

1 A bill to be entitled
2 An act relating to nursing homes; creating s. 400.0115,
3 F.S.; providing legislative findings and intent; providing
4 components of a plan for resolution of nursing home
5 liability claims; amending s. 400.023, F.S.; providing
6 that a licensee is liable for certain violations or
7 negligence by a licensed nurse practicing under the
8 direction of the licensee; requiring a resident or the
9 resident's legal representative to include a certificate
10 of compliance when a complaint alleging a violation of a
11 resident's rights is filed with the clerk of court;
12 amending s. 400.0233, F.S.; requiring that the presuit
13 notice of a claim against a nursing home facility be given
14 to each prospective defendant; requiring that certain
15 specified information be included with the notice;
16 providing that a defendant may request voluntary binding
17 arbitration; authorizing the parties to toll designated
18 time periods in order to mediate issues of liability and
19 damages; creating s. 400.02342, F.S.; providing that any
20 party may elect to participate in voluntary binding
21 arbitration; providing procedures to initiate and conduct
22 a voluntary binding arbitration; requiring that a claimant
23 agree to a damage award; providing exceptions and
24 limitations; authorizing the Division of Administrative
25 Hearings to adopt rules; authorizing the division to levy
26 specified sanctions; authorizing the division to charge a
27 party requesting binding arbitration an administrative
28 fee; creating s. 400.02343, F.S.; requiring multiple

29 defendants to a binding arbitration proceeding to
30 apportion a damage award through a second arbitration
31 proceeding; providing arbitration procedures for
32 apportioning damage awards; providing that a participant
33 has a cause of action for contribution from other
34 defendants; creating s. 400.02344, F.S.; providing
35 consequences for a claimant or defendant that fails to
36 offer or rejects an offer to participate in binding
37 arbitration; prescribing limitations if a party wishes to
38 proceed to trial; creating s. 400.02345, F.S.; providing
39 procedures for determining if a specific claim is subject
40 to binding arbitration; creating s. 400.02347, F.S.;
41 requiring a defendant to pay a damage award within a
42 specified time period; creating s. 400.02348, F.S.;
43 providing for an appeal of an arbitration or apportionment
44 award; providing that an appeal does not stay an
45 arbitration or apportionment award; permitting a party to
46 an arbitration or apportionment proceeding to enforce an
47 arbitration award or an apportionment of financial
48 responsibility; providing enforcement procedures;
49 providing exceptions; creating s. 400.024, F.S.;
50 establishing a pretrial nursing home services review
51 panel; providing for membership and duties; authorizing
52 the discovery of relevant documents; authorizing the
53 obtaining of unsworn statements; requiring the panel to
54 submit a written opinion; providing for dissolution of the
55 panel and for the claimant to file suit or request
56 arbitration, under certain circumstances; limiting

57 information that is discoverable or admissible in certain
58 civil actions; prohibiting panel members from testifying,
59 under certain circumstances; authorizing the Division of
60 Administrative Hearings to adopt rules; providing for
61 fees; amending s. 400.141, F.S.; requiring a nursing home
62 facility to maintain general and professional liability
63 insurance with specified insurance carriers; providing
64 alternative methods to establish financial responsibility
65 for claims filed against the nursing home; directing that
66 the amount of financial responsibility be increased by the
67 annual rate of inflation; providing exceptions; amending
68 s. 400.151, F.S.; providing criteria for a resident's
69 contract which include arbitration or dispute-resolution
70 provisions; requiring prominent notice of arbitration
71 provisions; requiring notice of which claims are subject
72 to arbitration; amending s. 409.907, F.S.; prohibiting the
73 Agency for Health Care Administration from renewing a
74 Medicaid provider agreement with a chronically poor-
75 performing nursing home facility after a specified date;
76 amending s. 409.908, F.S.; deleting obsolete provisions;
77 requiring the agency to recognize increases in the costs
78 of professional liability insurance by providing a pass-
79 through of professional liability insurance in a specified
80 amount; authorizing the agency to impose an assessment fee
81 for quality assurance; reenacting s. 430.80(3)(h), F.S.,
82 relating to a teaching nursing home pilot project, to
83 incorporate the amendment to s. 400.141, F.S., in a
84 reference thereto; requiring that arbitration limits be

85 | adjusted annually for inflation; providing legislative
 86 | intent that the Agency for Health Care Administration not
 87 | renew a Medicaid provider agreement with a nursing home
 88 | facility that has a pattern of harming its residents;
 89 | directing the agency to consult with certain specified
 90 | private organizations to identify and improve poor-
 91 | performing nursing homes; requiring the agency to prepare
 92 | a report of the Medicaid "Up-or-Out" Quality of Care
 93 | Contract Management Program; providing legislative intent
 94 | that a study be conducted by the Institute on Aging at the
 95 | University of South Florida of all federal and state
 96 | enforcement sanctions and remedies available to the agency
 97 | to use with nursing home facilities; providing the
 98 | subjects to be studied; requiring that a report of the
 99 | findings of the study be submitted by a specified date;
 100 | requiring each nursing home facility to pay an annual
 101 | assessment on each licensed bed after a specified date;
 102 | providing for the use of the funds collected; providing a
 103 | method by which the assessment will be determined;
 104 | providing for nonseverability; providing effective dates.

106 | Be It Enacted by the Legislature of the State of Florida:

108 | Section 1. Section 400.0115, Florida Statutes, is created
 109 | to read:

110 | 400.0115 Legislative findings and intent.--

111 | (1) The Legislature makes the following findings:

112 (a) Liability insurance premiums for nursing homes have
 113 increased dramatically in recent years, resulting in increased
 114 operating costs and functional unavailability of liability
 115 insurance for most nursing home facilities.

116 (b) The primary cause of the functional unavailability of
 117 meaningful liability insurance is the pressure of loss payments
 118 and the frequency of paid claims despite demonstrated,
 119 consistent increases in quality of care provided to nursing home
 120 patients and increased staffing at nursing home facilities.

121 (c) An effective, reliable business model no longer exists
 122 under which a nursing home that provides quality care to its
 123 residents is able to obtain functional insurance. This situation
 124 is contrary to the sound public policy of the state and
 125 jeopardizes the state's continued commitment to ensuring that
 126 quality nursing home services are available to the state's
 127 elderly population.

128 (d) The functional lack of insurance has created a crisis
 129 that, if not addressed, will result in the inability of nursing
 130 home facilities to continue to increase the quality of care
 131 provided to residents.

132 (e) The lack of functional insurance severely limits the
 133 ability of facilities to pay legitimate claims and thus limits
 134 the ability of residents to obtain appropriate access to courts.

135 (f) The high cost of nursing home liability claims in the
 136 state can be substantially alleviated by requiring that the
 137 parties participate in a system that encourages the early
 138 determination of the merit of claims by independent review of
 139 claims by a qualified, impartial panel, by promoting the

140 arbitration of claims, and by imposing a reasonable limitation
 141 on damages while preserving the right of either party to have a
 142 claim heard by a jury.

143 (2) It is the intent of the Legislature to respond to the
 144 crisis facing nursing home residents and the facilities
 145 themselves by providing a plan for prompt resolution of claims.
 146 Such plan shall consist of three parts: presuit investigation, a
 147 nursing home services review panel, and arbitration. Presuit
 148 investigation shall be mandatory and shall apply to all nursing
 149 home liability claims. Nursing home services review and
 150 arbitration shall be voluntary except as specified.

151 (a) A presuit investigation shall include verifiable
 152 requirements that a reasonable investigation precede both
 153 nursing home liability claims and defenses in order to deter
 154 frivolous claims and defenses.

155 (b) The nursing home services review panel shall provide a
 156 prompt, unbiased, professional review as to whether there has
 157 been negligence or a breach of an applicable standard of care as
 158 otherwise provided in this part.

