts, manages, or operates a facility licensed under part
22 III of chapter 400 relating to its operation of the licensed
23 facility shall be brought as a claim for long-term care
24 facility negligence. Such licensee or entity shall not be
25 vicariously liable for the acts or omissions of its employees
26 or agents or any other third party in an action brought under
27 this section.

28 Section 13. Subsections (2) and (5) of section
29 400.071, Florida Statutes, are amended, subsections (9) and
30 (10) are renumbered as subsections (10) and (11),
31

1 respectively, and a new subsection (9) is added to said
2 section, to read:

3 400.071 Application for license.--

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

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

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

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

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

30 (e) A signed affidavit disclosing any financial or
31 ownership interest that a person or entity described in

1 paragraph (a) or paragraph (d) has held in the last 5 years in
2 any entity licensed by this state or any other state to
3 provide health or residential care, which entity has closed
4 voluntarily or involuntarily, and the reason for the closure;
5 has filed bankruptcy; has had a receiver appointed or a
6 license denied, suspended, or revoked; or has had an
7 injunction issued against it which was initiated by a
8 regulatory agency.

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

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

25 ~~(h)(g)~~ Copies of any settlement entered into by the
26 applicant or any civil verdict or judgment involving the
27 applicant, rendered within the 10 years preceding the
28 application, relating to medical negligence, violation of
29 residents' rights, or wrongful death. As a condition of
30 licensure, the licensee agrees to provide to the agency copies
31 of any new settlement, verdict, or judgment involving the

1 applicant, relating to such matters, within 30 days after
2 filing with the clerk of the court. The information required
3 in this paragraph shall be maintained in the facility's
4 licensure file and in an agency database which is available as
5 a public record.

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

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

21 Section 14. Section 400.102, Florida Statutes, is
22 amended to read:

23 400.102 Action by agency against licensee; grounds.--

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

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

28 (b) Misappropriation or conversion of the property of
29 a resident of the facility;

30 (c) Failure to follow the criteria and procedures
31 provided under part I of chapter 394 relating to the

1 transportation, voluntary admission, and involuntary
2 examination of a nursing home resident;
3 (d) Violation of provisions of this part or rules
4 adopted under this part; ~~or~~
5 (e) Fraudulent altering, defacing, or falsifying any
6 medical or other nursing home record, or causing or procuring
7 any of these offenses to be committed;
8 (f) A demonstrated pattern of deficient practice.
9 Deficiencies found during the first 6 months after a change of
10 ownership to an unrelated party shall not be counted toward a
11 pattern of deficient practice under this paragraph. The agency
12 may adopt rules to implement this paragraph.
13 (g) Failure to pay any outstanding fines assessed by
14 final agency order or fines assessed by the Health Care
15 Financing Administration pursuant to requirements for federal
16 Medicare certification;
17 (h) Exclusion from the Medicare or Medicaid programs;
18 or
19 (i)~~(e)~~ Any act constituting a ground upon which
20 application for a license may be denied.
21 (2) If the agency has reasonable belief that any of
22 such conditions exist, it shall take the following action:
23 (a) In the case of an applicant for original
24 licensure, denial action as provided in s. 400.121.
25 (b) In the case of an applicant for relicensure or a
26 current licensee, administrative action as provided in s.
27 400.121 or injunctive action as authorized by s. 400.125.
28 (c) In the case of a facility operating without a
29 license, injunctive action as authorized in s. 400.125.
30
31

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

3 Section 15. Subsections (4) through (10) are added to
4 section 400.118, Florida Statutes, to read:

5 400.118 Quality assurance; early warning system;
6 monitoring; rapid response teams; verification of nursing
7 staff; provision of care and services.--

8 (4) Each time a staff person of the agency conducting
9 an inspection, an investigation of a complaint, an unannounced
10 facility review, or a monitoring visit under this part is in a
11 nursing home facility, the staff person shall verify, record,
12 and report to the agency the number of certified nursing
13 assistants, the number of licensed practical nurses, and the
14 number of registered nurses on duty. The staff person shall
15 report the date and time of the visit, and the facility census
16 at that time, to the agency.

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

22 (a) Activities of daily living.--Based on the
23 comprehensive assessment of a resident, the facility must
24 ensure that:

25 1. The resident's abilities in activities of daily
26 living do not diminish unless circumstances of the
27 individual's clinical condition demonstrate that diminution
28 was unavoidable. These abilities include the resident's
29 ability to bathe, dress, and groom; transfer and ambulate;
30 toilet; eat; and use speech, language, or other functional
31 communication systems.

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

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

7 (b) Vision and hearing.--To ensure that residents
8 receive proper treatment and assistive devices to maintain
9 vision and hearing abilities, the facility must, if necessary,
10 assist the resident in making appointments with, and by
11 arranging for transportation to and from, the office of a
12 practitioner specializing in the treatment of vision or
13 hearing impairment or the office of a professional
14 specializing in the provision of vision or hearing assistive
15 devices.

16 (c) Pressure sores.--Based on the comprehensive
17 assessment of a resident, the facility must ensure that a
18 resident who enters the facility without pressure sores does
19 not develop pressure sores unless the individual's clinical
20 condition demonstrates that they were unavoidable; and a
21 resident having pressure sores receives necessary treatment
22 and services to promote healing, prevent infection, and
23 prevent new sores from developing.

24 (d) Urinary incontinence.--Based on the comprehensive
25 assessment of a resident, the facility must ensure that a
26 resident who enters the facility without an indwelling
27 catheter is not catheterized unless the resident's clinical
28 condition demonstrates that catheterization was necessary; and
29 a resident who is incontinent of bladder receives appropriate
30 treatment and services to prevent urinary tract infections and
31 to restore as much normal bladder function as possible.

1 (e) Range of motion.--Based on the comprehensive
2 assessment of a resident, the facility must ensure that a
3 resident who enters the facility without a limited range of
4 motion does not experience reduction in range of motion unless
5 the resident's clinical condition demonstrates that a
6 reduction in range of motion is unavoidable; and a resident
7 with a limited range of motion receives appropriate treatment
8 and services to increase range of motion or to prevent further
9 decrease in range of motion.

10 (f) Mental and psychosocial functioning.--Based on the
11 comprehensive assessment of a resident, the facility must
12 ensure that a resident who displays mental or psychosocial
13 adjustment difficulty receives appropriate treatment and
14 services to correct the assessed problem; and a resident whose
15 assessment did not reveal a mental or psychosocial adjustment
16 difficulty does not display a pattern of decreased social
17 interaction or increased withdrawn, angry, or depressive
18 behaviors, unless the resident's clinical condition
19 demonstrates that such a pattern was unavoidable.

20 (g) Nasogastric tubes.--Based on the comprehensive
21 assessment of a resident, the facility must ensure that a
22 resident who has been able to eat enough alone or with
23 assistance is not fed by a nasogastric tube unless the
24 resident's clinical condition demonstrates that use of a
25 nasogastric or gastrostomy tube was unavoidable; and the
26 resident receives the appropriate treatment and services to
27 prevent aspiration pneumonia, diarrhea, vomiting, dehydration,
28 metabolic abnormalities, and nasal-pharyngeal ulcers and to
29 restore, if possible, normal eating skills.

30 (h) Accidents.--The facility must ensure that the
31 residents' environment remains as free of accident hazards as

1 is possible and that each resident receives adequate
2 supervision and assistance devices to prevent accidents.

3 (i) Nutrition.--Based on the comprehensive assessment
4 of a resident, the facility must ensure that a resident
5 maintains acceptable parameters of nutritional status, such as
6 body weight and protein levels, unless the resident's clinical
7 condition demonstrates that this is not possible, and receives
8 a therapeutic diet when there is a nutritional problem.

9 (j) Hydration.--The facility must provide each
10 resident with sufficient fluid intake to maintain proper
11 hydration and health.

12 (k) Special needs.--The facility must ensure that
13 residents receive proper treatment and care for the following
14 special services: injections; parenteral and enteral fluids;
15 colostomy, ureterostomy, or ileostomy care; tracheostomy care;
16 tracheal suctioning; respiratory care; foot care; and
17 prostheses.

18 (l) Drug regimen.--

19 1. The facility must ensure that a resident's drug
20 regimen is free from unnecessary drugs. An unnecessary drug is
21 any drug when used in excessive doses, including duplicate
22 drug therapy; or for excessive duration; or without adequate
23 monitoring; or without adequate indications for its use; or in
24 the presence of adverse consequences which indicate the dose
25 should be reduced or discontinued; or any combination of such
26 uses.

27 2. Based on a comprehensive assessment of a resident,
28 the facility must ensure that residents who have not used
29 antipsychotic drugs are not given these drugs unless
30 antipsychotic drug therapy is necessary to treat a specific
31 condition as diagnosed and documented in the clinical record;

1 and residents who use antipsychotic drugs receive gradual dose
2 reductions, and behavioral interventions, unless clinically
3 contraindicated, in an effort to discontinue these drugs.

4 3. The facility must ensure that a resident's drug
5 regimen is free of any significant medication errors. The
6 facility must ensure that the facility medication error rate
7 is less than 5 percent.

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

11 (7) A resident who refuses medication, treatment, or
12 other components of the plan of care shall be advised of the
13 potential consequences of such actions. The resident's refusal
14 shall be documented in the medical record.

15 (8) The legal representative of a resident who has
16 been adjudged incapacitated and unable to make decisions about
17 medication, treatment, or other components of the plan of care
18 must be informed in writing of the resident's proposed plan of
19 care and the consequences of refusal of medication, treatment,
20 or other components of the plan of care.

21 (9) If a resident refuses medication, treatment, or
22 other components of the plan of care, the nursing home
23 facility must continue to provide other services that the
24 resident agrees to, in accordance with the resident's plan of
25 care.

