

1 400.980, 400.9905, 400.9935, 401.23, 402.164,
2 408.033, 408.831, 409.212, 409.907, 410.031,
3 410.034, 415.1111, 430.601, 430.703, 435.03,
4 435.04, 440.13, 456.0375, 465.0235, 468.505,
5 477.025, 509.032, 509.241, 627.732, 651.011,
6 651.022, 651.023, 651.055, 651.095, 651.118,
7 765.1103, 765.205, 768.735, and 943.0585, F.S. ;
8 conforming references to changes made by the
9 act; providing a directive to the Division of
10 Statutory Revision to make necessary conforming
11 changes to the Florida Statutes; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Sections 400.401, 400.402, 400.404,
17 400.407, 400.4075, 400.408, 400.411, 400.412, 400.414,
18 400.415, 400.417, 400.4174, 400.4176, 400.4177, 400.4178,
19 400.418, 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423,
20 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.4275,
21 400.428, 400.429, 400.4293, 400.4294, 400.4295, 400.4296,
22 400.4297, 400.4298, 400.431, 400.434, 400.435, 400.441,
23 400.442, 400.444, 400.4445, 400.447, 400.449, 400.451,
24 400.452, 400.453, and 400.454, Florida Statutes, are
25 renumbered as sections 429.01, 429.02, 429.04, 429.07,
26 429.075, 429.08, 429.11, 429.12, 429.14, 429.15, 429.17,
27 429.174, 429.176, 429.177, 429.178, 429.18, 429.19, 429.195,
28 429.20, 429.21, 429.22, 429.23, 429.24, 429.255, 429.256,
29 429.26, 429.27, 429.275, 429.28, 429.29, 429.293, 429.294,
30 429.295, 429.296, 429.297, 429.298, 429.31, 429.34, 429.35,
31 429.41, 429.42, 429.44, 429.445, 429.47, 429.49, 429.51,

1 429.52, 429.53, and 429.54, Florida Statutes, respectively,
2 and designated as part I of chapter 429, Florida Statutes,
3 entitled "ASSISTED CARE COMMUNITIES."

4 Section 2. Sections 400.616, 400.617, 400.618,
5 400.619, 400.6194, 400.6196, 400.621, 400.6211, 400.622,
6 400.625, 400.6255, 400.628, 400.629, Florida Statutes, are
7 renumbered as sections 429.60, 429.63, 429.65, 429.67, 429.69,
8 429.71, 429.73, 429.75, 429.77, 429.81, 429.83, and 429.85,
9 Florida Statutes, respectively, and designated as part II of
10 chapter 429, Florida Statutes, entitled "ASSISTED CARE
11 COMMUNITIES."

12 Section 3. Sections 400.55, 400.551, 400.552, 400.553,
13 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
14 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562,
15 400.563, and 400.564, Florida Statutes, are renumbered as
16 Sections 429.90, 429.901, 429.903, 429.905, 429.907, 429.909,
17 429.911, 429.913, 429.915, 429.917, 429.919, 429.921, 429.923,
18 429.925, 429.927, 429.929, 429.931, and 429.933, Florida
19 Statutes, and designated as part III of Chapter 429, Florida
20 Statutes, entitled "ASSISTED CARE COMMUNITIES."

21 Section 4. Subsection (1) of section 101.655, Florida
22 Statutes, is amended to read:

23 101.655 Supervised voting by absent electors in
24 certain facilities.--

25 (1) The supervisor of elections of a county shall
26 provide supervised voting for absent electors residing in any
27 assisted living facility, as defined in s. 429.02 ~~400.402~~, or
28 nursing home facility, as defined in s. 400.021, within that
29 county at the request of any administrator of such a facility.
30 Such request for supervised voting in the facility shall be
31 made by submitting a written request to the supervisor of

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

7 | Section 5. Subsection (9) of section 189.428, Florida
8 | Statutes, is amended to read:

9 | 189.428 Special districts; oversight review process.--

10 | (9) This section does not apply to a deepwater port
11 | listed in s. 311.09(1) which is in compliance with a port
12 | master plan adopted pursuant to s. 163.3178(2)(k), or to an
13 | airport authority operating in compliance with an airport
14 | master plan approved by the Federal Aviation Administration,
15 | or to any special district organized to operate health systems
16 | and facilities licensed under chapter 395, ~~or~~ chapter 400, or
17 | chapter 429.

18 | Section 6. Paragraph (b) of subsection (2) of section
19 | 196.1975, Florida Statutes, is amended to read:

20 | 196.1975 Exemption for property used by nonprofit
21 | homes for the aged.--Nonprofit homes for the aged are exempt
22 | to the extent that they meet the following criteria:

23 | (2) A facility will not qualify as a "home for the
24 | aged" unless at least 75 percent of the occupants are over the
25 | age of 62 years or totally and permanently disabled. For
26 | homes for the aged which are exempt from paying income taxes
27 | to the United States as specified in subsection (1), licensing
28 | by the Agency for Health Care Administration is required for
29 | ad valorem tax exemption hereunder only if the home:

30 | (b) Qualifies as an assisted living facility under
31 | ~~part III of chapter 429~~ 400.

1 Section 7. Paragraph (c) of subsection (4) of section
2 202.125, Florida Statutes, is amended to read:

3 202.125 Sales of communications services; specified
4 exemptions.--

5 (4) The sale of communications services to a home for
6 the aged, religious institution or educational institution
7 that is exempt from federal income tax under s. 501(c)(3) of
8 the Internal Revenue Code, or by a religious institution that
9 is exempt from federal income tax under s. 501(c)(3) of the
10 Internal Revenue Code having an established physical place for
11 worship at which nonprofit religious services and activities
12 are regularly conducted and carried on, is exempt from the
13 taxes imposed or administered pursuant to ss. 202.12 and
14 202.19. As used in this subsection, the term:

15 (c) "Home for the aged" includes any nonprofit
16 corporation:

17 1. In which at least 75 percent of the occupants are
18 62 years of age or older or totally and permanently disabled;
19 which qualifies for an ad valorem property tax exemption under
20 s. 196.196, s. 196.197, or s. 196.1975; and which is exempt
21 from the sales tax imposed under chapter 212.

22 2. Licensed as a nursing home under chapter 400 or an
23 assisted living facility under chapter 429 ~~400~~ and which is
24 exempt from the sales tax imposed under chapter 212.