159 (c) Arbitration shall provide:

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

163 2. A conditional limitation on noneconomic damages if the
 164 defendant elects not to contest liability.

165 3. Limitations on the noneconomic damage components of
 166 large awards in order to increase the predictability of outcomes

167 of claims in order for insurers to anticipate losses and to
 168 facilitate early resolution of claims.

169 Section 2. Subsections (4) and (6) of section 400.023,
 170 Florida Statutes, are amended to read:

171 400.023 Civil enforcement.--

172 (4) A licensee is liable for ~~in~~ any claim for resident's
 173 rights violation or negligence by a nurse licensed under part I
 174 of chapter 464 who is practicing under the direction of the
 175 licensee. Such nurse shall have the duty to exercise care
 176 consistent with the prevailing professional standard of care for
 177 a nurse. The prevailing professional standard of care for a
 178 nurse shall be that level of care, skill, and treatment which,
 179 in light of all relevant surrounding circumstances, is
 180 recognized as acceptable and appropriate by reasonably prudent
 181 similar nurses.

182 (6) The resident or the resident's legal representative
 183 shall serve a copy of any complaint alleging in whole or in part
 184 a violation of any rights specified in this part to the Agency
 185 for Health Care Administration at the time of filing the initial
 186 complaint with the clerk of the court for the county in which
 187 the action is pursued. The initial complaint must contain a
 188 certificate of counsel certifying compliance with this
 189 subsection. The requirement of providing a copy of the complaint
 190 to the agency and certifying compliance with this subsection
 191 does not impair the resident's legal rights or ability to seek
 192 relief for his or her claim.

193 Section 3. Section 400.0233, Florida Statutes, is amended
 194 to read:

195 400.0233 Presuit notice; investigation; notification of
 196 violation of resident's rights or alleged negligence; claims
 197 evaluation procedure; informal discovery; review; settlement
 198 offer; mediation.--

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

200 (a) "Claim for resident's rights violation or negligence"
 201 means a negligence claim alleging injury to or the death of a
 202 resident arising out of ~~an~~ asserted violations ~~violation~~ of the
 203 rights of a resident under s. 400.022 or ~~an~~ asserted deviations
 204 ~~deviation~~ from the applicable standard of care. At the time of
 205 the filing of the notice of claim, all known incidents alleged
 206 to have caused injury or damages to the resident shall be
 207 included. This paragraph shall not abrogate the rights of
 208 parties to amend claims subject to the Florida Rules of Civil
 209 Procedure.

210 (b) "Claimant" means a person, including a decedent's
 211 estate, who files a claim for a resident's rights violation or
 212 negligence under this chapter. All persons claiming to have
 213 sustained damages as a result of the bodily injury or death of a
 214 resident are considered a single claimant with the exception of
 215 minor children.

216 (c) "Collateral sources" means any payments made to the
 217 claimant, or made on his or her behalf, by or pursuant to the
 218 United States Social Security Act; any federal, state, or local
 219 income disability act; or any other public program that provides
 220 coverage of medical expenses, disability payments, or other
 221 similar benefits, except as prohibited by federal law.

222 (d) "Economic damages" means financial losses that would
 223 not have occurred but for the injury giving rise to that cause
 224 of action, including, but not limited to, past and future
 225 medical expenses and loss of earning capacity to the extent the
 226 claimant is entitled to recover such damages under general law,
 227 including the Wrongful Death Act.

228 (e) "Incident" means any event, action, or conduct alleged
 229 to have caused injury or damages to the resident.

230 (f)(b) "Insurer" means any self-insurer authorized under
 231 s. 627.357, liability insurance carrier, joint underwriting
 232 association, or uninsured prospective defendant.

233 (g) "Financial responsibility" means demonstrating the
 234 minimum financial responsibility requirements as provided in s.
 235 400.141(20).

236 (h) "Noneconomic damages" means nonfinancial losses that
 237 would not have occurred but for the injury giving rise to the
 238 cause of action, including pain and suffering, inconvenience,
 239 physical impairment, mental anguish, disfigurement, loss of
 240 capacity for enjoyment of life, and other nonfinancial losses to
 241 the extent the claimant is entitled to recover those damages
 242 under general law, including noneconomic damages under the
 243 Wrongful Death Act.

244 (2) A claimant's initial notice ~~Prior to filing a claim~~
 245 ~~for a violation of a resident's rights or a claim for~~
 246 ~~negligence, a claimant~~ alleging injury to or the death of a
 247 resident shall be provided to notify each prospective defendant
 248 by certified mail, return receipt requested, asserting a ~~of an~~
 249 ~~asserted~~ violation of a resident's rights provided in s. 400.022

250 or deviation from the standard of care. Such notification shall
251 be made prior to filing a claim and shall include an
252 identification of the rights the prospective defendant has
253 violated and the negligence alleged to have caused the incident
254 or incidents and a brief description of the injuries sustained
255 by the resident which are reasonably identifiable at the time of
256 notice. The notice shall contain a certificate of counsel that
257 counsel's reasonable investigation gave rise to a good faith
258 belief that grounds exist for an action against each prospective
259 defendant. The notice of intent must contain a medical
260 information release that allows a defendant or his or her legal
261 representative to obtain all medical records potentially
262 relevant to the claimant's alleged injury, including all records
263 of nonparty care, death certificates, autopsy records, and other
264 records related to the claim. If the initial notice of claim
265 does not contain a medical release as provided in this
266 subsection, the time period for the defendant to provide a
267 written response pursuant to paragraph (3)(b) is tolled until
268 such release is provided.

269 (3)(a) No suit may be filed for a period of 75 days after
270 notice is mailed to any prospective defendant. During the 75-day
271 period, the prospective defendants or their insurers shall
272 conduct an evaluation of the claim to determine the liability of
273 each defendant and to evaluate the damages of the claimants.
274 Each defendant or insurer of the defendant shall have a
275 procedure for the prompt evaluation of claims during the 75-day
276 period. The procedure shall include one or more of the
277 following:

278 1. Internal review by a duly qualified facility risk
279 manager or claims adjuster;

280 2. Internal review by counsel for each prospective
281 defendant;

282 3. A quality assurance committee authorized under any
283 applicable state or federal statutes or regulations; or

284 4. Any other similar procedure that fairly and promptly
285 evaluates the claims.

286
287 Each defendant or insurer of the defendant shall evaluate the
288 claim in good faith.

289 (b) At or before the end of the 75 days, the defendant or
290 insurer of the defendant shall provide the claimant with a
291 written response:

292 1. Rejecting the claim; ~~or~~

293 2. Making a settlement offer; ~~or~~

294 3. Requesting a nursing home services review panel as
295 provided in s. 400.024. A defendant or insurer that requests a
296 review panel is not precluded from subsequently requesting
297 arbitration pursuant to s. 400.024(11); or

298 4. Requesting voluntary binding arbitration pursuant to s.
299 400.02342.

300 (c) The response shall be delivered to the claimant if not
301 represented by counsel or to the claimant's attorney, by
302 certified mail, return receipt requested. Failure of the
303 prospective defendant or insurer of the defendant to reply to
304 the notice within 75 days after receipt shall be deemed a
305 rejection of the claim for purposes of this section.

306 (4) The notification of a violation of a resident's rights
307 or alleged negligence shall be served within the applicable
308 statute of limitations period; however, during the 75-day
309 period, the statute of limitations is tolled as to all
310 prospective defendants. Upon stipulation by the parties, the 75-
311 day period may be extended and the statute of limitations is
312 tolled during any such extension. Upon receiving written notice
313 by certified mail, return receipt requested, of termination of
314 negotiations in an extended period, the claimant shall have 60
315 days or the remainder of the period of the statute of
316 limitations, whichever is greater, within which to file suit.