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

30 Section 16. Section 400.1183, Florida Statutes, is
31 created to read:

1 400.1183 Resident grievance procedures.--
2 (1) Every nursing home must have a grievance procedure
3 available to its residents and their families. The grievance
4 procedure must include:
5 (a) An explanation of how to pursue redress of a
6 grievance.
7 (b) The names, job titles, and telephone numbers of
8 the employees responsible for implementing the facility's
9 grievance procedure. The list must include the address and the
10 toll-free telephone numbers of the ombudsman and the agency.
11 (c) A simple description of the process through which
12 a resident may, at any time, contact the toll-free telephone
13 hotline of the ombudsman or the agency to report the
14 unresolved grievance.
15 (d) A procedure for providing assistance to residents
16 who cannot prepare a written grievance without help.
17 (2) Each facility shall maintain records of all
18 grievances and shall report annually to the agency the total
19 number of grievances handled, a categorization of the cases
20 underlying the grievances, and the final disposition of the
21 grievances.
22 (3) Each facility must respond to the grievance within
23 a reasonable time after its submission.
24 (4) The agency may investigate any grievance at any
25 time.
26 (5) The agency may impose an administrative fine, in
27 accordance with s. 400.121, against a nursing home facility
28 for noncompliance with this section.
29 Section 17. Subsections (2) and (5) of section
30 400.121, Florida Statutes, are amended, and subsections (7)
31 and (8) are added to said section, to read:

1 400.121 Denial, suspension, revocation of license;
2 moratorium on admissions; administrative fines; procedure;
3 order to increase staffing.--

4 (1) The agency may deny, revoke, or suspend a license
5 or impose an administrative fine, not to exceed \$500 per
6 violation per day, for a violation of any provision of s.
7 400.102(1). All hearings shall be held within the county in
8 which the licensee or applicant operates or applies for a
9 license to operate a facility as defined herein.

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

22 (5) An action taken by the agency to deny, suspend, or
23 revoke a facility's license ~~under this part~~, in which the
24 agency claims that the facility owner or an employee of the
25 facility has threatened the health, safety, or welfare of a
26 resident of the facility, shall be heard by the Division of
27 Administrative Hearings of the Department of Management
28 Services within 120 days after receipt of the facility's
29 request for a hearing, unless the time limitation is waived by
30 both parties. The administrative law judge must render a
31 decision within 30 days after receipt of a proposed

1 recommended order. This subsection does not modify the
2 requirement that an administrative hearing be held within 90
3 days after a license is suspended under paragraph (4)(b).
4 (7) The agency may deny an application based on the
5 disclosure of information required in s. 400.07(2)(e) if such
6 information demonstrates that any controlling interest has
7 been the subject of an adverse action by a regulatory
8 authority of any jurisdiction, including its agencies or
9 subdivisions, for a violation that would constitute a
10 violation under Florida law. The licensing authority's
11 acceptance of a relinquishment of licensure, stipulation,
12 consent order, or other settlement, offered in response to or
13 in anticipation of the filing of charges against the license,
14 shall be construed as an adverse action against the license.
15 If the adverse action solely involves the management company,
16 the applicant or licensee shall be given 30 days to replace
17 the management company with a company that has not been the
18 subject of an adverse action as described in this subsection.
19 The agency may adopt rules as necessary to implement this
20 subsection.

21 (8) Administrative proceedings challenging agency
22 licensure enforcement actions shall be reviewed on the basis
23 of the facts and conditions that resulted in the initial
24 agency action.

25 Section 18. Section 400.141, Florida Statutes, is
26 amended to read:

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

30 (1) Be under the administrative direction and charge
31 of a licensed administrator.

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

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

8 (4) Have sufficient nursing staff, on a 24-hour basis,
9 to provide nursing and related services to residents in order
10 to maintain the highest practicable physical, mental, and
11 psychosocial well-being of each resident, as determined by
12 resident assessments and plans of care.

13 (5) Conduct initially and periodically a
14 comprehensive, accurate, standardized, reproducible assessment
15 of each resident's functional capacity and care plans in
16 conformance with the federal regulations contained in Title 42
17 of the Code of Federal Regulation. Each assessment must be
18 conducted or coordinated by a registered nurse who signs and
19 certifies the accuracy of the assessment.

20 (6) Employ registered nurses and licensed practical
21 nurses who are responsible for the proper practice of
22 professional nursing and practical nursing, respectively, in
23 accordance with chapter 464.

24 (7) Designate as the director of nursing or the
25 assistant director of nursing persons who have had a least 12
26 months of experience in nursing service supervision or
27 administration, and education or work experience beyond the
28 minimum required for licensure in rehabilitative or geriatric
29 nursing, before assuming responsibility for the total nursing
30 service program in a nursing home.

31

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

4 ~~(9)(4)~~ Provide for resident use of a community
5 pharmacy as specified in s. 400.022(1)(q). Any other law to
6 the contrary notwithstanding, a registered pharmacist licensed
7 in Florida, that is under contract with a facility licensed
8 under this chapter, shall repackage a nursing facility
9 resident's bulk prescription medication which has been
10 packaged by another pharmacist licensed in any state in the
11 United States into a unit dose system compatible with the
12 system used by the nursing facility, if the pharmacist is
13 requested to offer such service. To be eligible for
14 repackaging, a resident or the resident's spouse must receive
15 prescription medication benefits provided through a former
16 employer as part of his or her retirement benefits a qualified
17 pension plan as specified in s. 4972 of the Internal Revenue
18 Code, a federal retirement program as specified under 5 C.F.R.
19 s. 831, or a long-term care policy as defined in s.
20 627.9404(1). A pharmacist who correctly repackages and
21 relabels the medication and the nursing facility which
22 correctly administers such repackaged medication under the
23 provisions of this subsection shall not be held liable in any
24 civil or administrative action arising from the repackaging.
25 In order to be eligible for the repackaging, a nursing
26 facility resident for whom the medication is to be repackaged
27 shall sign an informed consent form provided by the facility
28 which includes an explanation of the repackaging process and
29 which notifies the resident of the immunities from liability
30 provided herein. A pharmacist who repackages and relabels
31 prescription medications, as authorized under this subsection,

1 may charge a reasonable fee for costs resulting from the
2 implementation of this provision.

3 (10)~~(5)~~ Provide for the access of the facility
4 residents to dental and other health-related services,
5 recreational services, rehabilitative services, and social
6 work services appropriate to their needs and conditions and
7 not directly furnished by the licensee. When a geriatric
8 outpatient nurse clinic is conducted in accordance with rules
9 adopted by the agency, outpatients attending such clinic shall
10 not be counted as part of the general resident population of
11 the nursing home facility, nor shall the nursing staff of the
12 geriatric outpatient clinic be counted as part of the nursing
13 staff of the facility, until the outpatient clinic load
14 exceeds 15 a day.

15 (11)~~(6)~~ Be allowed and encouraged by the agency to
16 provide other needed services under certain conditions. If the
17 facility has a standard licensure status, and has had no class
18 I or class II deficiencies during the past 2 years or has been
19 awarded a Gold Seal under the program established in s.
20 400.235, it may be encouraged by the agency to provide
21 services, including, but not limited to, respite and adult day
22 services, which enable individuals to move in and out of the
23 facility. A facility is not subject to any additional
24 licensure requirements for providing these services. Respite
25 care may be offered to persons in need of short-term or
26 temporary nursing home services. Respite care must be provided
27 in accordance with this part and rules adopted by the agency.
28 However, the agency shall, by rule, adopt modified
29 requirements for resident assessment, resident care plans,
30 resident contracts, physician orders, and other provisions, as
31 appropriate, for short-term or temporary nursing home

1 services. The agency shall allow for shared programming and
2 staff in a facility which meets minimum standards and offers
3 services pursuant to this subsection, but, if the facility is
4 cited for deficiencies in patient care, may require additional
5 staff and programs appropriate to the needs of service
6 recipients. A person who receives respite care may not be
7 counted as a resident of the facility for purposes of the
8 facility's licensed capacity unless that person receives
9 24-hour respite care. A person receiving either respite care
10 for 24 hours or longer or adult day services must be included
11 when calculating minimum staffing for the facility. Any costs
12 and revenues generated by a nursing home facility from
13 nonresidential programs or services shall be excluded from the
14 calculations of Medicaid per diems for nursing home
15 institutional care reimbursement.

16 (12)~~(7)~~ If the facility has a standard licensure
17 status or is a Gold Seal facility, exceeds minimum staffing
18 standards, and is part of a retirement community that offers
19 other services pursuant to part III, part IV, or part V, be
20 allowed to share programming and staff. At the time of
21 relicensure, a retirement community that uses this option must
22 demonstrate through staffing records that minimum staffing
23 requirements for the facility were exceeded.

24 (13)~~(8)~~ Maintain the facility premises and equipment
25 and conduct its operations in a safe and sanitary manner.

26 (14)~~(9)~~ If the licensee furnishes food service,
27 provide a wholesome and nourishing diet sufficient to meet
28 generally accepted standards of proper nutrition for its
29 residents and provide such therapeutic diets as may be
30 prescribed by attending physicians. In making rules to
31 implement this subsection, the agency shall be guided by

1 standards recommended by nationally recognized professional
2 groups and associations with knowledge of dietetics.
3 ~~(15)(10)~~ Keep full records of resident admissions and
4 discharges; medical and general health status, including
5 medical records, personal and social history, and identity and
6 address of next of kin or other persons who may have
7 responsibility for the affairs of the residents; and
8 individual resident care plans including, but not limited to,
9 prescribed services, service frequency and duration, and
10 service goals. The records shall be open to inspection by the
11 agency.

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

22 ~~(17)(11)~~ Keep such fiscal records of its operations
23 and conditions as may be necessary to provide information
24 pursuant to this part.

25 ~~(18)(12)~~ Furnish copies of personnel records for
26 employees affiliated with such facility, to any other facility
27 licensed by this state requesting this information pursuant to
28 this part. Such information contained in the records may
29 include, but is not limited to, disciplinary matters and any
30 reason for termination. Any facility releasing such records
31 pursuant to this part shall be considered to be acting in good

1 faith and may not be held liable for information contained in
2 such records, absent a showing that the facility maliciously
3 falsified such records.

4 (19)~~(13)~~ Publicly display a poster provided by the
5 agency containing the names, addresses, and telephone numbers
6 for the state's abuse hotline, the State Long-Term Care
7 Ombudsman, the Agency for Health Care Administration consumer
8 hotline, the Advocacy Center for Persons with Disabilities,
9 the Florida Statewide Advocacy Council, and the Medicaid Fraud
10 Control Unit, with a clear description of the assistance to be
11 expected from each.