25 Section 8. Section 205.1965, Florida Statutes, is
26 amended to read:

27 205.1965 Assisted living facilities.--A county or
28 municipality may not issue an occupational license for the
29 operation of an assisted living facility pursuant to ~~part III~~
30 ~~of~~ chapter 429 ~~400~~ without first ascertaining that the
31 applicant has been licensed by the Agency for Health Care

1 Administration to operate such facility at the specified
2 location or locations. The Agency for Health Care
3 Administration shall furnish to local agencies responsible for
4 issuing occupational licenses sufficient instructions for
5 making the above required determinations.

6 Section 9. Paragraph (b) of subsection (1) of section
7 212.031, Florida Statutes, is amended to read:

8 212.031 Tax on rental or license fee for use of real
9 property.--

10 (1)

11 (b) When a lease involves multiple use of real
12 property wherein a part of the real property is subject to the
13 tax herein, and a part of the property would be excluded from
14 the tax under subparagraph (a)1., subparagraph (a)2.,
15 subparagraph (a)3., or subparagraph (a)5., the department
16 shall determine, from the lease or license and such other
17 information as may be available, that portion of the total
18 rental charge which is exempt from the tax imposed by this
19 section. The portion of the premises leased or rented by a
20 for-profit entity providing a residential facility for the
21 aged will be exempt on the basis of a pro rata portion
22 calculated by combining the square footage of the areas used
23 for residential units by the aged and for the care of such
24 residents and dividing the resultant sum by the total square
25 footage of the rented premises. For purposes of this section,
26 the term "residential facility for the aged" means a facility
27 that is licensed or certified in whole or in part under
28 chapter 400, chapter 429, or chapter 651; or that provides
29 residences to the elderly and is financed by a mortgage or
30 loan made or insured by the United States Department of
31 Housing and Urban Development under s. 202, s. 202 with a s. 8

1 | subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the
2 | National Housing Act; or other such similar facility that
3 | provides residences primarily for the elderly.

4 | Section 10. Paragraph (i) of subsection (7) of section
5 | 212.08, Florida Statutes, is amended to read:

6 | 212.08 Sales, rental, use, consumption, distribution,
7 | and storage tax; specified exemptions.--The sale at retail,
8 | the rental, the use, the consumption, the distribution, and
9 | the storage to be used or consumed in this state of the
10 | following are hereby specifically exempt from the tax imposed
11 | by this chapter.

12 | (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to
13 | any entity by this chapter do not inure to any transaction
14 | that is otherwise taxable under this chapter when payment is
15 | made by a representative or employee of the entity by any
16 | means, including, but not limited to, cash, check, or credit
17 | card, even when that representative or employee is
18 | subsequently reimbursed by the entity. In addition, exemptions
19 | provided to any entity by this subsection do not inure to any
20 | transaction that is otherwise taxable under this chapter
21 | unless the entity has obtained a sales tax exemption
22 | certificate from the department or the entity obtains or
23 | provides other documentation as required by the department.
24 | Eligible purchases or leases made with such a certificate must
25 | be in strict compliance with this subsection and departmental
26 | rules, and any person who makes an exempt purchase with a
27 | certificate that is not in strict compliance with this
28 | subsection and the rules is liable for and shall pay the tax.
29 | The department may adopt rules to administer this subsection.

30 | (i) Hospital meals and rooms.--Also exempt from
31 | payment of the tax imposed by this chapter on rentals and

1 meals are patients and inmates of any hospital or other
2 physical plant or facility designed and operated primarily for
3 the care of persons who are ill, aged, infirm, mentally or
4 physically incapacitated, or otherwise dependent on special
5 care or attention. Residents of a home for the aged are exempt
6 from payment of taxes on meals provided through the
7 facility. A home for the aged is defined as a facility that
8 is licensed or certified in part or in whole under chapter
9 400, chapter 429, or chapter 651, or that is financed by a
10 mortgage loan made or insured by the United States Department
11 of Housing and Urban Development under s. 202, s. 202 with a
12 s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the
13 National Housing Act, or other such similar facility designed
14 and operated primarily for the care of the aged.

15 Section 11. Subsection (5) of section 296.02, Florida
16 Statutes, is amended to read:

17 296.02 Definitions.--For the purposes of this part,
18 except where the context clearly indicates otherwise:

19 (5) "Extended congregate care" has the meaning given
20 to that term under s. 429.02 ~~400.402~~.

21 Section 12. Subsections (1) and (3) of section
22 381.0035, Florida Statutes, are amended to read:

23 381.0035 Educational course on HIV and AIDS; employees
24 and clients of certain health care facilities.--

25 (1) The Department of Health shall require all
26 employees and clients of facilities licensed under chapters
27 393, 394, and 397 and employees of facilities licensed under
28 chapter 395, ~~and~~ parts II, ~~III~~, IV, and VI of chapter 400, ~~and~~
29 chapter 429 to complete, biennially, a continuing educational
30 course on the modes of transmission, infection control
31 procedures, clinical management, and prevention of human

1 immunodeficiency virus and acquired immune deficiency syndrome
2 with an emphasis on appropriate behavior and attitude change.
3 Such instruction shall include information on current Florida
4 law and its impact on testing, confidentiality of test
5 results, and treatment of patients and any protocols and
6 procedures applicable to human immunodeficiency counseling and
7 testing, reporting, the offering of HIV testing to pregnant
8 women, and partner notification issues pursuant to ss. 381.004
9 and 384.25.

10 (3) Facilities licensed under chapters 393, 394, 395,
11 and 397, ~~and~~ parts II, ~~III~~, IV, and VI of chapter 400, and
12 chapter 429 shall maintain a record of employees and dates of
13 attendance at human immunodeficiency virus and acquired immune
14 deficiency syndrome educational courses.

15 Section 13. Subsection (10) of section 394.455,
16 Florida Statutes, is amended to read:

17 394.455 Definitions.--As used in this part, unless the
18 context clearly requires otherwise, the term:

19 (10) "Facility" means any hospital, community
20 facility, public or private facility, or receiving or
21 treatment facility providing for the evaluation, diagnosis,
22 care, treatment, training, or hospitalization of persons who
23 appear to have a mental illness or have been diagnosed as
24 having a mental illness. "Facility" does not include any
25 program or entity licensed pursuant to chapter 400 or chapter
26 429.