317 (5) No statement, discussion, written document, report, or
318 other work product generated by presuit claims evaluation
319 procedures under this section is discoverable or admissible in
320 any civil action for any purpose by the opposing party. All
321 participants, including, but not limited to, physicians,
322 investigators, witnesses, and employees or associates of the
323 defendant, are immune from civil liability arising from
324 participation in the presuit claims evaluation procedure. Any
325 licensed physician or registered nurse may be retained by either
326 party to provide an opinion regarding the reasonable basis of
327 the claim. The presuit opinions of the expert are not
328 discoverable or admissible in any civil action for any purpose
329 by the opposing party.

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

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

336 (a) Unsworn statements.--Any party may require other
337 parties to appear for the taking of an unsworn statement. Such
338 statements may be used only for the purpose of claims evaluation
339 and are not discoverable or admissible in any civil action for
340 any purpose by any party. A party seeking to take the unsworn
341 statement of any party must give reasonable notice in writing to
342 all parties. The notice must state the time and place for taking
343 the statement and the name and address of the party to be
344 examined. Unless otherwise impractical, the examination of any
345 party must be done at the same time by all other parties. Any
346 party may be represented by counsel at the taking of an unsworn
347 statement. An unsworn statement may be recorded electronically,
348 stenographically, or on videotape. The taking of unsworn
349 statements is subject to the provisions of the Florida Rules of
350 Civil Procedure and may be terminated for abuses.

351 (b) Documents or things.--Any party may request discovery
352 of relevant documents or things. The documents or things must be
353 produced, at the expense of the requesting party, within 20 days
354 after the date of receipt of the request. A party is required to
355 produce relevant and discoverable documents or things within
356 that party's possession or control, if in good faith it can
357 reasonably be done within the timeframe of the claims evaluation
358 process.

359 (8) Each request for and notice concerning informal
360 discovery pursuant to this section must be in writing, and a

361 copy thereof must be sent to all parties. Such a request or
 362 notice must bear a certificate of service identifying the name
 363 and address of the person to whom the request or notice is
 364 served, the date of the request or notice, and the manner of
 365 service thereof.

366 (9) In the event of a dispute regarding the right to or
 367 access to discovery, either party may petition a court of
 368 competent jurisdiction to enter an order permitting such
 369 discovery. If the court or administrative law judge determines
 370 that discoverable information was not available before the
 371 defendant was required to determine whether to request voluntary
 372 binding arbitration, the court or administrative law judge shall
 373 allow the defendant to either request binding arbitration or
 374 withdraw the offer to admit liability within 15 days after
 375 receipt of the ordered production.

376 (10)~~(9)~~ If a prospective defendant makes a written
 377 settlement offer, the claimant shall have 15 days from the date
 378 of receipt to accept the offer. An offer shall be deemed
 379 rejected unless accepted by delivery of a written notice of
 380 acceptance.

381 (11)~~(10)~~ To the extent not inconsistent with this part,
 382 the provisions of the Florida Mediation Code, Florida Rules of
 383 Civil Procedure, shall be applicable to such proceedings.

384 (12)~~(11)~~ ~~Within 30 days~~ After the claimant's receipt of
 385 the defendant's response to the claim, the parties or their
 386 designated representatives may stipulate to toll the statute of
 387 limitations for 30 days in order to ~~shall~~ meet in mediation to
 388 discuss the issues of liability and damages in accordance with

389 the mediation rules of practice and procedures adopted by the
 390 Supreme Court. Upon stipulation of the parties, this 30-day
 391 period may be extended and the statute of limitations is tolled
 392 during the mediation and any such extension. At the conclusion
 393 of mediation, the claimant shall have 60 days or the remainder
 394 of the period of the statute of limitations, whichever is
 395 greater, within which to file suit.

396 Section 4. Section 400.02342, Florida Statutes, is created
 397 to read:

398 400.02342 Voluntary binding arbitration of claims for
 399 violation of residents' rights or negligence.--

400 (1) Voluntary binding arbitration under this part does not
 401 apply to causes of action involving the state or its agencies or
 402 subdivisions, or the officers, employees, or agents thereof
 403 under s. 768.28.

404 (2) Any party may elect, with respect only to claims
 405 arising out of the rendering of or the failure to render nursing
 406 home services, to voluntarily submit the issue of damages to
 407 binding arbitration and have damages determined by the
 408 arbitration panel. For purposes of arbitration under this part,
 409 "nursing home services" means those services that are rendered
 410 to a resident as a result of the resident's needs or condition
 411 and that would be customarily within the scope of care provided
 412 by the nursing facility, including:

- 413 (a) Skin care.
- 414 (b) Mobility and walking assistance.
- 415 (c) Nourishment.
- 416 (d) Hydration.

417 (e) Prevention of elopement.
 418 (f) Therapy.
 419 (g) Nursing services.
 420 (h) Activities of daily living.
 421 (3) Any party may initiate the process to elect voluntary
 422 binding arbitration by serving a request for voluntary binding
 423 arbitration of damages as provided in s. 400.0233(3)(b) within
 424 60 days after the conclusion of the nursing home services review
 425 panel process or the remainder of the period of the statute of
 426 limitations, whichever is greater, or within 30 days from the
 427 date of filing of an amended complaint containing new claims
 428 which are subject to an offer of voluntary binding arbitration
 429 under this act. The evidentiary standards for voluntary binding
 430 arbitration of claims arising out of the rendering of or the
 431 failure to render nursing home services shall be as provided in
 432 s. 400.0233(2) and chapter 90.
 433 (4) The opposing party may accept the offer of voluntary
 434 binding arbitration no later than 30 days after receiving the
 435 other party's request for arbitration. Acceptance within the
 436 time period is a binding commitment to comply with the decision
 437 of the arbitration panel as to the appropriate level of damages,
 438 if any, which may be awarded.
 439 (5) The arbitration panel shall be composed of three
 440 arbitrators: one selected by the claimant, one selected by the
 441 defendant, and one administrative law judge furnished by the
 442 Division of Administrative Hearings who shall serve as the chief
 443 arbitrator. If the claim involves multiple claimants or multiple
 444 defendants, one arbitrator shall be selected by the side with

445 multiple parties as the choice of those parties. If the multiple
446 parties cannot reach agreement as to their arbitrator, each of
447 the multiple parties shall submit a nominee to the director of
448 the division who shall choose the arbitrator for the side with
449 multiple parties.

450 (6) The arbitrators shall be independent of all parties,
451 witnesses, and legal counsel; and an officer, director,
452 affiliate, subsidiary, or employee of a party, witness, or legal
453 counsel may not serve as an arbitrator in the proceeding.

454 (7) The rate of compensation for arbitrators, other than
455 the administrative law judge, shall be set by the Division of
456 Administrative Hearings and may not exceed the ordinary and
457 customary fees paid to court-approved mediators in the circuit
458 in which the claim would be filed.

459 (8) A party participating in arbitration under this
460 section may not use any other forum against a participating
461 defendant during the course of the arbitration.

462 (9) A participating claimant agrees that damages shall be
463 awarded in a manner consistent with this part, subject to the
464 following limitations:

465 (a) The defendant has offered not to contest liability and
466 causation and has agreed to arbitration on the issue of damages
467 as provided in this section.

468 (b) Net economic damages, if any, are awardable,
469 including, but not limited to, past and future medical and
470 health care expenses, offset by collateral source payments, to
471 the extent the claimant is entitled to recover such damages
472 under general law, including the Wrongful Death Act.

473 (c) Total noneconomic damages, if any, which may be
474 awarded for the claim arising out of the care and services
475 rendered to a nursing home resident, including any claim
476 available under the Wrongful Death Act, are limited to a maximum
477 of \$500,000, regardless of the number of individual claimants or
478 defendants, except that minor children shall each have a
479 separate claim.