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

15 (21) Submit to the agency by February 1 and August 1
16 of each year and as otherwise requested by the agency
17 information regarding staff-to-resident ratios, staff
18 turnover, and staff stability of the facility, with respect to
19 certified nursing assistants, registered nurses, licensed
20 nurses, the director of nursing, and the facility
21 administrator. For purposes of this reporting:

22 (a) Staff-to-resident ratio is based on the
23 requirements established pursuant to s. 400.23(3)(a) and
24 applicable rules.

25 (b) Staff turnover shall be calculated from the most
26 recent 12-month period ending on the 1st workday of the most
27 recent calendar quarter prior to submission of the
28 information. The turnover rate must be computed quarterly,
29 with the annual rate being the cumulative sum of the quarterly
30 rates. The formula to determine the turnover rate shall be the
31 total number of terminations or separations of nonprobationary

1 employees from employment divided by the total number of staff
2 employed at the end of the period for which the rate is
3 computed, expressed as a percent.

4 (c) Staff turnover shall be reported as one total
5 figure including staff of all classes and shall be reported by
6 the following categories: certified nursing assistants,
7 dietitians, licensed practical nurses, registered nurses,
8 noncertified nursing assistants working for the allowed 4
9 months before certification, therapists, social services
10 staff, recreation staff, activity staff, administrative
11 support personnel, managers, dietary aides, cooks, maintenance
12 personnel, custodial personnel, and any other category of
13 staff necessary for the facility.

14 (d) The formula for determining staff stability is the
15 total number of employees that have been employed for over 12
16 months divided by the total number of employees employed at
17 the end of the most recent calendar quarter, expressed as a
18 percentage.

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

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

30
31

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

6 Section 19. Section 400.1413, Florida Statutes, is
7 created to read:

8 400.1413 Internal risk management and quality
9 assurance program.--

10 (1) Every licensed facility shall, as part of its
11 administrative functions, establish an internal risk
12 management and quality assurance program, the purpose of which
13 is to assess patient care practices, review and act on
14 facility quality indicators, maintain and review facility
15 incident reports, correct deficiencies cited by the agency,
16 resolve resident grievances, and develop plans of action to
17 correct and respond quickly to identified quality
18 deficiencies.

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

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

24 (a) The investigation and analysis of the frequency
25 and causes of general categories and specific types of adverse
26 incidents involving or affecting residents.

27 (b) The development of appropriate measures to
28 minimize the risk of adverse incidents to residents,
29 including, but not limited to:

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

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

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

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

8 3. The development and implementation of an incident
9 reporting system based upon the affirmative duty of all health
10 care providers and all agents and employees of the facility to
11 report adverse incidents to the risk manager.

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

17 (5) Each internal risk management and quality
18 assurance program shall include the use of incident reports to
19 be filed with the risk manager and the facility administrator.
20 The risk manager shall have free access to all medical records
21 of the licensed facility. As a part of each internal risk
22 management and quality assurance program, the incident reports
23 shall be used to develop categories of incidents which
24 identify problem areas. Once identified, procedures shall be
25 adjusted to correct the problem areas.

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

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

30 (a) An event over which facility personnel could
31 exercise control and which is associated in whole or in part

1 with clinical intervention, rather than the condition for
2 which such intervention occurred, and which results in one of
3 the following injuries:
4 1. Death.
5 2. Brain or spinal damage.
6 3. Permanent disfigurement.
7 4. Fracture or dislocation of bones or joints.
8 5. A resulting limitation of neurological, physical,
9 or sensory function.
10 6. Any condition that required medical attention to
11 which the patient has not given his or her informed consent,
12 including failure to honor advanced directives.
13 7. Any condition that required the transfer of the
14 patient, within or outside the facility, to a unit providing a
15 more acute level of care due to the adverse incident, rather
16 than the resident's condition prior to the adverse incident.
17 (b) Abuse, neglect, or exploitation as defined in s.
18 415.102.
19 (c) Abuse, neglect, or harm as defined in s. 39.01.
20 (d) Resident elopement.
21 (e) Events reported to law enforcement.
22 (8)(a) Each licensed facility subject to this section
23 shall submit an annual report to the agency on a form
24 developed by the agency summarizing the incident reports that
25 have been filed in the facility for that year. The report
26 shall include:
27 1. The total number of adverse incidents.
28 2. A listing, by category, of the types of adverse
29 incidents and the number of incidents occurring within each
30 category.
31

1 3. Types of liability claims filed based on an adverse
2 incident or reportable injury.

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

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

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

15 (c) The report submitted to the agency shall also
16 contain the name of the person responsible for risk management
17 in the facility.

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

21 1. The death of a patient.

22 2. Alleged mistreatment of a patient by a certified
23 nursing assistant or licensed nurse.

24 3. Resident elopement.

25 4. Events reported to law enforcement.

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

28 (b) The notification must be made in writing and be
29 provided by facsimile device or overnight mail delivery. The
30 notification must include information regarding the identity
31 of the affected resident, the type of adverse incident, the

1 initiation of an investigation by the facility, and whether
2 the events causing or resulting in the adverse incident
3 represent a potential risk to other residents.

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

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

14 (11) The agency shall review, as part of its licensure
15 inspection process, the internal risk management and quality
16 assurance program at each licensed facility regulated by this
17 section to determine whether the program meets standards
18 established in statutes and rules, whether the program is
19 being conducted in a manner designed to reduce the incidence
20 and severity of adverse incidents, and whether the facility is
21 reporting adverse incidents as required.

22 (12) There shall be no monetary liability on the part
23 of, and no cause of action for damages shall arise against,
24 any risk manager licensed under s. 395.10974, for the
25 implementation and oversight of the internal risk management
26 and quality assurance program in a facility licensed under
27 this chapter as required by this section, or for any act or
28 proceeding undertaken or performed within the scope of the
29 functions of such internal risk management and quality
30 assurance program, if the risk manager acts without
31 intentional fraud.

1 (13) If the agency, through its receipt of the annual
2 reports prescribed in this chapter or through any
3 investigation, has a reasonable belief that conduct by a staff
4 member or employee of a licensed facility is grounds for
5 disciplinary action by the appropriate regulatory board, the
6 agency shall report this fact to such regulatory board.

7 Section 20. Section 400.1415, Florida Statutes, is
8 amended to read:

9 400.1415 Patient records; penalties for alteration.--

10 (1) Any person who fraudulently alters, defaces, or
11 falsifies any medical or other nursing home record, or causes
12 or procures any of these offenses to be committed, commits a
13 misdemeanor of the second degree, punishable as provided in s.
14 775.082 or 775.083. Any such offense at a facility shall be
15 subject to a class I citation and fine pursuant to s.
16 400.23(8). Any person authorized under s. 400.19 to enter a
17 nursing home facility who detects or reasonably suspects such
18 offense has occurred must immediately report such information
19 to the local law enforcement agency and state attorney.

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

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

27 (4) A conviction or finding by the agency under
28 subsection (1) is also grounds for an immediate moratorium on
29 admissions.

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

1 400.19 Right of entry and inspection.--
2 (4) The agency shall conduct unannounced onsite
3 facility reviews following written verification of licensee
4 noncompliance in instances in which a long-term care ombudsman
5 council, pursuant to ss. 400.0071 and 400.0075, has received a
6 complaint and has documented deficiencies in resident care or
7 in the physical plant of the facility that threaten the
8 health, safety, or security of residents, or when the agency
9 documents through inspection that conditions in a facility
10 present a direct or indirect threat to the health, safety, or
11 security of residents. However, the agency shall conduct ~~four~~
12 ~~or more~~ unannounced onsite reviews every 3 months to within a
13 ~~12-month period of~~ each facility while it ~~which~~ has a
14 conditional licensure status. Deficiencies related to physical
15 plant do not require followup reviews after the agency has
16 determined that correction of the deficiency has been
17 accomplished and that the correction is of the nature that
18 continued compliance can be reasonably expected.

19 Section 22. Paragraph (a) of subsection (5) of section
20 400.191, Florida Statutes, is amended to read:

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

23 (5) Every nursing home facility licensee shall:

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

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

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

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

5 Section 23. Subsection (2) of section 400.211, Florida
6 Statutes, is amended, and subsection (4) is added to section,
7 to read:

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

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

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

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

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

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

28 (4) When employed in a nursing home facility for a
29 12-month period or longer, a certified nursing assistant, to
30 maintain certification, shall submit to a performance review
31 every 12 months and shall be given regular inservice education

1 based on the outcome of such review. The inservice training
2 shall be provided by the facility and must:
3 (a) Be sufficient to ensure the continuing competence
4 of the certified nursing assistant, but must be no less than
5 18 hours per year.
6 (b) Include, at a minimum:
7 1. Assisting residents with eating and proper feeding
8 techniques.
9 2. Principles of adequate hydration.
10 3. Assisting and responding to the cognitively
11 impaired residents or residents with difficult behaviors.
12 4. Caring for resident at the end of life.
13 5. Recognizing changes that place a resident at risk
14 for pressure ulcers and falls.
15 (c) Address areas of weakness as determined in the
16 certified nursing assistant's performance reviews and may
17 address the special needs of residents as determined by the
18 nursing home facility staff.
19 Section 24. Subsections (2), (3), (7), and (8) of
20 section 400.23, Florida Statutes, are amended, and subsections
21 (10) and (11) are added to said section, to read:
22 400.23 Rules; evaluation and deficiencies; licensure
23 status.--
24 (2) Pursuant to the intention of the Legislature, the
25 agency, in consultation with the Department of Health and the
26 Department of Elderly Affairs, shall adopt and enforce rules
27 to implement this part, which shall include reasonable and
28 fair standards and procedures relating ~~criteria in relation~~
29 to:
30 (a) The location and construction of the facility;
31 including fire and life safety, plumbing, heating, cooling,

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

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

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

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

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

9 (e) A uniform accounting system.

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

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

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

8 (h) The implementation of the consumer satisfaction
9 surveys required under s. 400.0225; the availability,
10 distribution, and posting of reports and records required
11 under s. 400.191; and the Gold Seal program established under
12 s. 400.235.

13 (i) An adequate quality assurance process and risk
14 management procedure.