27 Section 14. Paragraphs (b), (c), and (e) of subsection
28 (2) of section 394.4574, Florida Statutes, are amended to
29 read:

30
31

1 394.4574 Department responsibilities for a mental
2 health resident who resides in an assisted living facility
3 that holds a limited mental health license.--

4 (2) The department must ensure that:

5 (b) A cooperative agreement, as required in s. 429.075
6 ~~400.4075~~, is developed between the mental health care services
7 provider that serves a mental health resident and the
8 administrator of the assisted living facility with a limited
9 mental health license in which the mental health resident is
10 living. Any entity that provides Medicaid prepaid health plan
11 services shall ensure the appropriate coordination of health
12 care services with an assisted living facility in cases where
13 a Medicaid recipient is both a member of the entity's prepaid
14 health plan and a resident of the assisted living facility. If
15 the entity is at risk for Medicaid targeted case management
16 and behavioral health services, the entity shall inform the
17 assisted living facility of the procedures to follow should an
18 emergent condition arise.

19 (c) The community living support plan, as defined in
20 s. 429.02 ~~400.402~~, has been prepared by a mental health
21 resident and a mental health case manager of that resident in
22 consultation with the administrator of the facility or the
23 administrator's designee. The plan must be provided to the
24 administrator of the assisted living facility with a limited
25 mental health license in which the mental health resident
26 lives. The support plan and the agreement may be in one
27 document.

28 (e) The mental health services provider assigns a case
29 manager to each mental health resident who lives in an
30 assisted living facility with a limited mental health license.
31 The case manager is responsible for coordinating the

1 development of and implementation of the community living
2 support plan defined in s. 429.02 ~~400.402~~. The plan must be
3 updated at least annually.

4 Section 15. Paragraph (b) of subsection (2) of section
5 394.463, Florida Statutes, is amended to read:

6 394.463 Involuntary examination.--

7 (2) INVOLUNTARY EXAMINATION.--

8 (b) A person shall not be removed from any program or
9 residential placement licensed under chapter 400 or chapter
10 429 and transported to a receiving facility for involuntary
11 examination unless an ex parte order, a professional
12 certificate, or a law enforcement officer's report is first
13 prepared. If the condition of the person is such that
14 preparation of a law enforcement officer's report is not
15 practicable before removal, the report shall be completed as
16 soon as possible after removal, but in any case before the
17 person is transported to a receiving facility. A receiving
18 facility admitting a person for involuntary examination who is
19 not accompanied by the required ex parte order, professional
20 certificate, or law enforcement officer's report shall notify
21 the Agency for Health Care Administration of such admission by
22 certified mail no later than the next working day. The
23 provisions of this paragraph do not apply when transportation
24 is provided by the patient's family or guardian.

25 Section 16. Paragraph (b) of subsection (3) of section
26 400.0063, Florida Statutes, is amended to read:

27 400.0063 Establishment of Office of State Long-Term
28 Care Ombudsman; designation of ombudsman and legal advocate.--

29 (3)

30 (b) The duties of the legal advocate shall include,
31 but not be limited to:

1 1. Assisting the ombudsman in carrying out the duties
2 of the office with respect to the abuse, neglect, or violation
3 of rights of residents of long-term care facilities.

4 2. Assisting the state and local ombudsman councils in
5 carrying out their responsibilities under this part.

6 3. Initiating and prosecuting legal and equitable
7 actions to enforce the rights of long-term care facility
8 residents as defined in this chapter or chapter 429.

9 4. Serving as legal counsel to the state and local
10 ombudsman councils, or individual members thereof, against
11 whom any suit or other legal action is initiated in connection
12 with the performance of the official duties of the councils or
13 an individual member.

14 Section 17. Subsection (3) of section 400.0069,
15 Florida Statutes, is amended to read:

16 400.0069 Local long-term care ombudsman councils;
17 duties; membership.--

18 (3) In order to carry out the duties specified in
19 subsection (2), the local ombudsman council is authorized,
20 pursuant to ss. 400.19(1) and 429.34 ~~400.434~~, to enter any
21 long-term care facility without notice or first obtaining a
22 warrant, subject to the provisions of s. 400.0073(5).

23 Section 18. Paragraphs (c) and (f) of subsection (5)
24 and subsection (6) of section 400.0073, Florida Statutes, are
25 amended to read:

26 400.0073 State and local ombudsman council
27 investigations.--

28 (5) Any onsite administrative inspection conducted by
29 an ombudsman council shall be subject to the following:

30 (c) Inspections shall be conducted in a manner which
31 will impose no unreasonable burden on nursing homes or

1 long-term care facilities, consistent with the underlying
2 purposes of this part and chapter 429. Unnecessary duplication
3 of efforts among council members or the councils shall be
4 reduced to the extent possible.

5 (f) All inspections shall be limited to compliance
6 with part ~~parts~~ II, ~~III, and VII~~ of this chapter, chapter 429,
7 and 42 U.S.C. ss. 1396(a) et seq., and any rules or
8 regulations promulgated pursuant to such laws.

9 (6) An inspection may not be accomplished by forcible
10 entry. Refusal of a long-term care facility to allow entry of
11 any ombudsman council member constitutes a violation of part
12 ~~II, part III, or part VII~~ of this chapter or chapter 429.

13 Section 19. Subsection (4) of section 400.0077,
14 Florida Statutes, is amended to read:

15 400.0077 Confidentiality.--

16 (4) Members of any state or local ombudsman council
17 shall not be required to testify in any court with respect to
18 matters held to be confidential under s. 429.14 ~~400.414~~ except
19 as may be necessary to enforce the provisions of this act.

20 Section 20. Subsection (1) of section 400.0239,
21 Florida Statutes, is amended to read:

22 400.0239 Quality of Long-Term Care Facility
23 Improvement Trust Fund.--

24 (1) There is created within the Agency for Health Care
25 Administration a Quality of Long-Term Care Facility
26 Improvement Trust Fund to support activities and programs
27 directly related to improvement of the care of nursing home
28 and assisted living facility residents. The trust fund shall
29 be funded through proceeds generated pursuant to ss. 400.0238
30 and 429.298 ~~400.4298~~, through funds specifically appropriated
31 by the Legislature, through gifts, endowments, and other

1 | charitable contributions allowed under federal and state law,
2 | and through federal nursing home civil monetary penalties
3 | collected by the Centers for Medicare and Medicaid Services
4 | and returned to the state. These funds must be utilized in
5 | accordance with federal requirements.