480 (d) Punitive damages may not be awarded.

481 (e) The defendant is responsible for the payment of
482 interest on all accrued damages with respect to which interest
483 would be awarded at trial.

484 (f) The party requesting binding arbitration shall pay the
485 fees of the arbitrators and the costs of the Division of
486 Administrative Hearings associated with arbitration as assessed
487 by the division. If the division determines that the plaintiff
488 is indigent and unable to pay, the defendant shall pay the fees
489 and costs assessed by the division, and the defendant shall have
490 a claim for reimbursement against the estate of the plaintiff.

491 (g) A defendant who agrees to participate in arbitration
492 under this section is jointly and severally liable for all
493 damages assessed under this section.

494 (h) A defendant's obligation to pay the claimant's damages
495 applies only to arbitration under this part. A defendant's or
496 claimant's offer to arbitrate may not be used in evidence or in
497 argument during any subsequent litigation of the claim following
498 rejection thereof.

499 (i) The fact of making or rejecting an offer to arbitrate
500 is not admissible as evidence of liability in any collateral or
501 subsequent proceeding on the claim.

502 (j) An offer by a claimant to arbitrate must be made to
503 each defendant against whom the claimant has made a claim. An
504 offer by a defendant to arbitrate must be made to each claimant.
505 A defendant who rejects a claimant's offer to arbitrate is
506 subject to s. 400.02344(3). A claimant who rejects a defendant's
507 offer to arbitrate is subject to s. 400.02344(4).

508 (k) The hearing shall be conducted by all the arbitrators,
509 but a majority may determine any question of fact and render a
510 final decision. The chief arbitrator shall decide all
511 evidentiary matters in accordance with the Florida Evidence Code
512 and the Florida Rules of Civil Procedure. The chief arbitrator
513 shall file a copy of the final decision with the Agency for
514 Health Care Administration. If any member of such arbitration
515 panel becomes unavailable, and as a result of the unavailability
516 the panel is unable to reach a final majority decision, the
517 chief arbitrator shall dissolve the arbitration panel, declare
518 misarbitration, and empanel a new arbitration panel under
519 subsection (5).

520 (l) This part does not preclude a settlement at any time
521 by mutual agreement of the parties.

522 (m) If an award of damages is made to a claimant by the
523 arbitration panel, the defendant must pay the damages no later
524 than 20 days after entry of the decision of the arbitration
525 panel.

526 (n) Damages and costs that are not paid within 20 days are
527 subject to postjudgment interest.

528 (o) This part does not relieve a defendant who voluntarily
529 participates in binding arbitration from the responsibility to
530 timely pay damages and costs awarded by an arbitration panel.

531 (10) Any issue between the defendant and the defendant's
532 insurer or self-insurer as to who shall control the defense of
533 the claim and any responsibility for payment of an arbitration
534 award shall be determined under existing principles of law,
535 except that the insurer or self-insurer may not offer to
536 arbitrate or accept a claimant's offer to arbitrate without the
537 written consent of the defendant.

538 (11)(a) The Division of Administrative Hearings may adopt
539 rules to implement this section.

540 (b) Rules adopted by the division under this section, s.
541 120.54, or s. 120.65 may authorize a reasonable sanction, except
542 contempt, including, but not limited to, any sanction authorized
543 by s. 57.105, against a party for violating a rule of the
544 division or failing to comply with an order issued by an
545 administrative law judge which is not under judicial review.

546 (12) The Division of Administrative Hearings may charge
547 the party requesting binding arbitration an administrative fee
548 for conducting the arbitration. The administrative fee may not
549 exceed \$1,000.

550 (13) This section does not prevent the parties from using
551 a private arbitrator or arbitrators, in which instance the same
552 procedures and limitations set forth in this section apply.

553 Section 5. Section 400.02343, Florida Statutes, is created
554 to read:

555 400.02343 Arbitration to apportion financial
556 responsibility among multiple defendants.--

557 (1) This section applies when more than one defendant
558 participates in voluntary binding arbitration under s.
559 400.02342.

560 (2)(a) Defendants who agreed to voluntary binding
561 arbitration must submit any dispute amongst themselves
562 concerning apportionment of financial responsibility to a
563 separate binding arbitration proceeding. The defendants must
564 file a notice of the dispute with the administrative law judge
565 of the arbitration panel no later than 20 days after a
566 determination of damages by the arbitration panel.

567 (b) The apportionment proceeding shall be conducted before
568 a panel of three arbitrators. The panel must include the
569 administrative law judge who presided in the arbitration
570 proceeding and two nursing home arbitrators appointed by the
571 defendants. If the defendants cannot agree on their selections
572 to the apportionment panel, a list of not more than five
573 nominees shall be submitted by each defendant to the director of
574 the Division of Administrative Hearings. The director shall
575 select the other arbitrators but may not select more than one
576 from the list of nominees of any defendant.

577 (3) The administrative law judge shall serve as the chief
578 arbitrator. The judge shall convene the apportionment panel no
579 later than 65 days after the arbitration panel issues a damage
580 award.

581 (4) The apportionment panel shall allocate financial
582 responsibility among all defendants named in the notice of an
583 asserted violation of a resident's rights or deviation from the
584 standard of care, regardless of whether the defendant had
585 submitted to arbitration. The defendants in the apportionment
586 proceeding are responsible to one another for their
587 proportionate share of the damage award, attorney's fees, and
588 costs awarded by the arbitration panel. All defendants in the
589 apportionment proceeding are jointly and severally liable for
590 any damages assessed in arbitration. The determination of the
591 percentage of fault of any nonarbitrating defendant is not
592 binding against that defendant but is admissible in any
593 subsequent legal proceeding.

594 (5) Payment by a defendant of the damages awarded by the
595 arbitration panel in the arbitration proceeding extinguishes the
596 defendant's liability to the claimant for the incident described
597 in the first arbitration and extinguishes the defendant's
598 liability for contribution to any defendant who did not
599 participate in arbitration.

600 (6) A defendant paying damages assessed under this section
601 or s. 400.02342 has a cause of action for contribution against
602 any arbitrating or nonarbitrating defendant whose negligence
603 contributed to the injury.

604 Section 6. Section 400.02344, Florida Statutes, is created
605 to read:

606 400.02344 Effects of failure to offer or accept voluntary
607 binding arbitration.--

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

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

615 (3) If the defendant rejects a claimant's offer to enter
616 voluntary binding arbitration, the claim shall proceed to trial
617 as otherwise provided in this part without limits on noneconomic
618 damages.

619 (4) If the claimant rejects a defendant's offer to
620 participate in voluntary binding arbitration:

621 (a) Damages are limited to net economic damages and
622 noneconomic damages of no more than \$500,000 per claim. The
623 total noneconomic damages, if any, which may be awarded for the
624 claim arising out of the care and services rendered to the
625 resident, including any claim under the Wrongful Death Act, are
626 limited to a maximum of \$500,000, regardless of the number of
627 individual claimants or defendants, except that minor children
628 shall each have a separate claim. The Legislature expressly
629 finds that such conditional limit on noneconomic damages is
630 warranted by the claimant's refusal to accept arbitration and
631 represents an appropriate balance between the interests of all
632 residents who ultimately pay for rights and negligence losses
633 and the interests of those residents who are injured as a result
634 of negligence and violations of rights.

635 (b) Attorney's fees may not be awarded.

636 (c) Net economic damages may be awarded, including, but
637 not limited to, past and future medical and health care
638 expenses, loss of wages, and loss of earning capacity, offset by
639 collateral source payments.

640 (d) Punitive damages may not be awarded under ss. 400.0237
641 and 400.0238.