15 (3)(a)1.a. Until January 1, 2002, the agency shall
16 adopt rules providing for the minimum staffing requirements
17 for nursing homes. These requirements shall include, for each
18 nursing home facility, a minimum certified nursing assistant
19 staffing and a minimum licensed nursing staffing per resident
20 per day, including evening and night shifts and weekends.
21 Agency rules shall specify requirements for documentation of
22 compliance with staffing standards, sanctions for violation of
23 such standards, and requirements for daily posting of the
24 names of staff on duty for the benefit of facility residents
25 and the public.

26 b. Beginning January 1, 2002, the minimum staffing
27 requirements for direct care staff shall include, for each
28 nursing home, a minimum certified nursing assistant staffing
29 of 2.6 hours per resident per day, with no single shift having
30 less than one certified nursing assistant per 15 residents.
31 Each nursing home shall document compliance with safety

1 standards and post daily the names of staff on duty for the
2 benefit of facility residents and the public. Failure to
3 provide such posting daily constitutes a class III deficiency.

4 2. The agency shall recognize the use of licensed
5 nurses for compliance with minimum staffing requirements for
6 certified nursing assistants, provided that the facility
7 otherwise meets the minimum staffing requirements for licensed
8 nurses and that the licensed nurses so recognized are
9 performing the duties of a certified nursing assistant. Unless
10 otherwise approved by the agency, licensed nurses counted
11 towards the minimum staffing requirements for certified
12 nursing assistants must exclusively perform the duties of a
13 certified nursing assistant for the entire shift and shall not
14 also be counted towards the minimum staffing requirements for
15 licensed nurses.

16 3. If the agency approved a facility's request to use
17 a licensed nurse to perform both licensed nursing and
18 certified nursing assistant duties, the facility must allocate
19 the amount of staff time specifically spent on certified
20 nursing assistant duties for the purpose of documenting
21 compliance with minimum staffing requirements for certified
22 and licensed nursing staff. In no event may the hours of a
23 licensed nurse with dual job responsibilities be counted
24 twice.

25 4. A nursing facility that has failed to comply with
26 state minimum staffing requirements 2 days out of any 7-day
27 period shall be prohibited from accepting new admissions until
28 such time as the facility has achieved the minimum staffing
29 requirements for a period of 7 consecutive days. For purposes
30 of this subparagraph, any person who was a resident of the
31 facility and was absent from the facility for the purpose of

1 receiving medical care at a separate location or was on a
2 leave of absence shall not be considered a new admission.
3 Failure to impose such an admissions moratorium constitutes a
4 class I deficiency.

5 (b) The agency shall adopt rules to allow properly
6 trained staff of a nursing facility, in addition to certified
7 nursing assistants and licensed nurses, to assist residents
8 with eating. The rules shall specify the minimum training
9 requirements and shall specify the physiological conditions or
10 disorders of residents which would necessitate that the eating
11 assistance be provided by nursing personnel of the facility.
12 Nonnursing staff providing eating assistance to residents
13 under the provisions of this subsection shall not count
14 towards compliance with minimum staffing standards.

15 (c) Licensed practical nurses licensed under chapter
16 464 who are providing nursing services in nursing home
17 facilities under this part may supervise the activities of
18 other licensed practical nurses, certified nursing assistants,
19 and other unlicensed personnel providing services in such
20 facilities in accordance with rules adopted by the Board of
21 Nursing.

22 (7) The agency shall, at least every 15 months,
23 evaluate all nursing home facilities and make a determination
24 as to the degree of compliance by each licensee with the
25 established rules adopted under this part as a basis for
26 assigning a licensure status to that facility. The agency
27 shall base its evaluation on the most recent inspection
28 report, taking into consideration findings from other official
29 reports, surveys, interviews, investigations, and inspections.
30 The agency shall assign a licensure status of standard or
31 conditional to each nursing home.

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

11 (b) A conditional licensure status means that a
12 facility, due to the presence of one or more class I or class
13 II deficiencies, or class III deficiencies not corrected
14 within the time established by the agency, is not in
15 substantial compliance at the time of the survey with criteria
16 established under this part, with rules adopted by the agency,
17 ~~or, if applicable, with rules adopted under the Omnibus Budget~~
18 ~~Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,~~
19 ~~1987), Title IV (Medicare, Medicaid, and Other Health-Related~~
20 ~~Programs), Subtitle C (Nursing Home Reform), as amended.~~If
21 the facility has no class I, class II, or class III
22 deficiencies ~~comes into substantial compliance~~ at the time of
23 the followup survey, a standard licensure status may be
24 assigned.

25 (c) In evaluating the overall quality of care and
26 services and determining whether the facility will receive a
27 conditional or standard license, the agency shall consider the
28 needs and limitations of residents in the facility and the
29 results of interviews and surveys of a representative sampling
30 of residents, families of residents, ombudsman council members
31 in the planning and service area in which the facility is

1 located, guardians of residents, and staff of the nursing home
2 facility.

3 (d) The current licensure status of each facility must
4 be indicated in bold print on the face of the license. A list
5 of the deficiencies of the facility shall be posted in a
6 prominent place that is in clear and unobstructed public view
7 at or near the place where residents are being admitted to
8 that facility. Licensees receiving a conditional licensure
9 status for a facility shall prepare, within 10 working days
10 after receiving notice of deficiencies, a plan for correction
11 of all deficiencies and shall submit the plan to the agency
12 for approval. ~~Correction of all deficiencies, within the~~
13 ~~period approved by the agency, shall result in termination of~~
14 ~~the conditional licensure status. Failure to correct the~~
15 ~~deficiencies within a reasonable period approved by the agency~~
16 ~~shall be grounds for the imposition of sanctions pursuant to~~
17 ~~this part.~~

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

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

24 1. Establish uniform procedures for the evaluation of
25 facilities.

26 2. Provide criteria in the areas referenced in
27 paragraph (c).

28 3. Address other areas necessary for carrying out the
29 intent of this section.

30 (8) The agency shall adopt rules to provide that, when
31 the criteria established under subsection (2) are not met,

1 such deficiencies shall be classified according to the nature
2 and scope of the deficiency. The scope of the deficiency shall
3 be cited as isolated, patterned, or widespread. An isolated
4 deficiency is a deficiency affecting one or a very limited
5 number of residents or involving one or a very limited number
6 of staff, or a situation that occurred only occasionally or in
7 a very limited number of locations. A patterned deficiency is
8 a deficiency where more than a very limited number of
9 residents are affected or more than a very limited number of
10 staff are involved, or the same resident or residents have
11 been affected by repeated occurrences of the same deficient
12 practice, or a situation that has occurred in several
13 locations; provided that the effect of the deficient practice
14 is not found to be pervasive throughout the facility. A
15 widespread deficiency is a deficiency in which the problems
16 causing the deficiency are pervasive throughout the facility
17 or represent systemic failure that affected or has the
18 potential to affect a large portion of all of the facility's
19 residents.The agency shall indicate the classification on the
20 face of the notice of deficiencies as follows:

21 (a) Class I deficiencies are those which the agency
22 determines present a situation in which immediate corrective
23 action is necessary because the facility's noncompliance has
24 caused, or is likely to cause, serious injury, harm,
25 impairment, or death to a resident receiving care in a
26 facility ~~an imminent danger to the residents or guests of the~~
27 ~~nursing home facility or a substantial probability that death~~
28 ~~or serious physical harm would result therefrom.~~ The condition
29 or practice constituting a class I violation shall be abated
30 or eliminated immediately, unless a fixed period of time, as
31 determined by the agency, is required for correction.

1 ~~Notwithstanding s. 400.121(2),~~ A class I deficiency is subject
2 to a civil penalty of \$5,000 for an isolated deficiency,
3 \$10,000 for a patterned deficiency, and \$15,000 for a
4 widespread deficiency in an amount not less than \$5,000 and
5 not exceeding \$25,000 for each and every deficiency. A fine
6 shall ~~may~~ be levied notwithstanding the correction of the
7 deficiency.

8 (b) Class II deficiencies are those which the agency
9 determines have compromised the resident's ability to maintain
10 or reach his or her highest practicable physical, mental, and
11 psychosocial well-being as defined by an accurate and
12 comprehensive resident assessment, plan of care, and provision
13 of services have a direct or immediate relationship to the
14 health, safety, or security of the nursing home facility
15 residents, other than class I deficiencies. A class II
16 deficiency is subject to a civil penalty of \$2,500 for an
17 isolated deficiency, \$5,000 for a patterned deficiency, and
18 \$7,500 for a widespread deficiency in an amount not less than
19 \$1,000 and not exceeding \$10,000 for each and every
20 deficiency. A citation for a class II deficiency shall
21 specify the time within which the deficiency is required to be
22 corrected. If a class II deficiency is corrected within the
23 time specified, no civil penalty shall be imposed, unless it
24 is a repeated offense. A fine shall be levied notwithstanding
25 the correction of the deficiency.

26 (c) Class III deficiencies are those which the agency
27 determines result in no more than minimal physical, mental, or
28 psychosocial discomfort to the resident or have minimal
29 potential to compromise the resident's ability to maintain or
30 reach his or her highest practical physical, mental, or
31 psychosocial well-being as defined by an accurate and

1 comprehensive resident assessment, plan of care, and provision
2 of services to have an indirect or potential relationship to
3 the health, safety, or security of the nursing home facility
4 residents, other than class I or class II deficiencies. A
5 class III deficiency shall be subject to a civil penalty of
6 \$1,000 for an isolated deficiency, \$2,000 for a patterned
7 deficiency, and \$3,000 for a widespread deficiency ~~not less~~
8 ~~than \$500 and not exceeding \$2,500 for each and every~~
9 ~~deficiency.~~ A citation for a class III deficiency shall
10 specify the time within which the deficiency is required to be
11 corrected. If a class III deficiency is corrected within the
12 time specified, no civil penalty shall be imposed, unless it
13 is a repeated offense.

14 (d) Class IV deficiencies are those which the agency
15 determines involve no actual harm but do not constitute a
16 class III deficiency. A class IV deficiency shall be
17 documented in the agency's survey results and may be required
18 to be corrected within a time specified by the agency. No
19 civil penalty shall be imposed. If the class IV deficiency is
20 an isolated deficiency, no plan of correction is required.

