

HB 1497

2004

1 A bill to be entitled

2 An act relating to long-term care civil enforcement;  
3 amending s. 400.023, F.S.; clarifying liability of nursing  
4 home facilities; requiring a certificate of counsel  
5 certifying compliance with the requirement to serve a copy  
6 of a complaint alleging a violation of rights with the  
7 Agency for Health Care Administration; amending s.  
8 400.0233, F.S.; providing definitions; authorizing  
9 voluntary binding arbitration following presuit  
10 investigation and mediation of claims; creating s.  
11 400.02341, F.S.; providing legislative findings and  
12 intent; providing for a plan consisting of presuit  
13 investigation and arbitration to resolve nursing home  
14 liability claims; providing requirements; creating s.  
15 400.02342, F.S.; providing for voluntary binding  
16 arbitration of claims for resident's rights violation or  
17 negligence; providing exemptions; providing for  
18 determination of damages by an arbitration panel after  
19 mediation; providing evidentiary standards; providing  
20 composition of the arbitration panel; providing  
21 qualifications and compensation of arbitrators; specifying  
22 terms and conditions for entering into arbitration;  
23 requiring written consent of a defendant for arbitration  
24 under certain circumstances; authorizing the Division of  
25 Administrative Hearings to adopt rules; authorizing  
26 imposition of certain sanctions under such rules; creating  
27 s. 400.02343, F.S.; providing for arbitration to allocate  
28 financial responsibility among multiple defendants;  
29 providing for a separate binding arbitration proceeding;

HB 1497

2004

30 providing for an arbitration panel; providing composition,  
31 duties, and responsibilities of the arbitration panel;  
32 requiring defendants to pay a proportionate share of the  
33 economic and noneconomic damages awarded by the  
34 arbitration panel; providing for joint and several  
35 liability; providing for extinguishment of liability for  
36 certain damages under certain circumstances; providing  
37 certain defendants with an action for contribution against  
38 any nonarbitrating defendant whose negligence contributed  
39 to the injury; creating s. 400.02344, F.S.; specifying  
40 effects of failure to offer or accept voluntary binding  
41 arbitration; providing procedures; specifying effects of  
42 rejection of an arbitration offer; providing limitations  
43 on damages; providing for punitive damages; creating s.  
44 400.02345, F.S.; authorizing a court to determine whether  
45 a disputed claim is subject to voluntary arbitration;  
46 providing for parties to determine whether to arbitrate  
47 certain amended claims; creating s. 400.02346, F.S.;  
48 providing for dissolution of the arbitration panel if  
49 agreement cannot be reached; providing for the appointment  
50 of new arbitrators; providing for conclusion of  
51 arbitration proceedings under certain circumstances;  
52 creating s. 400.02347, F.S.; requiring payment of an  
53 arbitration award by the defendant or submittal of certain  
54 disputes to arbitration; providing for accrual of  
55 interest; creating s. 400.02348, F.S.; designating  
56 arbitration awards and allocation of financial  
57 responsibility as final agency action for certain  
58 purposes; providing for appeal to the district court;

59 limiting judicial review; providing for enforcement of  
 60 arbitration awards by the parties to the arbitration;  
 61 providing for court orders to enforce such awards;  
 62 amending s. 400.141, F.S.; revising staffing criteria for  
 63 prohibiting nursing homes from accepting new admissions;  
 64 amending s. 400.23, F.S.; revising minimum staffing rule  
 65 requirements for nursing homes; amending s. 400.429, F.S.;  
 66 clarifying liability of assisted living facilities;  
 67 requiring a certificate of counsel certifying compliance  
 68 with the requirement to serve a copy of a complaint  
 69 alleging a violation of rights with the agency; amending  
 70 s. 400.4293, F.S.; providing definitions; authorizing  
 71 voluntary binding arbitration following presuit  
 72 investigation and mediation of claims; creating s.  
 73 400.42941, F.S.; providing legislative findings and  
 74 intent; providing for a plan consisting of presuit  
 75 investigation and arbitration to resolve assisted living  
 76 facility liability claims; providing requirements;  
 77 creating s. 400.42942, F.S.; providing for voluntary  
 78 binding arbitration of claims for resident's rights  
 79 violation or negligence; providing exemptions; providing  
 80 for determination of damages by an arbitration panel after  
 81 mediation; providing evidentiary standards; providing  
 82 composition of the arbitration panel; providing  
 83 qualifications and compensation of arbitrators; specifying  
 84 terms and conditions for entering into arbitration;  
 85 requiring written consent of a defendant for arbitration  
 86 under certain circumstances; authorizing the division to  
 87 adopt rules; authorizing imposition of certain sanctions

HB 1497

2004

88 under such rules; creating s. 400.42943, F.S.; providing  
89 for arbitration to allocate financial responsibility among  
90 multiple defendants; providing for a separate binding  
91 arbitration proceeding; providing for an arbitration  
92 panel; providing composition, duties, and responsibilities  
93 of the arbitration panel; requiring defendants to pay a  
94 proportionate share of the economic and noneconomic  
95 damages awarded by the arbitration panel; providing for  
96 joint and several liability; providing for extinguishment  
97 of liability for certain damages under certain  
98 circumstances; providing certain defendants with an action  
99 for contribution against any nonarbitrating defendant  
100 whose negligence contributed to the injury; creating s.  
101 400.42944, F.S.; specifying effects of failure to offer or  
102 accept voluntary binding arbitration; providing  
103 procedures; specifying effects of rejection of an  
104 arbitration offer; providing limitations on damages;  
105 providing for punitive damages; creating s. 400.42945,  
106 F.S.; authorizing a court to determine whether a disputed  
107 claim is subject to voluntary arbitration; providing for  
108 parties to determine whether to arbitrate certain amended  
109 claims; providing amendment procedures; creating s.  
110 400.42946, F.S.; providing for dissolution of the  
111 arbitration panel if agreement cannot be reached;  
112 providing for the appointment of new arbitrators;  
113 providing for conclusion of arbitration proceedings under  
114 certain circumstances; creating s. 400.42947, F.S.;

115 requiring payment of an arbitration award by the defendant  
116 or submittal of certain disputes to arbitration; providing

HB 1497

2004

117 for accrual of interest; creating s. 400.42948, F.S.;

118 designating arbitration awards and allocation of financial

119 responsibility as final agency action for certain

120 purposes; providing for appeal to the district court;

121 limiting judicial review; providing for enforcement of

122 arbitration awards by the parties to the arbitration;

123 providing for court orders to enforce such awards;

124 providing an effective date.

125

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

127

128 Section 1. Subsections (4) and (6) of section 400.023,

129 Florida Statutes, are amended to read:

130 400.023 Civil enforcement.--

131 (4) A licensee shall be liable for ~~in~~ any claim for

132 resident's rights violation or negligence by a nurse licensed

133 under part I of chapter 464 and employed by the licensee. Nurses

134 providing nursing services, ~~such nurse~~ shall have the duty to

135 exercise care consistent with the prevailing professional

136 standard of care for nurses ~~a nurse~~. The prevailing professional

137 standard of care for nurses ~~a nurse~~ shall be that level of care,

138 skill, and treatment which, in light of all relevant surrounding

139 circumstances, is recognized as acceptable and appropriate by

140 reasonably prudent similar nurses.