642 (5) Jury trial shall proceed in accordance with existing
643 principles of law.

644 Section 7. Section 400.02345, Florida Statutes, is created
645 to read:

646 400.02345 Determination of whether claim is subject to
647 arbitration.--

648 (1) A court of competent jurisdiction shall determine if a
649 claim is subject to voluntary arbitration under ss. 400.02342
650 and 400.02348 if the parties cannot agree. If a court determines
651 that a claim is subject to binding arbitration, the parties must
652 decide whether to voluntarily arbitrate the claim no later than
653 30 days after the date the court enters its order. If the
654 parties choose not to arbitrate, the limitations imposed by s.
655 400.02344 apply.

656 (2) If a plaintiff amends a complaint to allege facts that
657 render the claim subject to binding arbitration under ss.
658 400.02342 and 400.02348, the parties must decide whether to
659 participate in binding arbitration no later than 30 days after
660 the plaintiff files the amended complaint. If the parties choose
661 not to arbitrate, the limitations imposed upon the parties under
662 ss. 400.02343 and 400.02344 apply.

663 Section 8. Section 400.02347, Florida Statutes, is created
 664 to read:

665 400.02347 Payment of arbitration award; interest.--

666 (1) Within 20 days after the determination of damages by
 667 the arbitration panel under s. 400.02342, the defendant shall:

668 (a) Pay the arbitration award to the claimant.

669 (b) Submit any dispute among multiple defendants to
 670 arbitration under s. 400.02343.

671 (2) Beginning 20 days after a damage award is issued by
 672 the arbitration panel under s. 400.02342, the award shall begin
 673 to accrue interest at the rate of 18 percent per year.

674 Section 9. Section 400.02348, Florida Statutes, is created
 675 to read:

676 400.02348 Appeal of arbitration awards and apportionment
 677 of financial responsibility.--

678 (1) An arbitration award and an apportionment of financial
 679 responsibility are final agency action for purposes of s.
 680 120.68. An appeal shall be taken to the district court of appeal
 681 for the district in which the arbitration or apportionment took
 682 place. The appeal is limited to a review of the record and must
 683 proceed according to s. 120.68. The amount of an arbitration
 684 award or an order apportioning financial responsibility, the
 685 evidence in support of either, and the procedure by which either
 686 is determined are subject to judicial review only in a
 687 proceeding instituted pursuant to this section.

688 (2) An appeal does not stay an arbitration or
 689 apportionment award. An arbitration or apportionment panel,
 690 arbitration panel member, or circuit court may not stay an

691 arbitration or apportionment award. A district court of appeal
 692 may stay an award to prevent manifest injustice, but a district
 693 court of appeal may not abrogate the provisions of s.
 694 400.02347(2).

695 (3) A party to an arbitration proceeding may enforce an
 696 arbitration award or an apportionment of financial
 697 responsibility by filing a petition in the circuit court for the
 698 circuit in which the arbitration took place. A petition may not
 699 be granted unless the time for appeal has expired. If an appeal
 700 has been taken, a petition may not be granted with respect to an
 701 arbitration award or an apportionment of financial
 702 responsibility that has been stayed.

703 (4) If the petitioner establishes the authenticity of the
 704 arbitration award or of the apportionment of financial
 705 responsibility, shows that the time for appeal has expired, and
 706 demonstrates that no stay is in place, the court shall enter
 707 such orders and judgments as are required to carry out the terms
 708 of the arbitration award or apportionment of financial
 709 responsibility. The orders are enforceable by the contempt
 710 powers of the court, and execution shall issue upon the request
 711 of a party for the judgment.

712 Section 10. Section 400.024, Florida Statutes, is created
 713 to read:

714 400.024 Pretrial nursing home services review
 715 panel.--Either party may file a claim to be considered by a
 716 nursing home services review panel at any time after service of
 717 the written response by the defendant or insurer pursuant to s.
 718 400.0233(3)(b) and prior to the filing of a suit. Only claims

719 meeting the definition of nursing home services pursuant to s.
720 400.02342(2) may be considered by the panel. Either party may
721 request voluntary binding arbitration upon the conclusion of
722 such proceedings.

723 (1) The pretrial nursing home services review panel shall
724 be composed of three members, one of whom shall be an
725 administrative law judge furnished by the Division of
726 Administrative Hearings who shall serve as chair of the panel
727 and act in an advisory capacity. The chair shall establish,
728 consistent with this chapter, a schedule not to exceed 120 days
729 for the submission of evidence to the panel and allow for the
730 testimony of authorities and the presentation of facts related
731 to the claim. The chair shall vote to break a tie in the event
732 of a split opinion between the other two panel members.

733 (2)(a) The chair shall appoint the other two panel members
734 and issue a scheduling order consistent with subsection (1)
735 within 15 days after a request to convene a nursing home
736 services review panel is received by the Division of
737 Administrative Hearings.

738 (b) The chief judge of each circuit shall develop and
739 maintain a list of panel members. Panel members must be
740 practitioners licensed under the Division of Medical Quality
741 Assurance of the Department of Health and have the knowledge,
742 training, experience, and temperament necessary to analyze the
743 evidence and make a fair determination regarding the appropriate
744 standard of care for the provision of nursing home services
745 required by state law. The Division of Administrative Hearings
746 shall adopt rules providing criteria for serving on a panel

747 which shall include, but not be limited to, that panel members
748 have an appropriate level of expertise in the review of nursing
749 home care, that they have the knowledge and temperament to serve
750 on the panel, and that they have a lack of bias toward the
751 claimant or the facility.

752 (c) A person who has previously acted as an expert witness
753 in a chapter 400 civil proceeding may not be a panel member.

754 (3) The administrative law judge shall convene the
755 meetings of the panel, shall advise and assist panel members in
756 meeting their responsibilities, shall have the authority to rule
757 on all matters of discovery and procedure related to the panel,
758 and shall vote on matters of substance only in the case of a
759 tie.

760 (4) Parties may promptly submit written evidence to be
761 considered by the panel. The evidence may consist of medical
762 charts, X rays, lab tests, excerpts of treatises, sworn
763 statements of witnesses, including the parties, and other forms
764 of evidence as determined by the panel.

765 (5) The chair shall ensure that before the review panel
766 renders its decision, each member has the opportunity to review
767 every item of evidence submitted by the parties.

768 (6) Before considering any evidence or deliberating with
769 other panel members, each member of the review panel shall take
770 an oath in writing on a form provided by the panel, which shall
771 read as follows:

772
773 I swear or affirm under penalty of perjury that I will well and
774 truly consider the evidence submitted by the parties, that I

775 will render my opinion without bias based upon the evidence
776 submitted by the parties, and that I have not communicated with
777 and will not communicate with any party before rendering my
778 opinion, except as authorized by law.

779
780 (7) The chair shall advise the panel on any legal issues
781 involved in the review process and shall prepare and serve the
782 parties with a copy of the written opinion of the panel.

783 (8) All parties shall have full access to any material
784 received by the review panel. A party shall provide copies of
785 any materials submitted to the panel to the opposing party.

786 (9) The panel shall render its findings within 60 days
787 after the close of presentation of evidence to the panel. The
788 chair may extend the 60-day time period for an additional 30
789 days for good cause. The chair shall serve the parties with a
790 copy of the panel's written opinion within 15 days after the
791 panel renders its opinion.

792 (10) The sole duty of the panel shall be to express the
793 opinion of the panel as to each allegation presented to it. The
794 panel's opinion shall be in writing, signed by the panel chair,
795 and shall state one of the following:

796 (a) The evidence supports the conclusion that the
797 defendant or defendants failed to act within the appropriate
798 standard of care required by state law or was negligent and that
799 such conduct may have caused the injuries suffered by the
800 plaintiff to a reasonable degree of medical or nursing
801 certainty.