6 | Section 21. Subsections (1) and (4) of section
7 | 400.119, Florida Statutes, are amended to read:

8 | 400.119 Confidentiality of records and meetings of
9 | risk management and quality assurance committees.--

10 | (1) Records of meetings of the risk management and
11 | quality assurance committee of a long-term care facility
12 | licensed under this part or ~~part III of this~~ chapter 429, as
13 | well as incident reports filed with the facility's risk
14 | manager and administrator, notifications of the occurrence of
15 | an adverse incident, and adverse incident reports from the
16 | facility are confidential and exempt from s. 119.07(1) and s.
17 | 24(a), Art. I of the State Constitution. However, if the
18 | Agency for Health Care Administration has a reasonable belief
19 | that conduct by a staff member or employee of a facility is
20 | criminal activity or grounds for disciplinary action by a
21 | regulatory board, the agency may disclose such records to the
22 | appropriate law enforcement agency or regulatory board.

23 | (4) The meetings of an internal risk management and
24 | quality assurance committee of a long-term care facility
25 | licensed under this part or ~~part III of this~~ chapter 429 are
26 | exempt from s. 286.011 and s. 24(b), Art. I of the State
27 | Constitution and are not open to the public.

28 | Section 22. Subsections (4) and (7) of section
29 | 400.141, Florida Statutes, are amended to read:

30 |
31 |

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

4 (4) Provide for resident use of a community pharmacy
5 as specified in s. 400.022(1)(q). Any other law to the
6 contrary notwithstanding, a registered pharmacist licensed in
7 Florida, that is under contract with a facility licensed under
8 this chapter or chapter 429, shall repackage a nursing
9 facility resident's bulk prescription medication which has
10 been packaged by another pharmacist licensed in any state in
11 the United States into a unit dose system compatible with the
12 system used by the nursing facility, if the pharmacist is
13 requested to offer such service. In order to be eligible for
14 the repackaging, a resident or the resident's spouse must
15 receive prescription medication benefits provided through a
16 former employer as part of his or her retirement benefits, a
17 qualified pension plan as specified in s. 4972 of the Internal
18 Revenue Code, a federal retirement program as specified under
19 5 C.F.R. s. 831, or a long-term care policy as defined in s.
20 627.9404(1). A pharmacist who correctly repackages and
21 relabels the medication and the nursing facility which
22 correctly administers such repackaged medication under the
23 provisions of this subsection shall not be held liable in any
24 civil or administrative action arising from the repackaging.
25 In order to be eligible for the repackaging, a nursing
26 facility resident for whom the medication is to be repackaged
27 shall sign an informed consent form provided by the facility
28 which includes an explanation of the repackaging process and
29 which notifies the resident of the immunities from liability
30 provided herein. A pharmacist who repackages and relabels
31 prescription medications, as authorized under this subsection,

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

3 | (7) If the facility has a standard license or is a
4 | Gold Seal facility, exceeds the minimum required hours of
5 | licensed nursing and certified nursing assistant direct care
6 | per resident per day, and is part of a continuing care
7 | facility licensed under chapter 651 or a retirement community
8 | that offers other services pursuant to ~~part III~~, part IV, or
9 | part V of this chapter or chapter 429 on a single campus, be
10 | allowed to share programming and staff. At the time of
11 | inspection and in the semiannual report required pursuant to
12 | subsection (15), a continuing care facility or retirement
13 | community that uses this option must demonstrate through
14 | staffing records that minimum staffing requirements for the
15 | facility were met. Licensed nurses and certified nursing
16 | assistants who work in the nursing home facility may be used
17 | to provide services elsewhere on campus if the facility
18 | exceeds the minimum number of direct care hours required per
19 | resident per day and the total number of residents receiving
20 | direct care services from a licensed nurse or a certified
21 | nursing assistant does not cause the facility to violate the
22 | staffing ratios required under s. 400.23(3)(a). Compliance
23 | with the minimum staffing ratios shall be based on total
24 | number of residents receiving direct care services, regardless
25 | of where they reside on campus. If the facility receives a
26 | conditional license, it may not share staff until the
27 | conditional license status ends. This subsection does not
28 | restrict the agency's authority under federal or state law to
29 | require additional staff if a facility is cited for
30 | deficiencies in care which are caused by an insufficient
31 | number of certified nursing assistants or licensed nurses. The

1 agency may adopt rules for the documentation necessary to
2 determine compliance with this provision.

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

9 Section 23. Subsection (1) of section 400.142, Florida
10 Statutes, is amended to read:

11 400.142 Emergency medication kits; orders not to
12 resuscitate.--

13 (1) Other provisions of this chapter or of chapter
14 429, chapter 465, chapter 499, or chapter 893 to the contrary
15 notwithstanding, each nursing home operating pursuant to a
16 license issued by the agency may maintain an emergency
17 medication kit for the purpose of storing medicinal drugs to
18 be administered under emergency conditions to residents
19 residing in such facility.

20 Section 24. Paragraph (a) of subsection (2) of section
21 400.191, Florida Statutes, is amended to read:

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

24 (2) The agency shall provide additional information in
25 consumer-friendly printed and electronic formats to assist
26 consumers and their families in comparing and evaluating
27 nursing home facilities.