141 (6) The resident or the resident's legal representative

142 shall serve a copy of any complaint alleging in whole or in part

143 a violation of any rights specified in this part to the Agency

144 for Health Care Administration at the time of filing the initial

145 complaint with the clerk of the court for the county in which

HB 1497

2004

146 the action is pursued. The initial complaint shall contain a  
 147 certificate of counsel certifying compliance with this  
 148 subsection. The requirement of providing a copy of the complaint  
 149 to the agency and certifying compliance with this subsection  
 150 does not impair the resident's legal rights or ability to seek  
 151 relief for his or her claim.

152 Section 2. Subsections (1) and (11) of section 400.0233,  
 153 Florida Statutes, are amended to read:

154 400.0233 Presuit notice; investigation; notification of  
 155 violation of resident's rights or alleged negligence; claims  
 156 evaluation procedure; informal discovery; review; settlement  
 157 offer; mediation.--

158 (1) As used in this section and ss. 400.02341-400.02348,  
 159 the term:

160 (a) "Claim for resident's rights violation or negligence"  
 161 means a negligence claim alleging injury to or the death of a  
 162 resident arising out of an asserted violation of the rights of a  
 163 resident under s. 400.022 or an asserted deviation from the  
 164 applicable standard of care.

165 (b) "Collateral sources" means any payments made to the  
 166 claimant, or made on his or her behalf, by or pursuant to:

167 1. The United States Social Security Act; any federal,  
 168 state, or local income disability act; or any other public  
 169 program providing medical expenses, disability payments, or  
 170 other similar benefits, except as prohibited by federal law.

171 2. Any health, sickness, or income disability insurance;  
 172 automobile accident insurance that provides health benefits or  
 173 income disability coverage; and any other similar insurance  
 174 benefits, except life insurance benefits available to the

HB 1497

2004

175 claimant, whether purchased by the claimant or provided by  
 176 others.

177 3. Any contract or agreement of any group, organization,  
 178 partnership, or corporation to provide, pay for, or reimburse  
 179 the costs of hospital, medical, dental, or other health care  
 180 services.

181 4. Any contractual or voluntary wage continuation plan  
 182 provided by employers or by any other system intended to provide  
 183 wages during a period of disability.

184 (c) "Economic damages" means financial losses that would  
 185 not have occurred but for the injury giving rise to the cause of  
 186 action, including, but not limited to, past and future medical  
 187 expenses and 80 percent of wage loss and loss of earning  
 188 capacity.

189 (d) "Incident" means all conduct that is alleged in the  
 190 notice of claim or complaint to have caused the injury or  
 191 damages to the resident.

192 (e)~~(b)~~ "Insurer" means any self-insurer authorized under  
 193 s. 627.357, liability insurance carrier, joint underwriting  
 194 association, or uninsured prospective defendant.

195 (f) "Noneconomic damages" means nonfinancial losses that  
 196 would not have occurred but for the injury giving rise to the  
 197 cause of action, including, but not limited to, pain and  
 198 suffering, inconvenience, physical impairment, mental anguish,  
 199 disfigurement, loss of capacity for enjoyment of life, and other  
 200 nonfinancial losses.

201 (11) Within 30 days after the claimant's receipt of the  
 202 defendant's response to the claim, the parties or their  
 203 designated representatives shall meet in mediation to discuss

HB 1497

2004

204 the issues of liability and damages in accordance with the  
 205 mediation rules of practice and procedures adopted by the  
 206 Supreme Court. Upon stipulation of the parties, this 30-day  
 207 period may be extended and the statute of limitations is tolled  
 208 during the mediation and any such extension. At the conclusion  
 209 of mediation, the claimant shall have 60 days or the remainder  
 210 of the period of the statute of limitations, whichever is  
 211 greater, within which to enter into voluntary binding  
 212 arbitration under ss. 400.02341-400.02348 or to file suit.

213 Section 3. Section 400.02341, Florida Statutes, is created  
 214 to read:

215 400.02341 Legislative findings and intent.--

216 (1) The Legislature finds that:

217 (a) Liability insurance premiums for nursing homes have  
 218 increased dramatically in recent years, resulting in increased  
 219 nursing home care costs for most residents and functional  
 220 unavailability of liability insurance for most nursing home  
 221 facilities.

222 (b) The primary cause of increased liability insurance  
 223 premiums has been the substantial increase in loss payments to  
 224 claimants caused by tremendous increases in the amounts of paid  
 225 claims.

226 (c) The average cost of defending a nursing home liability  
 227 claim has escalated in the past decade to the point where it has  
 228 become imperative to control such cost in the interest of the  
 229 public need for quality nursing home care.

230 (d) The high cost of nursing home liability claims in the  
 231 state can be substantially alleviated by requiring early  
 232 determination of the merit of claims, by providing for early



HB 1497

2004

233 arbitration of claims, thereby reducing delay and attorney's  
 234 fees, and by imposing reasonable limitations on damages, while  
 235 preserving the right of either party to have its case heard by a  
 236 jury.

237 (e) The recovery of 100 percent of economic losses  
 238 constitutes overcompensation because such recovery fails to  
 239 recognize that such awards are not subject to taxes on economic  
 240 damages.

241 (f) Excessive awards of noneconomic damages threaten the  
 242 ability of nursing home facilities to continue to provide  
 243 appropriate care for residents. A reasonable limitation on  
 244 noneconomic damages will reduce the high cost of claims without  
 245 jeopardizing the right of each party to be heard by a jury.

246 (2) It is the intent of the Legislature to provide a plan  
 247 for prompt resolution of nursing home liability claims. Such  
 248 plan shall consist of two separate components: presuit  
 249 investigation and arbitration. Presuit investigation shall be  
 250 mandatory and shall apply to all nursing home liability claims  
 251 and defenses. Arbitration shall be voluntary and shall be  
 252 available except as otherwise provided in s. 400.02342.

253 (a) Presuit investigation shall include verifiable  
 254 requirements that reasonable investigation precede both nursing  
 255 home liability claims and defenses in order to eliminate  
 256 frivolous claims and defenses.

257 (b) Arbitration shall provide:

258 1. Substantial incentives for both claimants and  
 259 defendants to submit their cases to binding arbitration, thus  
 260 reducing attorney's fees, litigation costs, and delay.

261 2. A conditional limitation on noneconomic damages if the

HB 1497

2004

262 defendant concedes willingness to pay economic damages and  
 263 reasonable attorney's fees.

264 3. Limitations on the noneconomic damages components of  
 265 large awards to provide increased predictability of outcome of  
 266 the claims resolution process in order for insurers to  
 267 anticipate losses and to facilitate early resolution of  
 268 negligence claims.

269 Section 4. Section 400.02342, Florida Statutes, is created  
 270 to read:

271 400.02342 Voluntary binding arbitration of claims for  
 272 resident's rights violation or negligence.--

273 (1) Voluntary binding arbitration pursuant to this section  
 274 and ss. 400.02343-400.02348 does not apply to rights of action  
 275 involving the state or its agencies or subdivisions, or the  
 276 officers, employees, or agents thereof, pursuant to s. 768.28.

277 (2) Upon the completion of mediation under s.  
 278 400.0233(11), the parties may elect, with respect only to claims  
 279 arising out of the rendering of, or the failure to render,  
 280 medical care or service, to have damages determined by an  
 281 arbitration panel. For purposes of arbitration under this  
 282 section and ss. 400.02343-400.02348, medical care or service  
 283 includes:

- 284 (a) Skin care.
- 285 (b) Mobility and walking assistance.
- 286 (c) Nourishment.
- 287 (d) Hydration.
- 288 (e) Prevention of elopement.