802 (b) The evidence does not support the conclusion that the
803 defendant or defendants failed to act within the appropriate
804 standard of care required by state law or was negligent and that
805 such conduct may have caused the injuries suffered by the
806 plaintiff to a reasonable degree of medical or nursing
807 certainty.

808 (c) The panel is unable to reach an opinion regarding
809 whether the defendant or defendants failed to act within the
810 appropriate standard of care required by state law or was
811 negligent and that such conduct may have caused the injuries
812 suffered by the plaintiff to a reasonable degree of medical or
813 nursing certainty.

814 (11) If the panel fails to timely render its findings, the
815 chair shall issue an order dissolving the panel, and the
816 claimant shall have 60 days or the remainder of the period of
817 the statute of limitations, whichever is greater, within which
818 to file suit or request arbitration. No subsequent panel shall
819 be convened.

820 (12) Unless otherwise discoverable, a statement,
821 discussion, written document, report, or other work product
822 generated after a presuit claim is referred to a review panel
823 under this part is not discoverable or admissible in any civil
824 action for any purpose. The final written opinion of the panel
825 is admissible in any subsequent action, including arbitration. A
826 member of the panel may not be called to testify in any
827 subsequent proceeding.

828 (13) The Division of Administrative Hearings may adopt
 829 rules to carry out the provisions of this section, including the
 830 assessment and payment of fees.

831 (14) The Division of Administrative Hearings may charge
 832 the requesting party a fee not to exceed \$1,000 for conducting a
 833 nursing home services review panel.

834 (15) The Division of Administrative Hearings may charge
 835 the requesting party a fee to compensate the panel members other
 836 than the chair. Panel member fees shall be determined by the
 837 division and may not exceed the customary fee paid to court-
 838 approved mediators in the circuit in which the claim would be
 839 filed.

840 (16) The requesting party shall pay the fees of the panel
 841 members and the costs assessed by the Division of Administrative
 842 Hearings associated with the nursing home services review panel.
 843 If the division determines that the plaintiff is indigent and
 844 unable to pay, the defendant shall pay the fees and costs
 845 assessed by the division and have a claim for reimbursement
 846 against the estate of the plaintiff.

847 Section 11. Subsection (20) of section 400.141, Florida
 848 Statutes, is amended, subsections (21) through (24) are
 849 renumbered as subsections (22) through (25), respectively, and a
 850 new subsection (22) is added to said section, to read:

851 400.141 Administration and management of nursing home
 852 facilities.--Every licensed facility shall comply with all
 853 applicable standards and rules of the agency and shall:

854 (20) Effective July 1, 2005, maintain general and
 855 professional liability insurance coverage, written through

856 admitted carriers, surplus carriers, or offshore captives, in an
 857 amount not less than \$800 per licensed nursing home bed ~~that is~~
 858 ~~in force at all times. In lieu of general and professional~~
 859 ~~liability insurance coverage, a state-designated teaching~~
 860 ~~nursing home and its affiliated assisted living facilities~~
 861 ~~created under s. 430.80 may demonstrate proof of financial~~
 862 ~~responsibility as provided in s. 430.80(3)(h); the exception~~
 863 ~~provided in this paragraph shall expire July 1, 2005.~~

864 (21)(a) Effective July 1, 2005, in lieu of general and
 865 professional liability insurance coverage, demonstrate proof of
 866 financial responsibility in one of the following ways:

867 1. Establishing an escrow account consisting of cash or
 868 assets eligible for deposit in accordance with s. 625.52 in an
 869 annual amount not less than \$800 per licensed nursing home bed,
 870 to be funded in 12 monthly installments at the inception of the
 871 escrow account; or

872 2. Obtaining an unexpired, irrevocable letter of credit,
 873 established under chapter 675, in an annual amount not less than
 874 \$800 per licensed nursing home bed. The letter of credit shall
 875 be payable to the facility as beneficiary upon presentment of a
 876 final judgment indicating liability and awarding damages to be
 877 paid by the facility or upon presentment of a settlement
 878 agreement signed by all parties to the agreement when the final
 879 judgment or settlement is a result of a liability claim against
 880 the facility. The letter of credit shall be nonassignable and
 881 nontransferable. The letter of credit shall be issued by any
 882 bank or savings association organized and existing under the
 883 laws of this state or any bank or savings association organized

884 under the laws of the United States which has its principal
885 place of business in this state or has a branch office that is
886 authorized under the laws of this state or of the United States
887 to receive deposits in this state.

888 (b) In lieu of general and professional liability
889 insurance coverage, a state-designated teaching nursing home and
890 its affiliated assisted living facilities created under s.
891 430.80 may demonstrate proof of financial responsibility as
892 provided in s. 430.80(3)(h).

893 (c) The required amount of general and professional
894 liability insurance or financial responsibility shall be
895 recalculated beginning January 1, 2007, and continue each
896 January 1, by the rate of inflation for the preceding year,
897 using the Consumer Price Index-Urban B-All Items, as published
898 by the United States Bureau of Labor Statistics.

899 (d) General and professional liability coverage or
900 financial responsibility must be demonstrated at the time of
901 initial licensure and at the time of relicensure in order to
902 maintain the license.

903 (e) Notwithstanding any provision to the contrary, a
904 nursing home facility that is part of a continuing care facility
905 certified under chapter 651 and owned by the same corporation
906 may use the liability insurance or financial responsibility that
907 is in effect for the continuing care facility as proof of
908 compliance if the total amount of coverage or financial
909 responsibility is no less than the minimum amount required for
910 its nursing home facility based on \$800 per licensed nursing
911 home bed under the requirements of this section and as adjusted

912 for inflation as provided in paragraph (c).

913 (f) A corporation that owns a nursing home facility and
 914 offers other long-term care or housing services under the same
 915 corporate entity or a holding company through which nursing home
 916 care and other services are offered, including, but not limited
 917 to, assisted living, home health, apartments or units for
 918 independent living, or any combination thereof, may use the
 919 liability insurance or financial responsibility in effect for
 920 the corporation or holding company as proof of compliance if the
 921 amount of coverage or financial responsibility is no less than
 922 the minimum amount required for its nursing home facility based
 923 on \$800 per licensed nursing home bed under the requirements of
 924 this section and as adjusted for inflation as provided in
 925 paragraph (c).

926
 927 Facilities that have been awarded a Gold Seal under the program
 928 established in s. 400.235 may develop a plan to provide
 929 certified nursing assistant training as prescribed by federal
 930 regulations and state rules and may apply to the agency for
 931 approval of their program.

932 Section 12. Subsection (3) is added to section 400.151,
 933 Florida Statutes, to read:

934 400.151 Contracts.--

935 (3) If a contract to which this section applies contains a
 936 provision that provides for binding arbitration of any dispute
 937 that may arise under, or is related to, the duties, obligations,
 938 or services set forth in the contract, the binding arbitration
 939 provision must comply with the following criteria:

940 (a) The provision must be distinguishable from the
 941 remainder of the contract by the use of uppercase boldface type
 942 to denominate the provision as one providing for "DISPUTE
 943 RESOLUTION" or, alternatively, "ARBITRATION." The provision must
 944 also use upper case and boldface type to notify the resident
 945 that signing the contract means that the party agrees to waive
 946 any right to a jury trial and consents to engage in voluntary
 947 binding arbitration.

948 (b) The provision must include a short, easily
 949 understandable explanation of the arbitration process and what
 950 claims are subject to arbitration. The provision must clearly
 951 inform the resident, or the resident's designee, that he or she
 952 has the right to consult an attorney and have the agreement
 953 reviewed by an attorney of his or her choice. A representative
 954 of the licensee must read the provision to the resident and
 955 answer any questions asked by the resident. If a resident
 956 requires special accommodations for reading or hearing the
 957 provision, the licensee must ensure that appropriate
 958 accommodations are made.