21
22 The fine amount shall be doubled for each class I or class II
23 deficiency if the facility was previously cited for one or
24 more class I or class II deficiencies during or since its last
25 annual inspection.

26 (10) Facilities that have been free of any class I or
27 class II violation for the past 30 months may provide a
28 minimum of 2.3 hours per resident per day of certified nursing
29 assistant services. Such facilities are exempt from the
30 requirements of subparagraph (3)(a)1.

31

1 (11) The agency must submit a report annually to the
2 Legislature that summarizes the information regarding
3 staff-to-resident ratios, staff turnover, and staff stability
4 reported by nursing home facilities pursuant to s.
5 400.141(21).

6 Section 25. Subsection (3) of section 400.241, Florida
7 Statutes, is amended to read:

8 400.241 Prohibited acts; penalties for violations.--

9 (3) It is unlawful for any person, long-term care
10 facility, or other entity to willfully interfere with the
11 unannounced inspections mandated by s. 400.0073 or s.
12 400.19(3). Alerting or advising a facility of the actual or
13 approximate date of such inspection shall be a per se
14 violation of this subsection.

15 (4) A violation of any provision of this part or of
16 any minimum standard, rule, or regulation adopted pursuant
17 thereto constitutes a misdemeanor of the second degree,
18 punishable as provided in s. 775.082 or s. 775.083. Each day
19 of a continuing violation shall be considered a separate
20 offense.

21 Section 26. Paragraph (b) of subsection (3) of section
22 400.407, Florida Statutes, is amended to read:

23 400.407 License required; fee, display.--

24 (3) Any license granted by the agency must state the
25 maximum resident capacity of the facility, the type of care
26 for which the license is granted, the date the license is
27 issued, the expiration date of the license, and any other
28 information deemed necessary by the agency. Licenses shall be
29 issued for one or more of the following categories of care:
30 standard, extended congregate care, limited nursing services,
31 or limited mental health.

1 (b) An extended congregate care license shall be
2 issued to facilities providing, directly or through contract,
3 services beyond those authorized in paragraph (a), including
4 acts performed pursuant to part I of chapter 464 by persons
5 licensed thereunder, and supportive services defined by rule
6 to persons who otherwise would be disqualified from continued
7 residence in a facility licensed under this part.

8 1. In order for extended congregate care services to
9 be provided in a facility licensed under this part, the agency
10 must first determine that all requirements established in law
11 and rule are met and must specifically designate, on the
12 facility's license, that such services may be provided and
13 whether the designation applies to all or part of a facility.
14 Such designation may be made at the time of initial licensure
15 or biennial relicensure, or upon request in writing by a
16 licensee under this part. Notification of approval or denial
17 of such request shall be made within 90 days after receipt of
18 such request and all necessary documentation. Existing
19 facilities qualifying to provide extended congregate care
20 services must have maintained a standard license and may not
21 have been subject to administrative sanctions during the
22 previous 2 years, or since initial licensure if the facility
23 has been licensed for less than 2 years, for any of the
24 following reasons:

- 25 a. A class I or class II violation;
26 b. Three or more repeat or recurring class III
27 violations of identical or similar resident care standards as
28 specified in rule from which a pattern of noncompliance is
29 found by the agency;

30
31

1 c. Three or more class III violations that were not
2 corrected in accordance with the corrective action plan
3 approved by the agency;

4 d. Violation of resident care standards resulting in a
5 requirement to employ the services of a consultant pharmacist
6 or consultant dietitian;

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

11 f. Imposition of a moratorium on admissions or
12 initiation of injunctive proceedings.

13 2. Facilities that are licensed to provide extended
14 congregate care services shall maintain a written progress
15 report on each person who receives such services, which report
16 describes the type, amount, duration, scope, and outcome of
17 services that are rendered and the general status of the
18 resident's health. A registered nurse, or appropriate
19 designee, representing the agency shall visit such facilities
20 at least two times a year to monitor residents who are
21 receiving extended congregate care services and to determine
22 if the facility is in compliance with this part and with rules
23 that relate to extended congregate care. One of these visits
24 may be in conjunction with the regular biennial survey. The
25 monitoring visits may be provided through contractual
26 arrangements with appropriate community agencies. A
27 registered nurse shall serve as part of the team that
28 biennially inspects such facility. The agency may waive one of
29 the required yearly monitoring visits for a facility that has
30 been licensed for at least 24 months to provide extended
31 congregate care services, if, during the biennial inspection,

1 the registered nurse determines that extended congregate care
2 services are being provided appropriately, and if the facility
3 has no class I or class II violations and no uncorrected class
4 III violations. Before such decision is made, the agency shall
5 consult with the long-term care ombudsman council for the area
6 in which the facility is located to determine if any
7 complaints have been made and substantiated about the quality
8 of services or care. The agency may not waive one of the
9 required yearly monitoring visits if complaints have been made
10 and substantiated.

11 3. Facilities that are licensed to provide extended
12 congregate care services shall:

13 a. Demonstrate the capability to meet unanticipated
14 resident service needs.

15 b. Offer a physical environment that promotes a
16 homelike setting, provides for resident privacy, promotes
17 resident independence, and allows sufficient congregate space
18 as defined by rule.

19 c. Have sufficient staff available, taking into
20 account the physical plant and firesafety features of the
21 building, to assist with the evacuation of residents in an
22 emergency, as necessary.

23 d. Adopt and follow policies and procedures that
24 maximize resident independence, dignity, choice, and
25 decisionmaking to permit residents to age in place to the
26 extent possible, so that moves due to changes in functional
27 status are minimized or avoided.

28 e. Allow residents or, if applicable, a resident's
29 representative, designee, surrogate, guardian, or attorney in
30 fact to make a variety of personal choices, participate in

31

1 developing service plans, and share responsibility in
2 decisionmaking.

3 f. Implement the concept of managed risk.

4 g. Provide, either directly or through contract, the
5 services of a person licensed pursuant to part I of chapter
6 464.

7 h. In addition to the training mandated in s. 400.452,
8 provide specialized training as defined by rule for facility
9 staff.

10 4. Facilities licensed to provide extended congregate
11 care services are exempt from the criteria for continued
12 residency as set forth in rules adopted under s. 400.441.
13 Facilities so licensed shall adopt their own requirements
14 within guidelines for continued residency set forth by the
15 department in rule. However, such facilities may not serve
16 residents who require 24-hour nursing supervision. Facilities
17 licensed to provide extended congregate care services shall
18 provide each resident with a written copy of facility policies
19 governing admission and retention.

20 5. The primary purpose of extended congregate care
21 services is to allow residents, as they become more impaired,
22 the option of remaining in a familiar setting from which they
23 would otherwise be disqualified for continued residency. A
24 facility licensed to provide extended congregate care services
25 may also admit an individual who exceeds the admission
26 criteria for a facility with a standard license, if the
27 individual is determined appropriate for admission to the
28 extended congregate care facility.

29 6. Before admission of an individual to a facility
30 licensed to provide extended congregate care services, the
31 individual must undergo a medical examination as provided in

1 s. 400.426~~(4)~~and the facility must develop a preliminary
2 service plan for the individual.

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

8 8. Failure to provide extended congregate care
9 services may result in denial of extended congregate care
10 license renewal.

11 9. No later than January 1 of each year, the
12 department, in consultation with the agency, shall prepare and
13 submit to the Governor, the President of the Senate, the
14 Speaker of the House of Representatives, and the chairs of
15 appropriate legislative committees, a report on the status of,
16 and recommendations related to, extended congregate care
17 services. The status report must include, but need not be
18 limited to, the following information:

19 a. A description of the facilities licensed to provide
20 such services, including total number of beds licensed under
21 this part.

22 b. The number and characteristics of residents
23 receiving such services.

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

26 d. An analysis of deficiencies cited during biennial
27 inspections.

28 e. The number of residents who required extended
29 congregate care services at admission and the source of
30 admission.

31

1 f. Recommendations for statutory or regulatory
2 changes.

3 g. The availability of extended congregate care to
4 state clients residing in facilities licensed under this part
5 and in need of additional services, and recommendations for
6 appropriations to subsidize extended congregate care services
7 for such persons.

8 h. Such other information as the department considers
9 appropriate.

10 Section 27. Subsections (4) through (11) of section
11 400.426, Florida Statutes, are renumbered as subsections (5)
12 through (12), respectively, and a new subsection (4) is added
13 to said section to read:

14 400.426 Appropriateness of placements; daily record of
15 care;examinations of residents.--

16 (4) Each facility shall maintain in the care records
17 for each resident a daily chart of activities of daily living
18 care provided to a resident. This record must be completed
19 contemporaneously with the delivery of care by the caregiver
20 and include the date of care and the initials or signature of
21 the caregiver. These records shall be made available to the
22 resident or his or her guardian upon request within 7 days of
23 the request. These records shall be maintained by the facility
24 for a period of not less than 5 years.

25 Section 28. Paragraph (k) of subsection (1) of section
26 400.428, Florida Statutes, is amended to read:

27 400.428 Resident bill of rights.--

28 (1) No resident of a facility shall be deprived of any
29 civil or legal rights, benefits, or privileges guaranteed by
30 law, the Constitution of the State of Florida, or the
31

1 Constitution of the United States as a resident of a facility.
2 Every resident of a facility shall have the right to:
3 (k) At least 45 ~~30~~ days' notice of relocation or
4 termination of residency from the facility unless, for medical
5 reasons, the resident is certified by a physician to require
6 an emergency relocation to a facility providing a more skilled
7 level of care or the resident engages in a pattern of conduct
8 that is harmful or offensive to other residents. In the case
9 of a resident who has been adjudicated mentally incapacitated,
10 the guardian shall be given at least 45 ~~30~~ days' notice of a
11 nonemergency relocation or residency termination. Reasons for
12 relocation shall be set forth in writing. In order for a
13 facility to terminate the residency of an individual without
14 notice as provided herein, the facility shall show good cause
15 in a court of competent jurisdiction.