289  
 290 Such election may be initiated by either party by serving a

HB 1497

2004

291 request for voluntary binding arbitration of damages within 60  
 292 days after the conclusion of mediation or the remainder of the  
 293 period of the statute of limitations, whichever is greater. The  
 294 evidentiary standards for voluntary binding arbitration of  
 295 claims arising out of the rendering of, or the failure to  
 296 render, medical care or service shall be as provided in ss.  
 297 120.569(2)(g) and 120.57(1)(c).

298 (3) Upon receipt of a party's request for such  
 299 arbitration, the opposing party may accept the offer of  
 300 voluntary binding arbitration within 30 days. Such acceptance  
 301 within the time period provided by this subsection shall be a  
 302 binding commitment to comply with the decision of the  
 303 arbitration panel. The liability of any insurer shall be subject  
 304 to any applicable insurance policy limits.

305 (4) The arbitration panel shall be composed of three  
 306 arbitrators, one selected by the claimant, one selected by the  
 307 defendant, and one administrative law judge furnished by the  
 308 Division of Administrative Hearings who shall serve as the chief  
 309 arbitrator. In the event of multiple claimants or multiple  
 310 defendants, the arbitrator selected by the side with multiple  
 311 parties shall be the choice of those parties. If the multiple  
 312 parties cannot reach agreement as to an arbitrator, each of the  
 313 multiple parties shall submit a nominee, and the director of the  
 314 Division of Administrative Hearings shall appoint the arbitrator  
 315 from among such nominees.

316 (5) The arbitrators shall be independent of all parties,  
 317 witnesses, and legal counsel, and no officer, director,  
 318 affiliate, subsidiary, or employee of a party, witness, or legal  
 319 counsel may serve as an arbitrator in the proceeding.

320 (6) The rate of compensation for arbitrators other than  
 321 the administrative law judge shall be set by the chief judge of  
 322 the appropriate circuit court by schedule, providing for  
 323 compensation of not less than \$250 per day nor more than \$750  
 324 per day or as agreed to by the parties. In setting the schedule,  
 325 the chief judge shall consider the prevailing rates charged for  
 326 the delivery of professional services in the community.

327 (7) Arbitration pursuant to this section shall preclude  
 328 recourse to any other remedy by the claimant against any  
 329 participating defendant and shall be undertaken with the  
 330 understanding that:

331 (a) The defendant has made an offer of admission of  
 332 liability and for arbitration on the issue of damages. This  
 333 offer may be made contingent upon a limit of general damages.

334 (b) Net economic damages shall be awardable, including,  
 335 but not limited to, past and future medical expenses and 80  
 336 percent of wage loss and loss of earning capacity, offset by any  
 337 collateral source payments made prior to the arbitration award.

338 (c) Noneconomic damages shall be limited to a maximum of  
 339 \$250,000 per incident. If the claimant's care has been provided  
 340 in all or in part by Medicaid, the award shall first pay the  
 341 Medicaid program those amounts expended for the claimant's care,  
 342 and the Medicaid program shall have a lien against the award for  
 343 any future payments that would be paid by Medicaid.

344 (d) Punitive damages may not be awarded.

345 (e) The defendant shall be responsible for the payment of  
 346 interest on all accrued damages with respect to which interest  
 347 would be awarded at trial.

348 (f) The defendant shall pay the claimant's reasonable

HB 1497

2004

349 attorney's fees and costs, as determined by the arbitration  
 350 panel, but in no event more than 15 percent of the award,  
 351 reduced to present value.

352 (g) The defendant shall pay all the costs of the  
 353 arbitration proceeding and the fees of all the arbitrators other  
 354 than the administrative law judge.

355 (h) Each defendant who submits to arbitration under this  
 356 section shall be jointly and severally liable for all damages  
 357 assessed pursuant to this section.

358 (i) The defendant's obligation to pay the claimant's  
 359 damages shall be for the purpose of arbitration under this  
 360 section only. A defendant's or claimant's offer to arbitrate  
 361 shall not be used in evidence or in argument during any  
 362 subsequent litigation of the claim following the rejection  
 363 thereof.

364 (j) The fact of making or accepting an offer to arbitrate  
 365 shall not be admissible as evidence of liability in any  
 366 collateral or subsequent proceeding on the claim.

367 (k) Any offer by a claimant to arbitrate must be made to  
 368 each defendant against whom the claimant has made a claim. Any  
 369 offer by a defendant to arbitrate must be made to each claimant.  
 370 A defendant who rejects a claimant's offer to arbitrate shall be  
 371 subject to the provisions of s. 400.02344(3). A claimant who  
 372 rejects a defendant's offer to arbitrate shall be subject to the  
 373 provisions of s. 400.02344(4).

374 (l) The hearing shall be conducted by all of the  
 375 arbitrators, but a majority may determine any question of fact  
 376 and render a final decision. The chief arbitrator shall decide  
 377 all evidentiary matters. The chief arbitrator shall file a copy

HB 1497

2004

378 of the final decision with the clerk of the Agency for Health  
 379 Care Administration.

380  
 381 The provisions of this subsection shall not preclude settlement  
 382 at any time by mutual agreement of the parties.

383 (8) Any issue between the defendant and the defendant's  
 384 insurer or self-insurer as to who shall control the defense of  
 385 the claim and any responsibility for payment of an arbitration  
 386 award shall be determined under existing principles of law;  
 387 however, the insurer or self-insurer shall not offer to  
 388 arbitrate or accept a claimant's offer to arbitrate without the  
 389 written consent of the defendant.

390 (9) The Division of Administrative Hearings may adopt  
 391 rules to effect the orderly and efficient processing of the  
 392 arbitration procedures of this section and ss. 400.02343-  
 393 400.02348.

394 (10) Rules adopted by the Division of Administrative  
 395 Hearings pursuant to this section, s. 120.54, or s. 120.65 may  
 396 authorize any reasonable sanctions except contempt for violation  
 397 of the rules of the division or failure to comply with a  
 398 reasonable order issued by an administrative law judge, which is  
 399 not under judicial review.

400 Section 5. Section 400.02343, Florida Statutes, is created  
 401 to read:

402 400.02343 Arbitration to allocate financial responsibility  
 403 among multiple defendants.--

404 (1) The provisions of this section shall apply when more  
 405 than one defendant has participated in voluntary binding  
 406 arbitration pursuant to s. 400.02342.

HB 1497

2004

407       (2) Within 20 days after the determination of damages by  
408 the arbitration panel in the first arbitration proceeding, those  
409 defendants who have agreed to voluntary binding arbitration  
410 shall submit any dispute among them regarding the apportionment  
411 of financial responsibility to a separate binding arbitration  
412 proceeding. Such proceeding shall be with a panel of three  
413 arbitrators, which panel shall consist of the administrative law  
414 judge who presided in the first arbitration proceeding, who  
415 shall serve as the chief arbitrator, and two nursing home  
416 administrators appointed by the defendants. If the defendants  
417 cannot agree on their selection of arbitrators within 20 days  
418 after the determination of damages by the arbitration panel in  
419 the first arbitration proceeding, a list of not more than five  
420 nominees shall be submitted by each defendant to the director of  
421 the Division of Administrative Hearings, who shall select the  
422 other arbitrators but shall not select more than one from the  
423 list of nominees of any defendant.

424       (3) The administrative law judge appointed to serve as the  
425 chief arbitrator shall convene the arbitrators for the purpose  
426 of determining allocation of responsibility among multiple  
427 defendants within 65 days after the determination of damages by  
428 the arbitration panel in the first arbitration proceeding.