959 (c) The provision must comply with chapter 682, including,
 960 but not limited to, the right to participate in discovery, the
 961 right to counsel, the right to present evidence, the right to
 962 cross-examine witnesses, and the right to present expert
 963 testimony.

964 (d) The provision shall not place any limitation on the
 965 amount of the damages, if any, that may be awarded by the
 966 arbitrator, except that the election of remedies as set forth in
 967 s. 400.023(1) shall apply and, to the extent a claimant seeks to

968 assert a claim for punitive damages, the provisions of ss.
 969 400.0237 and 400.0238 shall apply in determining whether such a
 970 claim may be brought and the amount of damages, if any, that may
 971 be awarded.

972 (e) The provision must state that the laws of this state
 973 apply to any legal issue presented to the arbitration panel and
 974 must state that the arbitration will be held in the county where
 975 the nursing home facility is located.

976 (f) The provision does not limit the resident from
 977 bringing a claim in the arbitration based upon an alleged
 978 deprivation of his or her resident rights as set forth in s.
 979 400.022, and in accordance with the standards set forth in s.
 980 400.023(2)-(5).

981 (g) The resident or, if the resident is unable to sign the
 982 contract due to any physical or mental impairment, the
 983 resident's health care surrogate, health care proxy, spouse, or
 984 other person holding a power of attorney or durable family power
 985 of attorney has 14 calendar days after the date of execution of
 986 the agreement, excluding state holidays, in which to rescind the
 987 arbitration provision. The rescission does not affect the other
 988 duties and obligations set forth in the agreement by and between
 989 the parties.

990 (h) The page on which the dispute resolution or
 991 arbitration provision appears must include a signature line or
 992 other area where the resident or the resident's designee can
 993 sign or initial that he or she has read the page and that the
 994 contents of the page have been explained to him or her.

995 (i) The provision may not require the resident or the
 996 resident's designee to incur any initiation fees for the binding
 997 arbitration process which would be greater than the filing fee
 998 applicable to the initiation of a civil action in the circuit
 999 where the claim could be brought.

1000 (j) This subsection applies only to contracts having
 1001 arbitration provisions signed on or after July 1, 2005. This
 1002 subsection does not apply to continuing care contracts governed
 1003 under chapter 651.

1004 Section 13. Subsection (13) is added to section 409.907,
 1005 Florida Statutes, to read:

1006 409.907 Medicaid provider agreements.--The agency may make
 1007 payments for medical assistance and related services rendered to
 1008 Medicaid recipients only to an individual or entity who has a
 1009 provider agreement in effect with the agency, who is performing
 1010 services or supplying goods in accordance with federal, state,
 1011 and local law, and who agrees that no person shall, on the
 1012 grounds of handicap, race, color, or national origin, or for any
 1013 other reason, be subjected to discrimination under any program
 1014 or activity for which the provider receives payment from the
 1015 agency.

1016 (13) Effective January 1, 2007, and notwithstanding s.
 1017 409.905(8), the agency may not renew a Medicaid provider
 1018 agreement with a chronically poor-performing nursing facility.

1019 Section 14. Paragraph (b) of subsection (2) of section
 1020 409.908, Florida Statutes, is amended to read:

1021 409.908 Reimbursement of Medicaid providers.--Subject to
 1022 specific appropriations, the agency shall reimburse Medicaid

1023 providers, in accordance with state and federal law, according
1024 to methodologies set forth in the rules of the agency and in
1025 policy manuals and handbooks incorporated by reference therein.
1026 These methodologies may include fee schedules, reimbursement
1027 methods based on cost reporting, negotiated fees, competitive
1028 bidding pursuant to s. 287.057, and other mechanisms the agency
1029 considers efficient and effective for purchasing services or
1030 goods on behalf of recipients. If a provider is reimbursed based
1031 on cost reporting and submits a cost report late and that cost
1032 report would have been used to set a lower reimbursement rate
1033 for a rate semester, then the provider's rate for that semester
1034 shall be retroactively calculated using the new cost report, and
1035 full payment at the recalculated rate shall be effected
1036 retroactively. Medicare-granted extensions for filing cost
1037 reports, if applicable, shall also apply to Medicaid cost
1038 reports. Payment for Medicaid compensable services made on
1039 behalf of Medicaid eligible persons is subject to the
1040 availability of moneys and any limitations or directions
1041 provided for in the General Appropriations Act or chapter 216.
1042 Further, nothing in this section shall be construed to prevent
1043 or limit the agency from adjusting fees, reimbursement rates,
1044 lengths of stay, number of visits, or number of services, or
1045 making any other adjustments necessary to comply with the
1046 availability of moneys and any limitations or directions
1047 provided for in the General Appropriations Act, provided the
1048 adjustment is consistent with legislative intent.

1049 (2)

1050 (b) Subject to any limitations or directions provided for
 1051 in the General Appropriations Act, the agency shall establish
 1052 and implement a Florida Title XIX Long-Term Care Reimbursement
 1053 Plan (Medicaid) for nursing home care in order to provide care
 1054 and services in conformance with the applicable state and
 1055 federal laws, rules, regulations, and quality and safety
 1056 standards and to ensure that individuals eligible for medical
 1057 assistance have reasonable geographic access to such care.

1058 1. Changes of ownership or of licensed operator do not
 1059 qualify for increases in reimbursement rates associated with the
 1060 change of ownership or of licensed operator. The agency shall
 1061 amend the Title XIX Long Term Care Reimbursement Plan to provide
 1062 that the initial nursing home reimbursement rates, for the
 1063 operating, patient care, and MAR components, associated with
 1064 related and unrelated party changes of ownership or licensed
 1065 operator filed on or after September 1, 2001, are equivalent to
 1066 the previous owner's reimbursement rate.

1067 2. The agency shall amend the long-term care reimbursement
 1068 plan and cost reporting system to create direct care and
 1069 indirect care subcomponents of the patient care component of the
 1070 per diem rate. These two subcomponents together shall equal the
 1071 patient care component of the per diem rate. Separate cost-based
 1072 ceilings shall be calculated for each patient care subcomponent.
 1073 The direct care subcomponent of the per diem rate shall be
 1074 limited by the cost-based class ceiling, and the indirect care
 1075 subcomponent shall be limited by the lower of the cost-based
 1076 class ceiling, by the target rate class ceiling, or by the
 1077 individual provider target. ~~The agency shall adjust the patient~~

1078 ~~care component effective January 1, 2002. The cost to adjust the~~
 1079 ~~direct care subcomponent shall be net of the total funds~~
 1080 ~~previously allocated for the case mix add-on. The agency shall~~
 1081 ~~make the required changes to the nursing home cost reporting~~
 1082 ~~forms to implement this requirement effective January 1, 2002.~~

1083 3. The direct care subcomponent shall include salaries and
 1084 benefits of direct care staff providing nursing services
 1085 including registered nurses, licensed practical nurses, and
 1086 certified nursing assistants who deliver care directly to
 1087 residents in the nursing home facility. This excludes nursing
 1088 administration, MDS, and care plan coordinators, staff
 1089 development, and staffing coordinator.

1090 4. All other patient care costs shall be included in the
 1091 indirect care cost subcomponent of the patient care per diem
 1092 rate. There shall be no costs directly or indirectly allocated
 1093 to the direct care subcomponent from a home office or management
 1094 company.

1095 5. On July 1 of each year, the agency shall report to the
 1096 Legislature direct and indirect care costs, including average
 1097 direct and indirect care costs per resident per facility and
 1098 direct care and indirect care salaries and benefits per category
 1099 of staff member per facility.