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

- 1 1. A list by name and address of all nursing home
2 facilities in this state.
- 3 2. Whether such nursing home facilities are
4 proprietary or nonproprietary.
- 5 3. The current owner of the facility's license and the
6 year that that entity became the owner of the license.
- 7 4. The name of the owner or owners of each facility
8 and whether the facility is affiliated with a company or other
9 organization owning or managing more than one nursing facility
10 in this state.
- 11 5. The total number of beds in each facility.
- 12 6. The number of private and semiprivate rooms in each
13 facility.
- 14 7. The religious affiliation, if any, of each
15 facility.
- 16 8. The languages spoken by the administrator and staff
17 of each facility.
- 18 9. Whether or not each facility accepts Medicare or
19 Medicaid recipients or insurance, health maintenance
20 organization, Veterans Administration, CHAMPUS program, or
21 workers' compensation coverage.
- 22 10. Recreational and other programs available at each
23 facility.
- 24 11. Special care units or programs offered at each
25 facility.
- 26 12. Whether the facility is a part of a retirement
27 community that offers other services pursuant to ~~part III,~~
28 part IV, or part V of this chapter or chapter 429.
- 29 13. Survey and deficiency information contained on the
30 Online Survey Certification and Reporting (OSCAR) system of
31 the federal Health Care Financing Administration, including

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

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

16 Section 25. Paragraph (b) of subsection (2) of section
17 400.215, Florida Statutes, is amended to read:

18 400.215 Personnel screening requirement.--

19 (2) Employers and employees shall comply with the
20 requirements of s. 435.05.

21 (b) Employees qualified under the provisions of
22 paragraph (a) who have not maintained continuous residency
23 within the state for the 5 years immediately preceding the
24 date of request for background screening must complete level 2
25 screening, as provided in chapter 435. Such employees may work
26 in a conditional status up to 180 days pending the receipt of
27 written findings evidencing the completion of level 2
28 screening. Level 2 screening shall not be required of
29 employees or prospective employees who attest in writing under
30 penalty of perjury that they meet the residency requirement.
31 Completion of level 2 screening shall require the employee or

1 prospective employee to furnish to the nursing facility a full
2 set of fingerprints to enable a criminal background
3 investigation to be conducted. The nursing facility shall
4 submit the completed fingerprint card to the agency. The
5 agency shall establish a record of the request in the database
6 provided for in paragraph (c) and forward the request to the
7 Department of Law Enforcement, which is authorized to submit
8 the fingerprints to the Federal Bureau of Investigation for a
9 national criminal history records check. The results of the
10 national criminal history records check shall be returned to
11 the agency, which shall maintain the results in the database
12 provided for in paragraph (c). The agency shall notify the
13 administrator of the requesting nursing facility or the
14 administrator of any other facility licensed under chapter
15 393, chapter 394, chapter 395, chapter 397, chapter 429, or
16 this chapter, as requested by such facility, as to whether or
17 not the employee has qualified under level 1 or level 2
18 screening. An employee or prospective employee who has
19 qualified under level 2 screening and has maintained such
20 continuous residency within the state shall not be required to
21 complete a subsequent level 2 screening as a condition of
22 employment at another facility.

23 Section 26. Paragraph (f) of subsection (2) of section
24 400.23, Florida Statutes, is amended to read:

25 400.23 Rules; evaluation and deficiencies; licensure
26 status.--

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

1 (f) The care, treatment, and maintenance of residents
2 and measurement of the quality and adequacy thereof, based on
3 rules developed under this chapter or chapter 429 and the
4 Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.
5 100-203) (December 22, 1987), Title IV (Medicare, Medicaid,
6 and Other Health-Related Programs), Subtitle C (Nursing Home
7 Reform), as amended.

8 Section 27. Section 400.232, Florida Statutes, is
9 amended to read:

10 400.232 Review and approval of plans; fees and
11 costs.--The design, construction, erection, alteration,
12 modification, repair, and demolition of all public and private
13 health care facilities are governed by the Florida Building
14 Code and the Florida Fire Prevention Code under ss. 553.73 and
15 633.022. In addition to the requirements of ss. 553.79 and
16 553.80, the agency shall review the facility plans and survey
17 the construction of facilities licensed under this chapter or
18 chapter 429.

19 (1) The agency shall approve or disapprove the plans
20 and specifications within 60 days after receipt of the final
21 plans and specifications. The agency may be granted one
22 15-day extension for the review period, if the director of the
23 agency so approves. If the agency fails to act within the
24 specified time, it shall be deemed to have approved the plans
25 and specifications. When the agency disapproves plans and
26 specifications, it shall set forth in writing the reasons for
27 disapproval. Conferences and consultations may be provided as
28 necessary.

29 (2) The agency is authorized to charge an initial fee
30 of \$2,000 for review of plans and construction on all
31 projects, no part of which is refundable. The agency may also

1 collect a fee, not to exceed 1 percent of the estimated
2 construction cost or the actual cost of review, whichever is
3 less, for the portion of the review which encompasses initial
4 review through the initial revised construction document
5 review. The agency is further authorized to collect its
6 actual costs on all subsequent portions of the review and
7 construction inspections. Initial fee payment shall accompany
8 the initial submission of plans and specifications. Any
9 subsequent payment that is due is payable upon receipt of the
10 invoice from the agency. Notwithstanding any other provisions
11 of law to the contrary, all money received by the agency
12 pursuant to the provisions of this section shall be deemed to
13 be trust funds, to be held and applied solely for the
14 operations required under this section.

15 Section 28. Section 400.401, Florida Statutes, is
16 renumbered as section 429.01, Florida Statutes, and subsection
17 (3) is amended to read:

18 429.01 ~~400.401~~ Popular name ~~Short title~~; purpose.--

19 (3) The principle that a license issued under this
20 chapter part is a public trust and a privilege and is not an
21 entitlement should guide the finder of fact or trier of law at
22 any administrative proceeding or in a court action initiated
23 by the Agency for Health Care Administration to enforce this
24 chapter part.

25 Section 29. Section 400.402, Florida Statutes, is
26 renumbered as section 429.02, Florida Statutes, and amended to
27 read:

28 429.02 ~~400.402~~ Definitions.--When used in this chapter
29 ~~part~~, the term:

30
31

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

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

7 (3) "Agency" means the Agency for Health Care
8 Administration.

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

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

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

29 (7) "Chemical restraint" means a pharmacologic drug
30 that physically limits, restricts, or deprives an individual
31 of movement or mobility, and is used for discipline or

1 convenience and not required for the treatment of medical
2 symptoms.

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

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

24 (10) "Department" means the Department of Elderly
25 Affairs.

26 (11) "Emergency" means a situation, physical
27 condition, or method of operation which presents imminent
28 danger of death or serious physical or mental harm to facility
29 residents.