429       (4) The arbitration panel shall allocate financial  
430 responsibility among all defendants named in the notice of an  
431 asserted violation of a resident's rights or deviation from the  
432 standard of care, regardless of whether the defendant has  
433 submitted to arbitration. The defendants in the arbitration  
434 proceeding shall pay their proportionate share of the economic  
435 and noneconomic damages awarded by the arbitration panel. All

HB 1497

2004

436 defendants in the arbitration proceeding shall be jointly and  
437 severally liable for any damages assessed in arbitration. The  
438 determination of the percentage of fault of any defendant not in  
439 the arbitration case shall not be binding against that  
440 defendant, nor shall it be admissible in any subsequent legal  
441 proceeding.

442 (5) Payment by the defendants of the damages awarded by  
443 the arbitration panel in the first arbitration proceeding shall  
444 extinguish the liability of such defendants to the claimant and  
445 shall also extinguish the liability of such defendants for  
446 contribution to any defendants who did not participate in  
447 arbitration.

448 (6) Any defendant paying damages assessed pursuant to this  
449 section or s. 400.02342 shall have an action for contribution  
450 against any defendant who did not participate in the voluntary  
451 arbitration and whose negligence contributed to the injury.

452 Section 6. Section 400.02344, Florida Statutes, is created  
453 to read:

454 400.02344 Effects of failure to offer or accept voluntary  
455 binding arbitration.--

456 (1) A proceeding for voluntary binding arbitration is an  
457 alternative to jury trial and shall not supersede the right of  
458 any party to a jury trial.

459 (2) If neither party requests or agrees to voluntary  
460 binding arbitration, the claim shall proceed to trial or to any  
461 available legal alternative such as offer of and demand for  
462 judgment under s. 768.79 or offer of settlement under s. 45.061.

463 (3) If the defendant rejects a claimant's offer to enter  
464 voluntary binding arbitration:



HB 1497

2004

465 (a) The claim shall proceed to trial without limitation on  
 466 damages, and the claimant, upon proving violation of a  
 467 resident's rights or negligence, shall be entitled to recover  
 468 prejudgment interest and reasonable attorney's fees up to 25  
 469 percent of the award, reduced to present value.

470 (b) The claimant's award at trial shall be reduced by any  
 471 damages recovered by the claimant from arbitrating codefendants  
 472 following arbitration.

473 (4) If the claimant rejects a defendant's offer to enter  
 474 voluntary binding arbitration:

475 (a) The damages awardable at trial shall be limited to net  
 476 economic damages, plus noneconomic damages not to exceed  
 477 \$350,000 per incident. The Legislature expressly finds that such  
 478 conditional limit on noneconomic damages is warranted by the  
 479 claimant's refusal to accept arbitration and represents an  
 480 appropriate balance between the interests of all residents who  
 481 ultimately pay for rights and negligence losses and the  
 482 interests of those residents who are injured as a result of  
 483 negligence and violations of rights.

484 (b) Net economic damages reduced to present value shall be  
 485 awardable, including, but not limited to, past and future  
 486 medical expenses and 80 percent of wage loss and loss of earning  
 487 capacity, offset by any collateral source payments.

488 (c) If the claimant's care has been provided in all or in  
 489 part by Medicaid, the award shall first pay the Medicaid program  
 490 those amounts expended for the claimant's care, and the Medicaid  
 491 program shall have a lien against the award for any future  
 492 payments that would be paid by Medicaid.

493 (5) Punitive damages may be awarded pursuant to ss.

HB 1497

2004

494 400.0237 and 400.0238.

495 (6) A jury trial shall proceed in accordance with existing  
 496 principles of law.

497 Section 7. Section 400.02345, Florida Statutes, is created  
 498 to read:

499 400.02345 Determination of whether claim is subject to  
 500 arbitration.--

501 (1) In the event of a dispute, a court of competent  
 502 jurisdiction may determine whether the claim is subject to the  
 503 voluntary arbitration provisions of ss. 400.02342-400.02348.

504 (2) If a plaintiff, at any time, amends a complaint to  
 505 allege facts that render a claim subject to arbitration under  
 506 ss. 400.02342-400.02348, the parties shall have 30 days to  
 507 determine whether to arbitrate that claim voluntarily. The  
 508 procedural limitations imposed on the parties under ss.  
 509 400.02342-400.02348 shall apply if the case proceeds to trial.

510 Section 8. Section 400.02346, Florida Statutes, is created  
 511 to read:

512 400.02346 Misarbitration.--

513 (1) At any time during the course of voluntary binding  
 514 arbitration of a claim arising out of the rendering of, or the  
 515 failure to render, medical care or service pursuant to s.  
 516 400.02342, the administrative law judge serving as chief  
 517 arbitrator on the arbitration panel, if he or she determines  
 518 that agreement cannot be reached, may dissolve the arbitration  
 519 panel and request the director of the Division of Administrative  
 520 Hearings to appoint two new arbitrators from lists of three to  
 521 five names timely provided by each party to the arbitration. Not  
 522 more than one arbitrator shall be appointed from the list

HB 1497

2004

523 provided by any party unless only one list is timely filed.

524 (2) Upon appointment of the new arbitrators, arbitration  
 525 shall proceed at the direction of the chief arbitrator in  
 526 accordance with the provisions of ss. 400.02342-400.02348.

527 (3) At any time after the allocation arbitration hearing  
 528 under s. 400.02343 has concluded, the administrative law judge  
 529 -serving as chief arbitrator on the arbitration panel may  
 530 dissolve the arbitration panel and declare the proceedings  
 531 concluded if he or she determines that agreement cannot be  
 532 reached.

533 Section 9. Section 400.02347, Florida Statutes, is created  
 534 to read:

535 400.02347 Payment of arbitration award; interest.--

536 (1) Within 20 days after the determination of damages by  
 537 the arbitration panel pursuant to s. 400.02342, the defendant  
 538 shall:

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

541 (b) Submit any dispute among multiple defendants to  
 542 arbitration pursuant to s. 400.02343.

543 (2) Commencing 90 days after the award rendered in the  
 544 arbitration procedure pursuant to s. 400.02342, such award shall  
 545 begin to accrue interest at the rate of 18 percent per year.

546 Section 10. Section 400.02348, Florida Statutes, is  
 547 created to read:

548 400.02348 Appeal of arbitration awards and allocations of  
 549 financial responsibility.--

550 (1) An arbitration award and an allocation of financial  
 551 responsibility are final agency action for purposes of s.

HB 1497

2004

552 120.68. Any appeal shall be taken to the district court of  
553 appeal for the district in which the arbitration took place,  
554 shall be limited to review of the record, and shall otherwise  
555 proceed in accordance with s. 120.68. The amount of an  
556 arbitration award or an order allocating financial  
557 responsibility, the evidence in support of either, and the  
558 procedure by which either is determined are subject to judicial  
559 scrutiny only in a proceeding instituted pursuant to this  
560 subsection.

561 (2) No appeal shall operate to stay an arbitration award,  
562 nor shall any arbitration panel, arbitration panel member, or  
563 circuit court stay an arbitration award. The district court of  
564 appeal may order a stay to prevent manifest injustice, but no  
565 court shall abrogate the provisions of s. 400.02347(2).