1100 6. In order to offset the cost of general and professional
 1101 liability insurance, the agency shall amend the plan to allow
 1102 for interim rate adjustments to reflect increases in the cost of
 1103 general or professional liability insurance for nursing homes.
 1104 This provision shall be implemented to the extent existing
 1105 appropriations are available.

1106 7. Effective October 1, 2005, the agency shall amend the
1107 plan to recognize increases in professional liability insurance
1108 costs incurred by a nursing home facility. The agency shall
1109 provide a pass-through of professional liability insurance,
1110 including contributions establishing financial responsibility
1111 under s. 400.141(20), in an amount that does not exceed \$800 per
1112 licensed nursing home bed. Any portion of the costs of
1113 professional liability insurance which exceed \$800 per bed is
1114 recognized as an operating cost and is subject to the operating
1115 cost ceiling and target.

1116 8. The agency may impose a quality assurance assessment on
1117 all nursing home facilities licensed under part II of chapter
1118 400 as a provider contribution for making payments, including
1119 federal matching funds, through the methodologies for Medicaid
1120 nursing home reimbursement. Funds received for this purpose must
1121 be accounted for separately and may not be commingled with other
1122 state or local funds in any manner.

1123
1124 It is the intent of the Legislature that the reimbursement plan
1125 achieve the goal of providing access to health care for nursing
1126 home residents who require large amounts of care while
1127 encouraging diversion services as an alternative to nursing home
1128 care for residents who can be served within the community. The
1129 agency shall base the establishment of any maximum rate of
1130 payment, whether overall or component, on the available moneys
1131 as provided for in the General Appropriations Act. The agency
1132 may base the maximum rate of payment on the results of
1133 scientifically valid analysis and conclusions derived from

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1134 objective statistical data pertinent to the particular maximum
1135 rate of payment.

1136 Section 15. For the purpose of incorporating the amendment
1137 to section 400.141, Florida Statutes, in a reference thereto,
1138 paragraph (h) of subsection (3) of section 430.80, Florida
1139 Statutes, is reenacted to read:

1140 430.80 Implementation of a teaching nursing home pilot
1141 project.--

1142 (3) To be designated as a teaching nursing home, a nursing
1143 home licensee must, at a minimum:

1144 (h) Maintain insurance coverage pursuant to s. 400.141(20)
1145 or proof of financial responsibility in a minimum amount of
1146 \$750,000. Such proof of financial responsibility may include:

- 1147 1. Maintaining an escrow account consisting of cash or
1148 assets eligible for deposit in accordance with s. 625.52; or
- 1149 2. Obtaining and maintaining pursuant to chapter 675 an
1150 unexpired, irrevocable, nontransferable and nonassignable letter
1151 of credit issued by any bank or savings association organized
1152 and existing under the laws of this state or any bank or savings
1153 association organized under the laws of the United States that
1154 has its principal place of business in this state or has a
1155 branch office which is authorized to receive deposits in this
1156 state. The letter of credit shall be used to satisfy the
1157 obligation of the facility to the claimant upon presentment of a
1158 final judgment indicating liability and awarding damages to be
1159 paid by the facility or upon presentment of a settlement
1160 agreement signed by all parties to the agreement when such final

1161 judgment or settlement is a result of a liability claim against
 1162 the facility.

1163 Section 16. Adjustment of arbitration limits.-- Effective
 1164 January 1, 2008, the arbitration limits set forth in sections
 1165 400.02342(7) and 400.02344(4)(a), Florida Statutes, shall be
 1166 adjusted annually for inflation as measured by the Consumer
 1167 Price Index for All Urban Consumers published by the Bureau of
 1168 Labor Statistics of the United States Department of Labor.

1169 Section 17. Chronically poor-performing nursing home
 1170 facilities.--

1171 (1) It is the intent of the Legislature that the Agency
 1172 for Health Care Administration not renew Medicaid provider
 1173 agreements with any nursing home facility that has a pattern,
 1174 over time, of citations for actual harm or immediate jeopardy
 1175 citations in accordance with state and federal licensure and
 1176 certification requirements. These facilities are known as
 1177 chronically poor-performing nursing home facilities. In order to
 1178 carry out the intent of the Legislature, the agency, after
 1179 consulting with the Florida Health Care Association, the Florida
 1180 Association of Homes for the Aging, and the Association for the
 1181 Advancement of Retired Persons, shall:

1182 (a) Define a chronically poor-performing nursing home
 1183 facility with a specific period of time for determining a
 1184 pattern.

1185 (b) Identify, notify, monitor, measure improvement, and,
 1186 when appropriate, decline to renew the Medicaid agreements for
 1187 chronically poor-performing nursing facilities.

1188 (c) Foster the improvement of chronically poor-performing
 1189 nursing facilities by including time limits for demonstrating
 1190 measurable improvement, including identifying criteria that
 1191 measure the improvement.

1192 (d) Analyze and prepare a report regarding the existing
 1193 Medicaid "Up-or-Out" Quality of Care Contract Management Program
 1194 authorized in s. 400.148, Florida Statutes, including the
 1195 progress of participating nursing home facilities, benefits of
 1196 the program, and success in achieving the intended goals.

1197 (e) Review all administrative procedures and barriers
 1198 relating to identifying and eliminating chronically poor-
 1199 performing nursing home facilities and make recommendations for
 1200 necessary statutory changes to eliminate those barriers.

1201 (2) It is the intent of the Legislature that the Institute
 1202 on Aging at the University of South Florida conduct a study of
 1203 all federal and state enforcement sanctions and remedies
 1204 available to the Agency for Health Care Administration for use
 1205 with nursing home facilities. The study must include, but need
 1206 not be limited to, a review and evaluation of the agency's use
 1207 over the past 5 years of receivership, civil monetary penalties,
 1208 and denial of payment for new admissions. The study must also
 1209 evaluate the state survey process, including statewide
 1210 consistency in survey findings by state area office, the
 1211 systemic costs for survey appeals, the effectiveness and
 1212 objectivity of the informal dispute-resolution process in
 1213 resolving disputes, and recent experiences of reversals of final
 1214 orders of the agency and modifications of the state's
 1215 administrative actions concerning surveys and ratings. The

1216 results of the study shall be presented to the Governor, the
 1217 President of the Senate, and the Speaker of the House of
 1218 Representatives by February 1, 2006.

1219 Section 18. Assessments of nursing home facilities
 1220 assessments.--

1221 (1) Effective July 1, 2006, each nursing home facility
 1222 licensed under chapter 400, Florida Statutes, shall pay an
 1223 annual assessment for each licensed bed in the facility. The
 1224 funds raised by the assessment are intended to ensure access to
 1225 nursing home services by the state's elderly population. The
 1226 funds raised by the assessment shall be used as provided in this
 1227 section.

1228 (2) The amount of the annual assessment shall be
 1229 determined in the following manner:

1230 (a) The initial annual assessment shall be \$800 per bed.
 1231 Thereafter, the assessment shall be adjusted annually for
 1232 inflation as measured by the Consumer Price Index for All Urban
 1233 Consumers published by the Bureau of Labor Statistics of the
 1234 United States Department of Labor.

1235 (b) The initial assessment shall be determined by the
 1236 Agency for Health Care Administration and shall be based upon
 1237 the agency's determination of the needs that will be paid for by
 1238 the assessment and the ability of nursing home service providers
 1239 to pay the assessment.

1240 (3) It is the intent of the Legislature that funds derived
 1241 from the assessment may not be used to supplement existing
 1242 funding of programs providing nursing home services, but rather
 1243 to enhance the services provided by the current funding.

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1244 Section 19. If any portion of this act is found to be
1245 unconstitutional, then the entire act shall be null, void, and
1246 of no effect.

1247 Section 20. Except as otherwise provided herein, this act
1248 shall take effect July 1, 2005.