30 (12) "Extended congregate care" means acts beyond
31 those authorized in subsection (17) that may be performed

1 pursuant to part I of chapter 464 by persons licensed
2 thereunder while carrying out their professional duties, and
3 other supportive services which may be specified by rule. The
4 purpose of such services is to enable residents to age in
5 place in a residential environment despite mental or physical
6 limitations that might otherwise disqualify them from
7 residency in a facility licensed under this chapter ~~part~~.

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

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

23 (15) "Managed risk" means the process by which the
24 facility staff discuss the service plan and the needs of the
25 resident with the resident and, if applicable, the resident's
26 representative or designee or the resident's surrogate,
27 guardian, or attorney in fact, in such a way that the
28 consequences of a decision, including any inherent risk, are
29 explained to all parties and reviewed periodically in
30 conjunction with the service plan, taking into account changes
31

1 | in the resident's status and the ability of the facility to
2 | respond accordingly.

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

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

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

25 | (19) "Relative" means an individual who is the father,
26 | mother, stepfather, stepmother, son, daughter, brother,
27 | sister, grandmother, grandfather, great-grandmother,
28 | great-grandfather, grandson, granddaughter, uncle, aunt, first
29 | cousin, nephew, niece, husband, wife, father-in-law,
30 | mother-in-law, son-in-law, daughter-in-law, brother-in-law,
31 |

1 | sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
2 | half brother, or half sister of an owner or administrator.

3 | (20) "Resident" means a person 18 years of age or
4 | older, residing in and receiving care from a facility.

5 | (21) "Resident's representative or designee" means a
6 | person other than the owner, or an agent or employee of the
7 | facility, designated in writing by the resident, if legally
8 | competent, to receive notice of changes in the contract
9 | executed pursuant to s. ~~429.24~~ 400.424; to receive notice of
10 | and to participate in meetings between the resident and the
11 | facility owner, administrator, or staff concerning the rights
12 | of the resident; to assist the resident in contacting the
13 | ombudsman council if the resident has a complaint against the
14 | facility; or to bring legal action on behalf of the resident
15 | pursuant to s. 400.429.

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

28 | (23) "Shared responsibility" means exploring the
29 | options available to a resident within a facility and the
30 | risks involved with each option when making decisions
31 | pertaining to the resident's abilities, preferences, and

1 service needs, thereby enabling the resident and, if
2 applicable, the resident's representative or designee, or the
3 resident's surrogate, guardian, or attorney in fact, and the
4 facility to develop a service plan which best meets the
5 resident's needs and seeks to improve the resident's quality
6 of life.

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

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

16 (26) "Supportive services" means services designed to
17 encourage and assist aged persons or adults with disabilities
18 to remain in the least restrictive living environment and to
19 maintain their independence as long as possible.

20 (27) "Twenty-four-hour nursing supervision" means
21 services that are ordered by a physician for a resident whose
22 condition requires the supervision of a physician and
23 continued monitoring of vital signs and physical status. Such
24 services shall be: medically complex enough to require
25 constant supervision, assessment, planning, or intervention by
26 a nurse; required to be performed by or under the direct
27 supervision of licensed nursing personnel or other
28 professional personnel for safe and effective performance;
29 required on a daily basis; and consistent with the nature and
30 severity of the resident's condition or the disease state or
31 stage.

1 Section 30. Section 400.404, Florida Statutes, is
2 renumbered as section 429.04, Florida Statutes, and amended to
3 read:

4 429.04 ~~400.404~~ Facilities to be licensed;
5 exemptions.--

6 (1) For the administration of this chapter ~~part~~,
7 facilities to be licensed by the agency shall include all
8 assisted living facilities as defined in this chapter ~~part~~.

9 (2) The following are exempt from licensure under this
10 chapter ~~part~~:

11 (a) Any facility, institution, or other place operated
12 by the Federal Government or any agency of the Federal
13 Government.

14 (b) Any facility or part of a facility licensed under
15 chapter 393 or chapter 394.

16 (c) Any facility licensed as an adult family-care home
17 under part VII of chapter 400.

18 (d) Any person who provides housing, meals, and one or
19 more personal services on a 24-hour basis in the person's own
20 home to not more than two adults who do not receive optional
21 state supplementation. The person who provides the housing,
22 meals, and personal services must own or rent the home and
23 reside therein.

24 (e) Any home or facility approved by the United States
25 Department of Veterans Affairs as a residential care home
26 wherein care is provided exclusively to three or fewer
27 veterans.

28 (f) Any facility that has been incorporated in this
29 state for 50 years or more on or before July 1, 1983, and the
30 board of directors of which is nominated or elected by the
31 residents, until the facility is sold or its ownership is

1 transferred; or any facility, with improvements or additions
2 thereto, which has existed and operated continuously in this
3 state for 60 years or more on or before July 1, 1989, is
4 directly or indirectly owned and operated by a nationally
5 recognized fraternal organization, is not open to the public,
6 and accepts only its own members and their spouses as
7 residents.

8 (g) Any facility certified under chapter 651, or a
9 retirement community, may provide services authorized under
10 this chapter part or part IV of ~~this~~ chapter 400 to its
11 residents who live in single-family homes, duplexes,
12 quadruplexes, or apartments located on the campus without
13 obtaining a license to operate an assisted living facility if
14 residential units within such buildings are used by residents
15 who do not require staff supervision for that portion of the
16 day when personal services are not being delivered and the
17 owner obtains a home health license to provide such
18 services. However, any building or distinct part of a
19 building on the campus that is designated for persons who
20 receive personal services and require supervision beyond that
21 which is available while such services are being rendered must
22 be licensed in accordance with this chapter part. If a
23 facility provides personal services to residents who do not
24 otherwise require supervision and the owner is not licensed as
25 a home health agency, the buildings or distinct parts of
26 buildings where such services are rendered must be licensed
27 under this chapter part. A resident of a facility that obtains
28 a home health license may contract with a home health agency
29 of his or her choice, provided that the home health agency
30 provides liability insurance and workers' compensation
31 coverage for its employees. Facilities covered by this

1 exemption may establish policies that give residents the
2 option of contracting for services and care beyond that which
3 is provided by the facility to enable them to age in
4 place. For purposes of this section, a retirement community
5 consists of a facility licensed under this chapter part or
6 under part II of chapter 400, and apartments designed for
7 independent living located on the same campus.