566 (3) Any party to an arbitration proceeding may enforce an  
567 arbitration award or an allocation of financial responsibility  
568 by filing a petition in the circuit court for the circuit in  
569 which the arbitration took place. A petition may not be granted  
570 unless the time for appeal has expired. If an appeal has been  
571 taken, a petition may not be granted with respect to an  
572 arbitration award or an allocation of financial responsibility  
573 that has been stayed.

574 (4) If the petitioner establishes the authenticity of the  
575 arbitration award or of the allocation of financial  
576 responsibility, shows that the time for appeal has expired, and  
577 demonstrates that no stay is in place, the court shall enter  
578 such orders and judgments as are required to carry out the terms  
579 of the arbitration award or allocation of financial  
580 responsibility. Such orders are enforceable by the contempt

HB 1497

2004

581 powers of the court, and execution shall issue upon the request  
 582 of a party for such judgment.

583 Section 11. Paragraphs (d), (e), and (f) of subsection  
 584 (15) of section 400.141, Florida Statutes, are amended to read:

585 400.141 Administration and management of nursing home  
 586 facilities.--Every licensed facility shall comply with all  
 587 applicable standards and rules of the agency and shall:

588 (15) Submit semiannually to the agency, or more frequently  
 589 if requested by the agency, information regarding facility  
 590 staff-to-resident ratios, staff turnover, and staff stability,  
 591 including information regarding certified nursing assistants,  
 592 licensed nurses, the director of nursing, and the facility  
 593 administrator. For purposes of this reporting:

594 (d) A nursing facility that has failed to comply with 97  
 595 percent of the state minimum-staffing requirements for 2  
 596 consecutive days is prohibited from accepting new admissions  
 597 until the facility has achieved the minimum-staffing  
 598 requirements for a period of 6 consecutive days. For the  
 599 purposes of this paragraph, any person who was a resident of the  
 600 facility and was absent from the facility for the purpose of  
 601 receiving medical care at a separate location or was on a leave  
 602 of absence is not considered a new admission. Failure to impose  
 603 such an admissions moratorium constitutes a class II deficiency.

604 (e) A nursing facility that ~~which~~ does not have a  
 605 conditional license may be cited for failure to comply with the  
 606 standards in s. 400.23(3)(a) only if it has failed to meet those  
 607 standards on 2 consecutive days or if it has failed to meet at  
 608 least 97 percent of those standards on any one day.

HB 1497

2004

609 (f) A facility that ~~which~~ has a conditional license must  
 610 be in compliance with the standards in s. 400.23(3)(a) at all  
 611 times.

612  
 613 Nothing in this section shall limit the agency's ability to  
 614 impose a deficiency or take other actions if a facility does not  
 615 have enough staff to meet the residents' needs.

616  
 617 Facilities that have been awarded a Gold Seal under the program  
 618 established in s. 400.235 may develop a plan to provide  
 619 certified nursing assistant training as prescribed by federal  
 620 regulations and state rules and may apply to the agency for  
 621 approval of their program.

622 Section 12. Paragraph (a) of subsection (3) of section  
 623 400.23, Florida Statutes, is amended to read:

624 400.23 Rules; evaluation and deficiencies; licensure  
 625 status.--

626 (3)(a) The agency shall adopt rules providing for the  
 627 minimum staffing requirements for nursing homes. These  
 628 requirements shall include, for each nursing home facility, a  
 629 minimum certified nursing assistant staffing of 2.3 hours of  
 630 direct care per resident per day beginning January 1, 2002,  
 631 increasing to 2.6 hours of direct care per resident per day  
 632 beginning January 1, 2003, and increasing to 2.9 hours of direct  
 633 care per resident per day beginning May 1, 2004. Beginning  
 634 January 1, 2002, no facility shall staff below one certified  
 635 nursing assistant per 20 residents, and a minimum licensed  
 636 nursing staffing of 1.0 hour of direct resident care per  
 637 resident per day but never below one licensed nurse per 40

HB 1497

2004

638 residents, except during the night shift when one licensed nurse  
639 per 60 residents shall apply. Nursing assistants employed never  
640 below one licensed nurse per 40 residents. Nursing assistants  
641 employed under s. 400.211(2) may be included in computing the  
642 staffing ratio for certified nursing assistants only if they  
643 provide nursing assistance services to residents on a full-time  
644 basis. Each nursing home must document compliance with staffing  
645 standards as required under this paragraph and post daily the  
646 names of staff on duty for the benefit of facility residents and  
647 the public. The agency shall recognize the use of licensed  
648 nurses for compliance with minimum staffing requirements for  
649 certified nursing assistants, provided that the facility  
650 otherwise meets the minimum staffing requirements for licensed  
651 nurses and that the licensed nurses so recognized are performing  
652 the duties of a certified nursing assistant. Unless otherwise  
653 approved by the agency, licensed nurses counted towards the  
654 minimum staffing requirements for certified nursing assistants  
655 must exclusively perform the duties of a certified nursing  
656 assistant for the entire shift and shall not also be counted  
657 towards the minimum staffing requirements for licensed nurses.  
658 If the agency approved a facility's request to use a licensed  
659 nurse to perform both licensed nursing and certified nursing  
660 assistant duties, the facility must allocate the amount of staff  
661 time specifically spent on certified nursing assistant duties  
662 for the purpose of documenting compliance with minimum staffing  
663 requirements for certified and licensed nursing staff. In no  
664 event may the hours of a licensed nurse with dual job  
665 responsibilities be counted twice.

HB 1497

2004

666 Section 13. Subsections (4) and (7) of section 400.429,  
 667 Florida Statutes, are amended to read:

668 400.429 Civil actions to enforce rights.--

669 (4) A licensee shall be liable for ~~in~~ any claim for  
 670 resident's rights violation or negligence by a nurse licensed  
 671 under part I of chapter 464 and employed by the licensee. Nurses  
 672 providing nursing services, ~~such nurse~~ shall have the duty to  
 673 exercise care consistent with the prevailing professional  
 674 standard of care for nurses ~~a nurse~~. The prevailing professional  
 675 standard of care for nurses ~~a nurse~~ shall be that level of care,  
 676 skill, and treatment which, in light of all relevant surrounding  
 677 circumstances, is recognized as acceptable and appropriate by  
 678 reasonably prudent similar nurses.

679 (7) The resident or the resident's legal representative  
 680 shall serve a copy of any complaint alleging in whole or in part  
 681 a violation of any rights specified in this part to the Agency  
 682 for Health Care Administration at the time of filing the initial  
 683 complaint with the clerk of the court for the county in which  
 684 the action is pursued. The initial complaint shall contain a  
 685 certificate of counsel certifying compliance with this  
 686 subsection. The requirement of providing a copy of the complaint  
 687 to the agency and certifying compliance with this subsection  
 688 does not impair the resident's legal rights or ability to seek  
 689 relief for his or her claim.

690 Section 14. Subsections (1) and (11) of section 400.4293,  
 691 Florida Statutes, are amended to read:

692 400.4293 Presuit notice; investigation; notification of  
 693 violation of residents' rights or alleged negligence; claims



HB 1497

2004

694 evaluation procedure; informal discovery; review; settlement  
 695 offer; mediation.--

696 (1) As used in this section and ss. 400.42941-400.42948,  
 697 the term:

698 (a) "Claim for residents' rights violation or negligence"  
 699 means a negligence claim alleging injury to or the death of a  
 700 resident arising out of an asserted violation of the rights of a  
 701 resident under s. 400.428 or an asserted deviation from the  
 702 applicable standard of care.