16 Section 29. Effective July 1, 2001, and applying to
17 causes of action accruing on or after that date, section
18 400.429, Florida Statutes, is amended to read:

19 400.429 Civil actions to enforce rights.--

20 (1) Any person or resident whose rights as specified
21 in this part are violated shall have a cause of action for
22 long-term care facility negligence ~~against any facility owner,~~
23 ~~administrator, or staff responsible for the violation.~~ The
24 action may be brought by the resident or his or her guardian,
25 or by a person or organization acting on behalf of a resident
26 with the consent of the resident or his or her guardian, or by
27 the personal representative of the estate of a deceased
28 resident regardless of the cause of death ~~when the cause of~~
29 ~~death resulted from a violation of the decedent's rights, to~~
30 ~~enforce such rights.~~ If the action alleges a claim for the
31 resident's rights or for negligence that caused the death of

1 the resident, the claimant shall be required to elect either
2 survival damages pursuant to s. 46.021 or wrongful death
3 damages pursuant to s. 768.21. If the action alleges a claim
4 for the resident's rights or for negligence that did not cause
5 the death of the resident, the personal representative of the
6 estate may recover damages for the negligence that caused
7 injury to the resident.The action may be brought in any court
8 of competent jurisdiction to enforce such rights and to
9 recover actual damages, and punitive damages for any violation
10 of the rights of a resident or negligence ~~when malicious,~~
11 ~~wanton, or willful disregard of the rights of others can be~~
12 ~~shown.~~ Any resident who prevails in seeking injunctive relief
13 or a claim for an administrative remedy is entitled to recover
14 the costs of the action, and a reasonable attorney's fee
15 assessed against the defendant not to exceed \$25,000. Fees
16 shall be awarded solely for the injunctive or administrative
17 relief and not for any claim or action for damages whether
18 such claim or action is brought together with a request for an
19 injunction or administrative relief or as a separate action,
20 except as provided under s. 768.79 or the Florida Rules of
21 Civil Procedure. Sections 400.429-400.4298 provide the
22 exclusive remedy for a cause of action for recovery of damages
23 for the personal injury or death of a nursing home resident
24 arising out of negligence or violation of rights specified in
25 s. 400.022. This section shall not be construed as precluding
26 theories of recovery not arising out of negligence or s.
27 400.022 that are available to a resident or to the agency.
28 The provisions of chapter 766 do not apply to any cause of
29 action brought under ss. 400.429-400.4298. ~~Any plaintiff who~~
30 ~~prevails in any such action may be entitled to recover~~
31 ~~reasonable attorney's fees, costs of the action, and damages,~~

1 ~~unless the court finds that the plaintiff has acted in bad~~
2 ~~faith, with malicious purpose, and that there was a complete~~
3 ~~absence of a justiciable issue of either law or fact. A~~
4 ~~prevailing defendant may be entitled to recover reasonable~~
5 ~~attorney's fees pursuant to s. 57.105. The remedies provided~~
6 ~~in this section are in addition to and cumulative with other~~
7 ~~legal and administrative remedies available to a resident or~~
8 ~~to the agency.~~

9 (2) In any claim for long-term care facility
10 negligence causing injury to or the death of a resident, the
11 claimant shall have the burden of proving, by a preponderance
12 of the evidence, that:

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

19
20 Nothing in this part shall be interpreted to create strict
21 liability. A violation of the rights set forth in s. 400.428
22 or in any other standard or guidelines specified in this part
23 or in any applicable administrative standard or guidelines of
24 this state or a federal regulatory agency shall be evidence of
25 negligence but shall not be considered negligence per se.

26 (3) In any claim for long-term care facility
27 negligence, a licensee, person, or entity shall have a duty to
28 exercise reasonable care. Reasonable care is that degree of
29 care which a reasonably careful licensee, person, or entity
30 would use under like circumstances.

31

1 (4) In any claim for long-term care facility
2 negligence, a nurse licensed under part I of chapter 464 shall
3 have the duty to exercise care consistent with the prevailing
4 professional standard of care for a nurse. The prevailing
5 professional standard of care for a nurse shall be that level
6 of care, skill, and treatment which, in light of all relevant
7 surrounding circumstances, is recognized as acceptable and
8 appropriate by reasonably prudent similar nurses.~~To recover~~
9 ~~attorney's fees under this section, the following conditions~~
10 ~~precedent must be met:~~
11 ~~(a) Within 120 days after the filing of a responsive~~
12 ~~pleading or defensive motion to a complaint brought under this~~
13 ~~section and before trial, the parties or their designated~~
14 ~~representatives shall meet in mediation to discuss the issues~~
15 ~~of liability and damages in accordance with this paragraph for~~
16 ~~the purpose of an early resolution of the matter.~~
17 ~~1. Within 60 days after the filing of the responsive~~
18 ~~pleading or defensive motion, the parties shall:~~
19 ~~a. Agree on a mediator. If the parties cannot agree on~~
20 ~~a mediator, the defendant shall immediately notify the court,~~
21 ~~which shall appoint a mediator within 10 days after such~~
22 ~~notice.~~
23 ~~b. Set a date for mediation.~~
24 ~~c. Prepare an order for the court that identifies the~~
25 ~~mediator, the scheduled date of the mediation, and other terms~~
26 ~~of the mediation. Absent any disagreement between the parties,~~
27 ~~the court may issue the order for the mediation submitted by~~
28 ~~the parties without a hearing.~~
29 ~~2. The mediation must be concluded within 120 days~~
30 ~~after the filing of a responsive pleading or defensive motion.~~
31

1 ~~The date may be extended only by agreement of all parties~~
2 ~~subject to mediation under this subsection.~~

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

5 ~~a. Each party shall ensure that all persons necessary~~
6 ~~for complete settlement authority are present at the~~
7 ~~mediation.~~

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

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

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

23 ~~(c) This subsection applies only to claims for~~
24 ~~liability and damages and does not apply to actions for~~
25 ~~injunctive relief.~~

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

28 (5)(3) ~~Discovery of financial information for the~~
29 ~~purpose of determining the value of punitive damages may not~~
30 ~~be had unless the plaintiff shows the court by proffer or~~
31

1 evidence in the record that a reasonable basis exists to
2 support a claim for punitive damages.

3 ~~(6)(4)~~ In addition to any other standards for punitive
4 damages, any award of punitive damages must be reasonable in
5 light of the actual harm suffered by the resident and the
6 egregiousness of the conduct that caused the actual harm to
7 the resident.

8 (7) The resident or the resident's legal
9 representative shall serve a copy of any complaint alleging,
10 in whole or in part, the violation of any rights specified in
11 this part to the Agency for Health Care Administration at the
12 time of filing the initial complaint with the clerk of the
13 court for the county in which the action is pursued.

14 Section 30. Effective July 1, 2001, and applying to
15 causes of action accruing on or after that date, section
16 400.4293, Florida Statutes, is created to read:

17 400.4293 Presuit notice; investigation; notification
18 of violation of residents' rights or alleged negligence;
19 claims evaluation procedure; informal discovery; review.--

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

21 (a) "Claim for long-term care facility negligence"
22 means a negligence claim alleging injury to or the death of a
23 resident arising out of an asserted violation of the rights of
24 a resident under s. 400.428 or an asserted deviation from the
25 applicable standard of care.

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

29 (2) Prior to filing a claim for long-term care
30 facility negligence, a claimant alleging injury to or the
31 death of a resident shall notify each prospective defendant by

1 certified mail, return receipt requested, of an asserted
2 violation of a resident's rights provided in s. 400.428 or
3 deviation from the standard of care. Such notification shall
4 include an identification of the rights the prospective
5 defendant has violated and the negligence alleged to have
6 caused the incident or incidents and a brief description of
7 the injuries sustained by the resident which are reasonably
8 identifiable at the time of notice. If the claimant is
9 represented by counsel, the notice shall contain a certificate
10 of counsel that counsel's reasonable investigation gave rise
11 to a good-faith belief that grounds exist for an action
12 against each prospective defendant.

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

22 1. Internal review by a duly qualified facility risk
23 manager or claims adjuster.

24 2. Internal review by counsel for each prospective
25 defendant.

26 3. A quality assurance committee authorized under any
27 applicable state or federal statutes, rules, or regulations.

28 4. Any other similar procedure that fairly and
29 promptly evaluates the claims.

30
31

1 Each defendant or insurer of the defendant shall evaluate the
2 claim in good faith.

3 (b) At or before the end of the 75 days, the defendant
4 or insurer of the defendant shall provide the claimant with a
5 written response:

6 1. Rejecting the claim; or

7 2. Making a settlement offer.

8 (c) The response shall be delivered to the claimant if
9 not represented by counsel or to the claimant's attorney, by
10 certified mail, return receipt requested. Failure of the
11 prospective defendant or insurer of the defendant to reply to
12 the notice within 75 days after receipt shall be deemed a
13 rejection of the claim for purposes of this section.

14 (4) The notification of a claim for long-term care
15 facility negligence shall be served within the applicable
16 statute of limitations period; however, during the 75-day
17 period, the statute of limitations is tolled as to all
18 prospective defendants. Upon stipulation by the parties, the
19 75-day period may be extended and the statute of limitations
20 is tolled during any such extension. Upon receiving written
21 notice by certified mail, return receipt requested, of
22 termination of negotiations in an extended period, the
23 claimant shall have 60 days or the remainder of the period of
24 the statute of limitations, whichever is greater, within which
25 to file suit.

26 (5) No statement, discussion, written document,
27 report, or other work product generated by presuit claims
28 evaluation procedures under this section is discoverable or
29 admissible in any civil action for any purpose by the opposing
30 party. All participants, including, but not limited to,
31 physicians, investigators, witnesses, and employees or

1 associates of the defendant, are immune from civil liability
2 arising from participation in the presuit claims evaluation
3 procedure. Any licensed physician or registered nurse may be
4 retained by either party to provide an opinion regarding the
5 reasonable basis of the claim. The presuit opinions of the
6 expert are not discoverable or admissible in any civil action
7 for any purpose by the opposing party.

8 (6) Upon receipt by a prospective defendant of a
9 notice of claim, the parties shall make discoverable
10 information available without formal discovery as provided in
11 subsection (7).

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

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

31

1 (b) Documents or things.--Any party may request
2 discovery of relevant documents or things. The documents or
3 things must be produced, at the expense of the requesting
4 party, within 20 days after the date of receipt of the
5 request. A party is required to produce relevant and
6 discoverable documents or things within that party's
7 possession or control, if in good faith it can reasonably be
8 done within the timeframe of the claims evaluation process.