8 (h) Any residential unit for independent living which
9 is located within a facility certified under chapter 651, or
10 any residential unit which is colocated with a nursing home
11 licensed under part II of chapter 400 or colocated with a
12 facility licensed under this chapter part in which services
13 are provided through an outpatient clinic or a nursing home on
14 an outpatient basis.

15 Section 31. Section 400.407, Florida Statutes, is
16 renumbered as section 429.07, Florida Statutes, and paragraphs
17 (a), (b), and (c) of subsection (3), paragraphs (b) and (c) of
18 subsection (4), and subsection (5) are amended to read:

19 429.07 ~~400.407~~ License required; fee, display.--

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

28 (a) A standard license shall be issued to facilities
29 providing one or more of the personal services identified in
30 s. 429.02 ~~400.402~~. Such facilities may also employ or contract
31 with a person licensed under part I of chapter 464 to

1 administer medications and perform other tasks as specified in
2 s. 429.255 ~~400.4255~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 e. Allow residents or, if applicable, a resident's
29 representative, designee, surrogate, guardian, or attorney in
30 fact to make a variety of personal choices, participate in
31

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

3 f. Implement the concept of managed risk.

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

7 h. In addition to the training mandated in s. 429.52
8 ~~400.452~~, provide specialized training as defined by rule for
9 facility staff.

10 4. Facilities licensed to provide extended congregate
11 care services are exempt from the criteria for continued
12 residency as set forth in rules adopted under s. 429.41
13 ~~400.441~~. Facilities so licensed shall adopt their own
14 requirements within guidelines for continued residency set
15 forth by the department in rule. However, such facilities may
16 not serve residents who require 24-hour nursing supervision.
17 Facilities licensed to provide extended congregate care
18 services shall provide each resident with a written copy of
19 facility policies governing admission and retention.

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

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

1 s. 429.26 ~~400.426~~(4) and the facility must develop a
2 preliminary service plan for the individual.

3 7. When a facility can no longer provide or arrange
4 for services in accordance with the resident's service plan
5 and needs and the facility's policy, the facility shall make
6 arrangements for relocating the person in accordance with s.
7 429.28 ~~400.428~~(1)(k).

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

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

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

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

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

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

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

31

1 f. Recommendations for statutory or regulatory
2 changes.

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

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

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

13 1. In order for limited nursing services to be
14 provided in a facility licensed under this chapter part, the
15 agency must first determine that all requirements established
16 in law and rule are met and must specifically designate, on
17 the facility's license, that such services may be provided.
18 Such designation may be made at the time of initial licensure
19 or relicensure, or upon request in writing by a licensee under
20 this chapter part. Notification of approval or denial of such
21 request shall be made within 90 days after receipt of such
22 request and all necessary documentation. Existing facilities
23 qualifying to provide limited nursing services shall have
24 maintained a standard license and may not have been subject to
25 administrative sanctions that affect the health, safety, and
26 welfare of residents for the previous 2 years or since initial
27 licensure if the facility has been licensed for less than 2
28 years.

29 2. Facilities that are licensed to provide limited
30 nursing services shall maintain a written progress report on
31 each person who receives such nursing services, which report

1 describes the type, amount, duration, scope, and outcome of
2 services that are rendered and the general status of the
3 resident's health. A registered nurse representing the agency
4 shall visit such facilities at least twice a year to monitor
5 residents who are receiving limited nursing services and to
6 determine if the facility is in compliance with applicable
7 provisions of this chapter part and with related rules. The
8 monitoring visits may be provided through contractual
9 arrangements with appropriate community agencies. A
10 registered nurse shall also serve as part of the team that
11 inspects such facility.

12 3. A person who receives limited nursing services
13 under this chapter part must meet the admission criteria
14 established by the agency for assisted living
15 facilities. When a resident no longer meets the admission
16 criteria for a facility licensed under this chapter part,
17 arrangements for relocating the person shall be made in
18 accordance with s. 429.28 ~~400.428~~(1)(k), unless the facility
19 is licensed to provide extended congregate care services.

20 (4)

21 (b) In addition to the total fee assessed under
22 paragraph (a), the agency shall require facilities that are
23 licensed to provide extended congregate care services under
24 this chapter part to pay an additional fee per licensed
25 facility. The amount of the biennial fee shall be \$400 per
26 license, with an additional fee of \$10 per resident based on
27 the total licensed resident capacity of the facility. No part
28 of this fee shall be returned to the facility. The agency may
29 adjust the per bed license fee and the annual license fee once
30 each year by not more than the average rate of inflation for
31 the 12 months immediately preceding the increase.

1 (c) In addition to the total fee assessed under
2 paragraph (a), the agency shall require facilities that are
3 licensed to provide limited nursing services under this
4 ~~chapter part~~ to pay an additional fee per licensed
5 facility. The amount of the biennial fee shall be \$250 per
6 license, with an additional fee of \$10 per resident based on
7 the total licensed resident capacity of the facility. No part
8 of this fee shall be returned to the facility. The agency may
9 adjust the per bed license fee and the biennial license fee
10 once each year by not more than the average rate of inflation
11 for the 12 months immediately preceding the increase.

12 (5) Counties or municipalities applying for licenses
13 under this ~~chapter part~~ are exempt from the payment of license
14 fees.

15 Section 32. Section 400.408, Florida Statutes, is
16 renumbered as section 429.08, Florida Statutes, and paragraphs
17 (a), (d), (e), (f), and (g) of subsection (1) and paragraph
18 (f) of subsection (2) are amended to read:

19 429.08 ~~400.408~~ Unlicensed facilities; referral of
20 person for residency to unlicensed facility; penalties;
21 verification of licensure status.--

22 (1)(a) It is unlawful to own, operate, or maintain an
23 assisted living facility without obtaining a license under
24 this ~~chapter part~~.

25 (d) Any person who owns, operates, or maintains an
26 unlicensed assisted living facility due to a change in this
27 ~~chapter part~~ or a modification in department rule within 6
28 months after the effective date of such change and who, within
29 10 working days after receiving notification from the agency,
30 fails to cease operation or apply for a license under this
31 ~~chapter part~~ commits a felony of the third degree, punishable

1 as provided in s. 775.082, s. 775.083, or s. 775.084. Each day
2 of continued operation is a separate offense.

3 (e) Any facility that fails to cease operation after
4 agency notification may be fined for each day of noncompliance
5 pursuant to s. 429.19 ~~400.419~~.