703 (b) "Collateral sources" means any payments made to the  
 704 claimant, or made on his or her behalf, by or pursuant to:

705 1. The United States Social Security Act; any federal,  
 706 state, or local income disability act; or any other public  
 707 program providing medical expenses, disability payments, or  
 708 other similar benefits, except as prohibited by federal law.

709 2. Any health, sickness, or income disability insurance;  
 710 automobile accident insurance that provides health benefits or  
 711 income disability coverage; and any other similar insurance  
 712 benefits, except life insurance benefits available to the  
 713 claimant, whether purchased by the claimant or provided by  
 714 others.

715 3. Any contract or agreement of any group, organization,  
 716 partnership, or corporation to provide, pay for, or reimburse  
 717 the costs of hospital, medical, dental, or other health care  
 718 services.

719 4. Any contractual or voluntary wage continuation plan  
 720 provided by employers or by any other system intended to provide  
 721 wages during a period of disability.

722 (c) "Economic damages" means financial losses that would

HB 1497

2004

723 not have occurred but for the injury giving rise to the cause of  
 724 action, including, but not limited to, past and future medical  
 725 expenses and 80 percent of wage loss and loss of earning  
 726 capacity.

727 (d) "Incident" means all conduct that is alleged in the  
 728 notice of claim or complaint to have caused the injury or  
 729 damages to the resident.

730 (e)(b) "Insurer" means any self-insurer authorized under  
 731 s. 627.357, liability insurance carrier, joint underwriting  
 732 association, or uninsured prospective defendant.

733 (f) "Noneconomic damages" means nonfinancial losses that  
 734 would not have occurred but for the injury giving rise to the  
 735 cause of action, including, but not limited to, pain and  
 736 suffering, inconvenience, physical impairment, mental anguish,  
 737 disfigurement, loss of capacity for enjoyment of life, and other  
 738 nonfinancial losses.

739 (11) Within 30 days after the claimant's receipt of  
 740 defendant's response to the claim, the parties or their  
 741 designated representatives shall meet in mediation to discuss  
 742 the issues of liability and damages in accordance with the  
 743 mediation rules of practice and procedures adopted by the  
 744 Supreme Court. Upon stipulation of the parties, this 30-day  
 745 period may be extended and the statute of limitations is tolled  
 746 during the mediation and any such extension. At the conclusion  
 747 of mediation, the claimant shall have 60 days or the remainder  
 748 of the period of the statute of limitations, whichever is  
 749 greater, within which to enter into voluntary binding  
 750 arbitration under ss. 400.42941-400.42948 or to file suit.

HB 1497

2004

751 Section 15. Section 400.42941, Florida Statutes, is  
 752 created to read:

753 400.42941 Legislative findings and intent.--

754 (1) The Legislature finds that:

755 (a) Liability insurance premiums for assisted living  
 756 facilities have increased dramatically in recent years,  
 757 resulting in increased assisted living facility care costs for  
 758 most residents and functional unavailability of liability  
 759 insurance for most assisted living facilities.

760 (b) The primary cause of increased liability insurance  
 761 premiums has been the substantial increase in loss payments to  
 762 claimants caused by tremendous increases in the amounts of paid  
 763 claims.

764 (c) The average cost of defending an assisted living  
 765 facility liability claim has escalated in the past decade to the  
 766 point where it has become imperative to control such cost in the  
 767 interest of the public need for quality assisted living facility  
 768 care.

769 (d) The high cost of assisted living facility liability  
 770 claims in the state can be substantially alleviated by requiring  
 771 early determination of the merit of claims, by providing for  
 772 early arbitration of claims, thereby reducing delay and  
 773 attorney's fees, and by imposing reasonable limitations on  
 774 damages, while preserving the right of either party to have its  
 775 case heard by a jury.

776 (e) The recovery of 100 percent of economic losses  
 777 constitutes overcompensation because such recovery fails to  
 778 recognize that such awards are not subject to taxes on economic  
 779 damages.

HB 1497

2004

780 (f) Excessive awards of noneconomic damages threaten the  
781 ability of assisted living facilities to continue to provide  
782 appropriate care for residents. A reasonable limitation on  
783 noneconomic damages will reduce the high cost of claims without  
784 jeopardizing the right of each party to be heard by a jury.

785 (2) It is the intent of the Legislature to provide a plan  
786 for prompt resolution of assisted living facility liability  
787 claims. Such plan shall consist of two separate components:  
788 presuit investigation and arbitration. Presuit investigation  
789 shall be mandatory and shall apply to all assisted living  
790 facility liability claims and defenses. Arbitration shall be  
791 voluntary and shall be available except as otherwise provided in  
792 s. 400.42942.

793 (a) Presuit investigation shall include verifiable  
794 requirements that reasonable investigation precede both assisted  
795 living facility liability claims and defenses in order to  
796 eliminate frivolous claims and defenses.

797 (b) Arbitration shall provide:

798 1. Substantial incentives for both claimants and  
799 defendants to submit their cases to binding arbitration, thus  
800 reducing attorney's fees, litigation costs, and delay.

801 2. A conditional limitation on noneconomic damages if the  
802 defendant concedes willingness to pay economic damages and  
803 reasonable attorney's fees.

804 3. Limitations on the noneconomic damages components of  
805 large awards to provide increased predictability of outcome of  
806 the claims resolution process in order for insurers to  
807 anticipate losses and to facilitate early resolution of  
808 negligence claims.

HB 1497

2004

809 Section 16. Section 400.42942, Florida Statutes, is  
810 created to read:

811 400.42942 Voluntary binding arbitration of claims for  
812 resident's rights violation or negligence.--

813 (1) Voluntary binding arbitration pursuant to this section  
814 and ss. 400.42943-400.42948 does not apply to rights of action  
815 involving the state or its agencies or subdivisions, or the  
816 officers, employees, or agents thereof, pursuant to s. 768.28.

817 (2) Upon the completion of mediation under s.  
818 400.4293(11), the parties may elect, with respect only to claims  
819 arising out of the rendering of, or the failure to render,  
820 medical care or service, to have damages determined by an  
821 arbitration panel. For purposes of arbitration under this  
822 section and ss. 400.42943-400.42948, medical care or service  
823 includes:

824 (a) Skin care.

825 (b) Mobility and walking assistance.

826 (c) Nourishment.

827 (d) Hydration.

828 (e) Prevention of elopement.

829  
830 Such election may be initiated by either party by serving a  
831 request for voluntary binding arbitration of damages within 60  
832 days after the conclusion of mediation or the remainder of the  
833 period of the statute of limitations, whichever is greater. The  
834 evidentiary standards for voluntary binding arbitration of  
835 claims arising out of the rendering of, or the failure to  
836 render, medical care or service shall be as provided in ss.  
837 120.569(2)(g) and 120.57(1)(c).

HB 1497

2004

838       (3) Upon receipt of a party's request for such  
 839 arbitration, the opposing party may accept the offer of  
 840 voluntary binding arbitration within 30 days. Such acceptance  
 841 within the time period provided by this subsection shall be a  
 842 binding commitment to comply with the decision of the  
 843 arbitration panel. The liability of any insurer shall be subject  
 844 to any applicable insurance policy limits.

845       (4) The arbitration panel shall be composed of three  
 846 arbitrators, one selected by the claimant, one selected by the  
 847 defendant, and one administrative law judge furnished by the  
 848 Division of Administrative Hearings who shall serve as the chief  
 849 arbitrator. In the event of multiple claimants or multiple  
 850 defendants, the arbitrator selected by the side with multiple  
 851 parties shall be the choice of those parties. If the multiple  
 852 parties cannot reach agreement as to an arbitrator, each of the  
 853 multiple parties shall submit a nominee, and the director of the  
 854 Division of Administrative Hearings shall appoint the arbitrator  
 855 from among such nominees.