9 (8) Each request for and notice concerning informal
10 discovery pursuant to this section must be in writing, and a
11 copy thereof must be sent to all parties. Such a request or
12 notice must bear a certificate of service identifying the name
13 and address of the person to whom the request or notice is
14 served, the date of the request or notice, and the manner of
15 service thereof.

16 (9) If a prospective defendant makes a written
17 settlement offer, the claimant shall have 15 days from the
18 date of receipt to accept the offer. An offer shall be deemed
19 rejected unless accepted by delivery of a written notice of
20 acceptance.

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

24 (11) Within 30 days after the claimant's receipt of
25 defendant's response to the claim, the parties or their
26 designated representatives shall meet in mediation to discuss
27 the issues of liability and damages in accordance with the
28 mediation rules of practice and procedures adopted by the
29 Supreme Court. Upon stipulation of the parties, this 30-day
30 period may be extended and the statute of limitations is
31 tolled during the mediation and any such extension. At the

1 conclusion of mediation, the claimant shall have 60 days or
2 the remainder of the period of the statute of limitations,
3 whichever is greater, within which to file suit.

4 Section 31. Effective July 1, 2001, and applying to
5 causes of action accruing on or after that date, section
6 400.4294, Florida Statutes, is created to read:

7 400.4294 Availability of facility records for
8 investigation of resident's rights violations and defenses;
9 penalty.--

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

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

20 Section 32. Effective July 1, 2001, section 400.4295,
21 Florida Statutes, is created to read:

22 400.4295 Certain provisions not applicable to claims
23 for long-term care facility negligence.--A claim for long-term
24 care facility negligence is not a claim for medical
25 malpractice, and the provisions of s. 768.21(8) do not apply
26 to a claim alleging death of the resident.

27 Section 33. Effective July 1, 2001, section 400.4296,
28 Florida Statutes, is created to read:

29 400.4296 Statute of limitations.--

30 (1) Any claim for long-term care facility negligence
31 shall be commenced within 2 years from the time the incident

1 giving rise to the action occurred or within 2 years from the
2 time the incident is discovered, or should have been
3 discovered with the exercise of due diligence; however, in no
4 event shall the action be commenced later than 4 years from
5 the date of the incident or occurrence out of which the cause
6 of action accrued.

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

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

26 Section 34. Section 400.4297, Florida Statutes, is
27 created to read:

28 400.4297 Punitive damages; pleading; burden of
29 proof.--

30 (1) In any claim for long-term care facility
31 negligence, no claim for punitive damages shall be permitted

1 unless there is a reasonable showing by evidence in the record
2 or proffered by the claimant which would provide a reasonable
3 basis for recovery of such damages. The claimant may move to
4 amend her or his complaint to assert a claim for punitive
5 damages as allowed by the rules of civil procedure. The rules
6 of civil procedure shall be liberally construed so as to allow
7 the claimant discovery of evidence which appears reasonably
8 calculated to lead to admissible evidence on the issue of
9 punitive damages. No discovery of financial worth shall
10 proceed until after the pleading concerning punitive damages
11 is permitted.

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

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

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

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

31

1 (a) The employer, principal, corporation, or other
2 legal entity actively and knowingly participated in such
3 conduct;

4 (b) The officers, directors, or managers of the
5 employer, principal, corporation, or other legal entity
6 knowingly condoned, ratified, or consented to such conduct; or

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

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

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

17 Section 35. Section 400.4298, Florida Statutes, is
18 created to read:

19 400.4298 Punitive damages; limitation.--

20 (1)(a) Except as provided in paragraph (b), an award
21 of punitive damages may not exceed the greater of:

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

25 2. The sum of \$1 million.

26 (b) Where the fact finder determines beyond a
27 reasonable doubt that at the time of injury the wrongful
28 conduct proven under this section was motivated primarily by
29 unreasonable financial gain and determines that the
30 unreasonably dangerous nature of the conduct, together with
31 the high likelihood of injury resulting from the conduct, was

1 actually known by the managing agent, director, officer, or
2 other person responsible for making policy decisions on behalf
3 of the defendant, or at the time of injury the defendant had a
4 specific intent to harm the claimant and the finder of fact
5 determines by clear and convincing evidence that the
6 defendant's conduct did in fact harm the claimant, there shall
7 be no cap on punitive damages.

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

13 (2) The claimant's attorney's fees, if payable from
14 the judgment, are, to the extent that the fees are based on
15 the punitive damages, calculated based on the final judgment
16 for punitive damages. This subsection does not limit the
17 payment of attorney's fees based upon an award of damages
18 other than punitive damages.

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

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

23 Section 36. Section 400.449, Florida Statutes, is
24 created to read:

25 400.449 Altering, defacing, or falsifying records;
26 penalties.--

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

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

4 Section 37. Subsection (3) of section 430.708, Florida
5 Statutes, is amended to read:

6 430.708 Certificate of need.--To ensure that Medicaid
7 community diversion pilot projects result in a reduction in
8 the projected average monthly nursing home caseload, the
9 agency shall, in accordance with the provisions of s.
10 408.034(4):

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

15 Section 38. Subsections (2) and (3) of section
16 430.709, Florida Statutes, are amended to read:

17 430.709 Reports and evaluations.--

18 (2) The agency, in consultation with the department,
19 shall contract for an independent evaluation of the community
20 diversion pilot projects. Such evaluation must include a
21 careful review and assessment of the actual cost for the
22 provision of services to enrollees participants. No later than
23 120 days after the effective date of this section, the agency
24 shall select a contractor with experience and expertise in
25 evaluating capitation rates for managed care organizations
26 serving a disabled or frail elderly population to conduct the
27 evaluation of the community diversion pilot project as defined
28 in s. 430.703. The contractor shall demonstrate the capacity
29 to evaluate managed care arrangements that seek to test the
30 blending of Medicaid and Medicare capitation as a strategy to
31 provide efficient, cost-effective care. The contractor shall

1 report to the agency and the Legislature the specific array of
2 services provided to each enrollee, the average number of
3 times per week each service was provided, the unit cost and
4 total cost per week to provide the service, the total cost of
5 all services provided to the enrollee, and the enrollment
6 period for which total costs were calculated. In addition, the
7 contractor shall report to the agency and the Legislature the
8 total number of enrollees to date; the total payment to the
9 managed care organization for enrollees; the number of
10 enrollees who have been admitted to a nursing facility; the
11 total number of days enrollees have spent in nursing home
12 facilities; the number of enrollees who have disenrolled from
13 the project; the average length of time participants were
14 enrolled, expressed as the mean number of days and standard
15 deviation; the number of persons who disenrolled and
16 subsequently became a nursing home resident; the number of
17 enrollees who have died while enrolled in the project and the
18 mean number of days enrolled prior to death; the list of
19 available services delivered in-home by percentage of
20 enrollees receiving the service; the list of available
21 services delivered out-of-home by percentage of enrollees
22 receiving the service. The evaluation contractor shall analyze
23 and report the individual services and the array of services
24 most associated with effective diversion of frail elderly
25 enrollees from nursing home placement. Further, the contractor
26 will evaluate the project responses to at least the following
27 questions:
28 (a) Was the cost of the diversion project per person
29 less than the cost of providing services through
30 fee-for-service Medicaid?
31

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

1 (n) Was there a volume-outcome or dose-response
2 relationship between the utilization rate of noninstitutional
3 services, functional assessment, and the ability of the
4 enrollee to remain in the community?

5 (3) The evaluation contractor shall submit the final
6 report to the Speaker of the House of Representatives and the
7 President of the Senate on or before February 15, 2002.
8 Subsequent to the completion of the evaluation and submission
9 of the evaluation report to the Legislature, the agency, in
10 consultation with the department, in consultation with the
11 agency, shall assess and make specific recommendations to the
12 Legislature as to the feasibility of implementing a managed
13 long-term care system throughout the state to serve
14 appropriate Medicaid-eligible long-term care recipients age 60
15 years and older.

16 Section 39. Subsection (3) of section 435.04, Florida
17 Statutes, is amended to read:

18 435.04 Level 2 screening standards.--

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

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

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

26 Section 40. Paragraph (a) of subsection (1) of section
27 464.201, Florida Statutes, is amended to read:

28 464.201 Definitions.--As used in this part, the term:

29 (1) "Approved training program" means:

30 (a) A program offered by Enterprise Florida Jobs and
31 Education Partnership Grant or a course of training conducted

1 by a public sector or private sector educational center
2 licensed by the Department of Education to implement the basic
3 curriculum for nursing assistants which is approved by the
4 Department of Education. Beginning October 1, 2000, the board
5 shall assume responsibility for approval of training programs
6 under this paragraph.

7 Section 41. Paragraph (e) is added to subsection (2)
8 of section 464.2085, Florida Statutes, to read:

9 464.2085 Council on Certified Nursing Assistants.--The
10 Council on Certified Nursing Assistants is created within the
11 department, under the Board of Nursing.

12 (2) The council shall:

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

22 Section 42. Subsection (1) of section 101.655, Florida
23 Statutes, is amended to read:

24 101.655 Supervised voting by absent electors in
25 certain facilities.--

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

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

8 Section 43. Subsection (2) of section 397.405, Florida
9 Statutes, is amended to read:

10 397.405 Exemptions from licensure.--The following are
11 exempt from the licensing provisions of this chapter:

12 (2) A nursing home ~~facility~~ as defined in s.
13 400.021~~(12)~~.

14

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

31

1 Section 44. Subsection (3) of section 400.0069,
2 Florida Statutes, is amended to read:

3 400.0069 Local long-term care ombudsman councils;
4 duties; membership.--

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

10 Section 45. The Auditor General shall develop a
11 standard chart of accounts to govern the content and manner of
12 presentation of financial information to be submitted by
13 Medicaid long-term care providers in their cost reports. The
14 Auditor General shall submit the standard chart of accounts to
15 the Agency for Health Care Administration not later than
16 December 31, 2001. The agency shall amend the Florida Title
17 XIX Long-Term Care Reimbursement Plan to incorporate this
18 standard chart of accounts and shall implement use of this
19 standard chart of accounts effective January 1, 2002. The
20 standard chart of accounts shall include specific accounts for
21 each component of direct care staff by type of personnel and
22 may not be revised without the written consent of the Auditor
23 General.