856       (5) The arbitrators shall be independent of all parties,  
 857 witnesses, and legal counsel, and no officer, director,  
 858 affiliate, subsidiary, or employee of a party, witness, or legal  
 859 counsel may serve as an arbitrator in the proceeding.

860       (6) The rate of compensation for arbitrators other than  
 861 the administrative law judge shall be set by the chief judge of  
 862 the appropriate circuit court by schedule, providing for  
 863 compensation of not less than \$250 per day nor more than \$750  
 864 per day or as agreed to by the parties. In setting the schedule,  
 865 the chief judge shall consider the prevailing rates charged for  
 866 the delivery of professional services in the community.

HB 1497

2004

867       (7) Arbitration pursuant to this section shall preclude  
868 recourse to any other remedy by the claimant against any  
869 participating defendant and shall be undertaken with the  
870 understanding that:

871       (a) The defendant has made an offer of admission of  
872 liability and for arbitration on the issue of damages. This  
873 offer may be made contingent upon a limit of general damages.

874       (b) Net economic damages shall be awardable, including,  
875 but not limited to, past and future medical expenses and 80  
876 percent of wage loss and loss of earning capacity, offset by any  
877 collateral source payments made prior to the arbitration award.

878       (c) Noneconomic damages shall be limited to a maximum of  
879 \$250,000 per incident. If the claimant's care has been provided  
880 in all or in part by Medicaid, the award shall first pay the  
881 Medicaid program those amounts expended for the claimant's care,  
882 and the Medicaid program shall have a lien against the award for  
883 any future payments that would be paid by Medicaid.

884       (d) Punitive damages may not be awarded.

885       (e) The defendant shall be responsible for the payment of  
886 interest on all accrued damages with respect to which interest  
887 would be awarded at trial.

888       (f) The defendant shall pay the claimant's reasonable  
889 attorney's fees and costs, as determined by the arbitration  
890 panel, but in no event more than 15 percent of the award,  
891 reduced to present value.

892       (g) The defendant shall pay all the costs of the  
893 arbitration proceeding and the fees of all the arbitrators other  
894 than the administrative law judge.

HB 1497

2004

895 (h) Each defendant who submits to arbitration under this  
 896 section shall be jointly and severally liable for all damages  
 897 assessed pursuant to this section.

898 (i) The defendant's obligation to pay the claimant's  
 899 damages shall be for the purpose of arbitration under this  
 900 section only. A defendant's or claimant's offer to arbitrate  
 901 shall not be used in evidence or in argument during any  
 902 subsequent litigation of the claim following the rejection  
 903 thereof.

904 (j) The fact of making or accepting an offer to arbitrate  
 905 shall not be admissible as evidence of liability in any  
 906 collateral or subsequent proceeding on the claim.

907 (k) Any offer by a claimant to arbitrate must be made to  
 908 each defendant against whom the claimant has made a claim. Any  
 909 offer by a defendant to arbitrate must be made to each claimant.  
 910 A defendant who rejects a claimant's offer to arbitrate shall be  
 911 subject to the provisions of s. 400.42944(3). A claimant who  
 912 rejects a defendant's offer to arbitrate shall be subject to the  
 913 provisions of s. 400.42944(4).

914 (l) The hearing shall be conducted by all of the  
 915 arbitrators, but a majority may determine any question of fact  
 916 and render a final decision. The chief arbitrator shall decide  
 917 all evidentiary matters. The chief arbitrator shall file a copy  
 918 of the final decision with the clerk of the Agency for Health  
 919 Care Administration.

920  
 921 The provisions of this subsection shall not preclude settlement  
 922 at any time by mutual agreement of the parties.



HB 1497

2004

923       (8) Any issue between the defendant and the defendant's  
 924 insurer or self-insurer as to who shall control the defense of  
 925 the claim and any responsibility for payment of an arbitration  
 926 award shall be determined under existing principles of law;  
 927 however, the insurer or self-insurer shall not offer to  
 928 arbitrate or accept a claimant's offer to arbitrate without the  
 929 written consent of the defendant.

930       (9) The Division of Administrative Hearings may adopt  
 931 rules to effect the orderly and efficient processing of the  
 932 arbitration procedures of this section and ss. 400.42943-  
 933 400.42948.

934       (10) Rules adopted by the Division of Administrative  
 935 Hearings pursuant to this section, s. 120.54, or s. 120.65 may  
 936 authorize any reasonable sanctions except contempt for violation  
 937 of the rules of the division or failure to comply with a  
 938 reasonable order issued by an administrative law judge, which is  
 939 not under judicial review.

940       Section 17. Section 400.42943, Florida Statutes, is  
 941 created to read:

942       400.42943 Arbitration to allocate financial responsibility  
 943 among multiple defendants.--

944       (1) The provisions of this section shall apply when more  
 945 than one defendant has participated in voluntary binding  
 946 arbitration pursuant to s. 400.42942.

947       (2) Within 20 days after the determination of damages by  
 948 the arbitration panel in the first arbitration proceeding, those  
 949 defendants who have agreed to voluntary binding arbitration  
 950 shall submit any dispute among them regarding the apportionment  
 951 of financial responsibility to a separate binding arbitration

HB 1497

2004

952 proceeding. Such proceeding shall be with a panel of three  
953 arbitrators, which panel shall consist of the administrative law  
954 judge who presided in the first arbitration proceeding, who  
955 shall serve as the chief arbitrator, and two assisted living  
956 facility administrators appointed by the defendants. If the  
957 defendants cannot agree on their selection of arbitrators within  
958 20 days after the determination of damages by the arbitration  
959 panel in the first arbitration proceeding, a list of not more  
960 than five nominees shall be submitted by each defendant to the  
961 director of the Division of Administrative Hearings, who shall  
962 select the other arbitrators but shall not select more than one  
963 from the list of nominees of any defendant.

964 (3) The administrative law judge appointed to serve as the  
965 chief arbitrator shall convene the arbitrators for the purpose  
966 of determining allocation of responsibility among multiple  
967 defendants within 65 days after the determination of damages by  
968 the arbitration panel in the first arbitration proceeding.

969 (4) The arbitration panel shall allocate financial  
970 responsibility among all defendants named in the notice of an  
971 asserted violation of a resident's rights or deviation from the  
972 standard of care, regardless of whether the defendant has  
973 submitted to arbitration. The defendants in the arbitration  
974 proceeding shall pay their proportionate share of the economic  
975 and noneconomic damages awarded by the arbitration panel. All  
976 defendants in the arbitration proceeding shall be jointly and  
977 severally liable for any damages assessed in arbitration. The  
978 determination of the percentage of fault of any defendant not in  
979 the arbitration case shall not be binding against that

HB 1497

2004

980 defendant, nor shall it be admissible in any subsequent legal  
 981 proceeding.

982 (5) Payment by the defendants of the damages awarded by  
 983 the arbitration panel in the first arbitration proceeding shall  
 984 extinguish the liability of such defendants to the claimant and  
 985 shall also extinguish the liability of such defendants for  
 986 contribution to any defendants who did not participate in  
 987 arbitration.

988 (6) Any defendant paying damages assessed pursuant to this  
 989 section or s. 400.42942 shall have an action for contribution  
 990 against any defendant who did not participate in the voluntary  
 991 arbitration and whose negligence contributed to the injury.

992 Section 18. Section 400.42944, Florida Statutes, is  
 993 created to read:

994 400.42944 Effects of failure to offer or accept voluntary  
 995 binding arbitration.--

996 (1) A proceeding for voluntary binding arbitration is an  
 997 alternative to jury trial and shall not supersede the right of  
 998 any party to a jury trial.

999 (2) If neither party requests or agrees to voluntary  
 1000 binding arbitration, the claim shall proceed to trial or to any  
 1001 available legal alternative such as offer of and demand for  
 1002 judgment under s. 768.79 or offer of settlement under s. 45.061.

1003 (3) If the defendant rejects a claimant's offer to enter  
 1004 voluntary binding arbitration:

1005 (a) The claim shall proceed to trial without limitation on  
 1006 damages, and the claimant, upon proving violation of a  
 1007 resident's rights or negligence, shall be entitled to recover

HB 1497

2004

1008 prejudgment interest and reasonable attorney's fees up to 25  
 1009 percent of the award, reduced to present value.

1010 (b) The claimant's award at trial shall be reduced by any  
 1011 damages recovered by the claimant from arbitrating codefendants  
 1012 following arbitration.

1013 (4) If the claimant rejects a defendant's offer to enter  
 1014 voluntary binding arbitration:

1015 (a) The damages awardable at trial shall be limited to net  
 1016 economic damages, plus noneconomic damages not to exceed  
 1017 \$350,000 per incident. The Legislature expressly finds that such  
 1018 conditional limit on noneconomic damages is warranted by the  
 1019 claimant's refusal to accept arbitration and represents an  
 1020 appropriate balance between the interests of all residents who  
 1021 ultimately pay for rights and negligence losses and the  
 1022 interests of those residents who are injured as a result of  
 1023 negligence and violations of rights.

1024 (b) Net economic damages reduced to present value shall be  
 1025 awardable, including, but not limited to, past and future  
 1026 medical expenses and 80 percent of wage loss and loss of earning  
 1027 capacity, offset by any collateral source payments.

1028 (c) If the claimant's care has been provided in all or in  
 1029 part by Medicaid, the award shall first pay the Medicaid program  
 1030 those amounts expended for the claimant's care, and the Medicaid  
 1031 program shall have a lien against the award for any future  
 1032 payments that would be paid by Medicaid.

1033 (5) Punitive damages may be awarded pursuant to ss.  
 1034 400.4297 and 400.4298.

1035 (6) A jury trial shall proceed in accordance with existing  
 1036 principles of law.

HB 1497

2004

1037 Section 19. Section 400.42945, Florida Statutes, is  
 1038 created to read:

1039 400.42945 Determination of whether claim is subject to  
 1040 arbitration.--

1041 (1) In the event of a dispute, a court of competent  
 1042 jurisdiction may determine whether the claim is subject to the  
 1043 voluntary arbitration provisions of ss. 400.42942-400.42948.

1044 (2) If a plaintiff, at any time, amends a complaint to  
 1045 allege facts that render a claim subject to arbitration under  
 1046 ss. 400.42942-400.42948, the parties shall have 30 days to  
 1047 determine whether to arbitrate that claim voluntarily. The  
 1048 procedural limitations imposed on the parties under ss.  
 1049 400.42942-400.42948 shall apply if the case proceeds to trial.

1050 Section 20. Section 400.42946, Florida Statutes, is  
 1051 created to read:

1052 400.42946 Misarbitration.--

1053 (1) At any time during the course of voluntary binding  
 1054 arbitration of a claim arising out of the rendering of, or the  
 1055 failure to render, medical care or service pursuant to s.  
 1056 400.42942, the administrative law judge serving as chief  
 1057 arbitrator on the arbitration panel, if he or she determines  
 1058 that agreement cannot be reached, may dissolve the arbitration  
 1059 panel and request the director of the Division of Administrative  
 1060 Hearings to appoint two new arbitrators from lists of three to  
 1061 five names timely provided by each party to the arbitration. Not  
 1062 more than one arbitrator shall be appointed from the list  
 1063 provided by any party unless only one list is timely filed.

HB 1497

2004

1064 (2) Upon appointment of the new arbitrators, arbitration  
 1065 shall proceed at the direction of the chief arbitrator in  
 1066 accordance with the provisions of ss. 400.42942-400.42948.

1067 (3) At any time after the allocation arbitration hearing  
 1068 under s. 400.42943 has concluded, the administrative law judge  
 1069 -serving as chief arbitrator on the arbitration panel may  
 1070 dissolve the arbitration panel and declare the proceedings  
 1071 concluded if he or she determines that agreement cannot be  
 1072 reached.

1073 Section 21. Section 400.42947, Florida Statutes, is  
 1074 created to read:

1075 400.42947 Payment of arbitration award; interest.--

1076 (1) Within 20 days after the determination of damages by  
 1077 the arbitration panel pursuant to s. 400.42942, the defendant  
 1078 shall:

1079 (a) Pay the arbitration award, including interest at the  
 1080 legal rate, to the claimant; or

1081 (b) Submit any dispute among multiple defendants to  
 1082 arbitration pursuant to s. 400.42943.

1083 (2) Commencing 90 days after the award rendered in the  
 1084 arbitration procedure pursuant to s. 400.42942, such award shall  
 1085 begin to accrue interest at the rate of 18 percent per year.

1086 Section 22. Section 400.42948, Florida Statutes, is  
 1087 created to read:

1088 400.42948 Appeal of arbitration awards and allocations of  
 1089 financial responsibility.--

1090 (1) An arbitration award and an allocation of financial  
 1091 responsibility are final agency action for purposes of s.  
 1092 120.68. Any appeal shall be taken to the district court of

HB 1497

2004

1093 appeal for the district in which the arbitration took place,  
 1094 shall be limited to review of the record, and shall otherwise  
 1095 proceed in accordance with s. 120.68. The amount of an  
 1096 arbitration award or an order allocating financial  
 1097 responsibility, the evidence in support of either, and the  
 1098 procedure by which either is determined are subject to judicial  
 1099 scrutiny only in a proceeding instituted pursuant to this  
 1100 subsection.

1101 (2) No appeal shall operate to stay an arbitration award,  
 1102 nor shall any arbitration panel, arbitration panel member, or  
 1103 circuit court stay an arbitration award. The district court of  
 1104 appeal may order a stay to prevent manifest injustice, but no  
 1105 court shall abrogate the provisions of s. 400.42947(2).

1106 (3) Any party to an arbitration proceeding may enforce an  
 1107 arbitration award or an allocation of financial responsibility  
 1108 by filing a petition in the circuit court for the circuit in  
 1109 which the arbitration took place. A petition may not be granted  
 1110 unless the time for appeal has expired. If an appeal has been  
 1111 taken, a petition may not be granted with respect to an  
 1112 arbitration award or an allocation of financial responsibility  
 1113 that has been stayed.

1114 (4) If the petitioner establishes the authenticity of the  
 1115 arbitration award or of the allocation of financial  
 1116 responsibility, shows that the time for appeal has expired, and  
 1117 demonstrates that no stay is in place, the court shall enter  
 1118 such orders and judgments as are required to carry out the terms  
 1119 of the arbitration award or allocation of financial  
 1120 responsibility. Such orders are enforceable by the contempt

HB 1497

2004

1121 powers of the court, and execution shall issue upon the request  
1122 of a party for such judgment.

1123       Section 23. This act shall take effect July 1, 2004.