24 Section 46. The Agency for Health Care Administration
25 shall amend the Medicaid Title XIX Long-Term Care
26 Reimbursement Plan effective December 31, 2001, to include the
27 following provisions:

28 (1) COST REPORT FILING.--

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

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

7 (2) LIMITATIONS ON ALLOWABLE COSTS.--

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

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

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

30 (3) RECOUPMENT.--Any provider participating in the
31 Florida Medicaid nursing home program who has failed to

1 provide the goods and services in accordance with federal and
2 state requirements may be subject to recoupment of costs by
3 the agency.

4 Section 47. The Board of Nursing is directed to
5 develop standards and procedures for recognizing professional
6 nurses whose commitment to the practice of nursing in
7 long-term care settings is worthy of commendation.

8 Section 48. The Agency for Health Care Administration
9 shall require that a portion of each nursing facility's
10 Medicaid rate be used exclusively for wage and benefit
11 increases for nursing home direct care staff. Such funds shall
12 be used only for actual wage or benefit improvements. Eligible
13 staff members include all direct care workers (including RNs,
14 LPNs, and CNAs) and all dietary, housekeeping, laundry, and
15 maintenance workers. Temporary, contract, agency, and pool
16 employees are excluded. The agency shall develop
17 cost-reporting systems to ensure that the funds the agency has
18 required to be used for wage and benefit increases for direct
19 care staff are used for this purpose. On January 1 of each
20 year, the agency shall report to the Legislature the effect of
21 such wage and benefit increases for employees in nursing
22 facilities in this state.

23 Section 49. Subsection (11) of section 400.021,
24 Florida Statutes, as created by section 1 of chapter 2000-350,
25 Laws of Florida, is reenacted to read:

26 400.021 Definitions.--When used in this part, unless
27 the context otherwise requires, the term:

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

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

5 Section 50. Section 400.0225, Florida Statutes, as
6 amended by section 2 of chapter 2000-350, Laws of Florida, is
7 reenacted to read:

8 400.0225 Consumer satisfaction surveys.--The agency,
9 or its contractor, in consultation with the nursing home
10 industry and consumer representatives, shall develop an
11 easy-to-use consumer satisfaction survey, shall ensure that
12 every nursing facility licensed pursuant to this part
13 participates in assessing consumer satisfaction, and shall
14 establish procedures to ensure that, at least annually, a
15 representative sample of residents of each facility is
16 selected to participate in the survey. The sample shall be of
17 sufficient size to allow comparisons between and among
18 facilities. Family members, guardians, or other resident
19 designees may assist the resident in completing the survey.
20 Employees and volunteers of the nursing facility or of a
21 corporation or business entity with an ownership interest in
22 the facility are prohibited from assisting a resident with or
23 attempting to influence a resident's responses to the consumer
24 satisfaction survey. The agency, or its contractor, shall
25 survey family members, guardians, or other resident designees.
26 The agency, or its contractor, shall specify the protocol for
27 conducting and reporting the consumer satisfaction surveys.
28 Reports of consumer satisfaction surveys shall protect the
29 identity of individual respondents. The agency shall contract
30 for consumer satisfaction surveys and report the results of
31 those surveys in the consumer information materials prepared

1 and distributed by the agency. The agency may adopt rules as
2 necessary to administer this section.

3 Section 51. Subsections (3) and (8) of section
4 400.0255, Florida Statutes, as amended by section 138 of
5 chapter 2000-349, section 3 of chapter 2000-350, and section
6 58 of chapter 2000-367, Laws of Florida, are reenacted to
7 read:

8 400.0255 Resident transfer or discharge; requirements
9 and procedures; hearings.--

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

23 (8) The notice required by subsection (7) must be in
24 writing and must contain all information required by state and
25 federal law, rules, or regulations applicable to Medicaid or
26 Medicare cases. The agency shall develop a standard document
27 to be used by all facilities licensed under this part for
28 purposes of notifying residents of a discharge or transfer.
29 Such document must include a means for a resident to request
30 the local long-term care ombudsman council to review the
31 notice and request information about or assistance with

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

17 Section 52. Subsections (4) and (5) of section
18 400.141, Florida Statutes, as renumbered and amended by
19 section 4 of chapter 2000-350, Laws of Florida, are reenacted
20 to read:

21 400.141 Administration and management of nursing home
22 facilities.--Every licensed facility shall comply with all
23 applicable standards and rules of the agency and shall:

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

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

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

1 the facility, until the outpatient clinic load exceeds 15 a
2 day.

3

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

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

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

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

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

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

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

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

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

- 1 organization owning or managing more than one nursing facility
2 in this state.
- 3 5. The total number of beds in each facility.
- 4 6. The number of private and semiprivate rooms in each
5 facility.
- 6 7. The religious affiliation, if any, of each
7 facility.
- 8 8. The languages spoken by the administrator and staff
9 of each facility.
- 10 9. Whether or not each facility accepts Medicare or
11 Medicaid recipients or insurance, health maintenance
12 organization, Veterans Administration, CHAMPUS program, or
13 workers' compensation coverage.
- 14 10. Recreational and other programs available at each
15 facility.
- 16 11. Special care units or programs offered at each
17 facility.
- 18 12. Whether the facility is a part of a retirement
19 community that offers other services pursuant to part III,
20 part IV, or part V.
- 21 13. The results of consumer and family satisfaction
22 surveys for each facility, as described in s. 400.0225. The
23 results may be converted to a score or scores, which may be
24 presented in either numeric or symbolic form for the intended
25 consumer audience.
- 26 14. Survey and deficiency information contained on the
27 Online Survey Certification and Reporting (OSCAR) system of
28 the federal Health Care Financing Administration, including
29 annual survey, revisit, and complaint survey information, for
30 each facility for the past 45 months. For noncertified
31 nursing homes, state survey and deficiency information,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 400.23 Rules; evaluation and deficiencies; licensure
19 status.--

20 (5) The agency, in collaboration with the Division of
21 Children's Medical Services of the Department of Health, must,
22 no later than December 31, 1993, adopt rules for minimum
23 standards of care for persons under 21 years of age who reside
24 in nursing home facilities. The rules must include a
25 methodology for reviewing a nursing home facility under ss.
26 408.031-408.045 which serves only persons under 21 years of
27 age. A facility may be exempt from these standards for
28 specific persons between 18 and 21 years of age, if the
29 person's physician agrees that minimum standards of care based
30 on age are not necessary.

31

1 Section 55. Paragraph (a) of subsection (3),
2 subsection (4), and paragraph (e) of subsection (5) of section
3 400.235, Florida Statutes, as amended by section 12 of chapter
4 2000-305 and section 7 of chapter 2000-350, Laws of Florida,
5 and subsection (9) of section 400.235, Florida Statutes, as
6 created by section 7 of chapter 2000-350, are reenacted to
7 read:

8 400.235 Nursing home quality and licensure status;
9 Gold Seal Program.--

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

29 (4) The panel shall consider the quality of care
30 provided to residents when evaluating a facility for the Gold
31

1 Seal Program. The panel shall determine the procedure or
2 procedures for measuring the quality of care.

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

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

11
12 A facility assigned a conditional licensure status may not
13 qualify for consideration for the Gold Seal Program until
14 after it has operated for 30 months with no class I or class
15 II deficiencies and has completed a regularly scheduled
16 relicensure survey.

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

19 Section 56. The repeal of paragraph (h) of subsection
20 (5) of section 400.235, Florida Statutes, 1999, by section 7
21 of chapter 2000-350, Laws of Florida, is reenacted.

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

25 400.962 License required; license application.--

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

28 Section 58. Subsection (2) of section 397.405, Florida
29 Statutes, as amended by section 9 of chapter 2000-350, Laws of
30 Florida, is reenacted to read:

31

1 397.405 Exemptions from licensure.--The following are
2 exempt from the licensing provisions of this chapter:

3 (2) A nursing home facility as defined in s.
4 400.021(12).

5
6 The exemptions from licensure in this section do not apply to
7 any facility or entity which receives an appropriation, grant,
8 or contract from the state to operate as a service provider as
9 defined in this chapter or to any substance abuse program
10 regulated pursuant to s. 397.406. No provision of this
11 chapter shall be construed to limit the practice of a
12 physician licensed under chapter 458 or chapter 459, a
13 psychologist licensed under chapter 490, or a psychotherapist
14 licensed under chapter 491, providing outpatient or inpatient
15 substance abuse treatment to a voluntary patient, so long as
16 the physician, psychologist, or psychotherapist does not
17 represent to the public that he or she is a licensed service
18 provider under this act. Failure to comply with any
19 requirement necessary to maintain an exempt status under this
20 section is a misdemeanor of the first degree, punishable as
21 provided in s. 775.082 or s. 775.083.

22 Section 59. Section 10 of chapter 2000-350, Laws of
23 Florida, is reenacted to read:

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

1 for up to 12 months. A report summarizing the results of the
2 study shall be submitted by the board and the agency to the
3 Speaker of the House of Representatives and the President of
4 the Senate by January 1, 2001. If the study determines that
5 such dispensing machines would benefit residents of nursing
6 facilities and should be allowed, the report shall identify
7 those specific statutory changes necessary to allow nursing
8 facilities to use automated medication dispensing machines.

9 Section 60. It is the intent of the Legislature that
10 the reenactment of statutes provided in this act is remedial
11 in nature and is not intended to conflict with any amendment
12 provided in this act to any of the statutes reenacted, but
13 merely serves to settle and provide relief from uncertainty
14 with respect to the provisions of chapter 2000-350, Laws of
15 Florida, relating to nursing homes and related health care
16 facilities, which chapter law may contain more than one
17 subject.

18 Section 61. Subsection (1) of section 71 of chapter
19 98-171, Laws of Florida, is repealed.

20 Section 62. Implementation of the provisions of this
21 act shall be contingent upon specific appropriations in the
22 General Appropriations Act for such purposes.

23 Section 63. Except as otherwise provided herein, this
24 act shall take effect upon becoming a law.

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