6 (f) When a licensee has an interest in more than one
7 assisted living facility, and fails to license any one of
8 these facilities, the agency may revoke the license, impose a
9 moratorium, or impose a fine pursuant to s. 429.19 ~~400.419~~, on
10 any or all of the licensed facilities until such time as the
11 unlicensed facility is licensed or ceases operation.

12 (g) If the agency determines that an owner is
13 operating or maintaining an assisted living facility without
14 obtaining a license and determines that a condition exists in
15 the facility that poses a threat to the health, safety, or
16 welfare of a resident of the facility, the owner is subject to
17 the same actions and fines imposed against a licensed facility
18 as specified in ss. 429.14 and 429.19 ~~400.414 and 400.419~~.

19 (2) It is unlawful to knowingly refer a person for
20 residency to an unlicensed assisted living facility; to an
21 assisted living facility the license of which is under denial
22 or has been suspended or revoked; or to an assisted living
23 facility that has a moratorium on admissions. Any person who
24 violates this subsection commits a noncriminal violation,
25 punishable by a fine not exceeding \$500 as provided in s.
26 775.083.

27 (f) At least annually, the agency shall notify, in
28 appropriate trade publications, physicians licensed under
29 chapter 458 or chapter 459, hospitals licensed under chapter
30 395, nursing home facilities licensed under part II of ~~this~~
31 chapter 400, and employees of the agency or the department, or

1 | the Department of Children and Family Services, who are
2 | responsible for referring persons for residency, that it is
3 | unlawful to knowingly refer a person for residency to an
4 | unlicensed assisted living facility and shall notify them of
5 | the penalty for violating such prohibition. The department and
6 | the Department of Children and Family Services shall, in turn,
7 | notify service providers under contract to the respective
8 | departments who have responsibility for resident referrals to
9 | facilities. Further, the notice must direct each noticed
10 | facility and individual to contact the appropriate agency
11 | office in order to verify the licensure status of any facility
12 | prior to referring any person for residency. Each notice must
13 | include the name, telephone number, and mailing address of the
14 | appropriate office to contact.

15 | Section 33. Section 400.411, Florida Statutes, is
16 | renumbered as section 429.11, Florida Statutes, and paragraph
17 | (c) of subsection (3) and subsections (4), (11), and (13) are
18 | amended to read:

19 | 429.11 ~~400.411~~ Initial application for license;
20 | provisional license.--

21 | (3) The application must be signed by the applicant
22 | under oath and must contain the following:

23 | (c) The name and address of any long-term care
24 | facility with which the applicant, administrator, or financial
25 | officer has been affiliated through ownership or employment
26 | within 5 years of the date of this license application; and a
27 | signed affidavit disclosing any financial or ownership
28 | interest that the applicant, or any person listed in paragraph
29 | (a), holds or has held within the last 5 years in any facility
30 | licensed under this chapter ~~part~~, or in any other entity
31 | licensed by this state or another state to provide health or

1 residential care, which facility or entity closed or ceased to
2 operate as a result of financial problems, or has had a
3 receiver appointed or a license denied, suspended or revoked,
4 or was subject to a moratorium on admissions, or has had an
5 injunctive proceeding initiated against it.

6 (4) The applicant shall furnish satisfactory proof of
7 financial ability to operate and conduct the facility in
8 accordance with the requirements of this chapter ~~part~~. A
9 certificate of authority, pursuant to chapter 651, may be
10 provided as proof of financial ability.

11 (11) The applicant must furnish proof of compliance
12 with level 2 background screening as required under s. 429.174
13 ~~400.4174~~.

14 (13) A county or municipality may not issue an
15 occupational license that is being obtained for the purpose of
16 operating a facility regulated under this chapter ~~part~~ without
17 first ascertaining that the applicant has been licensed to
18 operate such facility at the specified location or locations
19 by the agency. The agency shall furnish to local agencies
20 responsible for issuing occupational licenses sufficient
21 instruction for making such determinations.

22 Section 34. Section 400.412, Florida Statutes, is
23 renumbered as section 429.12, Florida Statutes, and subsection
24 (1) is amended to read:

25 429.12 ~~400.412~~ Sale or transfer of ownership of a
26 facility.--It is the intent of the Legislature to protect the
27 rights of the residents of an assisted living facility when
28 the facility is sold or the ownership thereof is transferred.
29 Therefore, whenever a facility is sold or the ownership
30 thereof is transferred, including leasing:

31

1 (1) The transferee shall make application to the
2 agency for a new license at least 60 days before the date of
3 transfer of ownership. The application must comply with the
4 provisions of s. 429.11 ~~400.411~~.

5 Section 35. Section 400.414, Florida Statutes, is
6 renumbered as section 429.14, Florida Statutes, and
7 subsections (1), (3), and (5) are amended to read:

8 429.14 ~~400.414~~ Denial, revocation, or suspension of
9 license; imposition of administrative fine; grounds.--

10 (1) The agency may deny, revoke, or suspend any
11 license issued under this chapter ~~part~~, or impose an
12 administrative fine in the manner provided in chapter 120, for
13 any of the following actions by an assisted living facility,
14 for the actions of any person subject to level 2 background
15 screening under s. 429.174 ~~400.4174~~, or for the actions of any
16 facility employee:

17 (a) An intentional or negligent act seriously
18 affecting the health, safety, or welfare of a resident of the
19 facility.

20 (b) The determination by the agency that the owner
21 lacks the financial ability to provide continuing adequate
22 care to residents.

23 (c) Misappropriation or conversion of the property of
24 a resident of the facility.

25 (d) Failure to follow the criteria and procedures
26 provided under part I of chapter 394 relating to the
27 transportation, voluntary admission, and involuntary
28 examination of a facility resident.

29 (e) A citation of any of the following deficiencies as
30 defined in s. 429.19 ~~400.419~~:

31 1. One or more cited class I deficiencies.

1 2. Three or more cited class II deficiencies.

2 3. Five or more cited class III deficiencies that have
3 been cited on a single survey and have not been corrected
4 within the times specified.

5 (f) A determination that a person subject to level 2
6 background screening under s. 429.174 ~~400.4174~~(1) does not
7 meet the screening standards of s. 435.04 or that the facility
8 is retaining an employee subject to level 1 background
9 screening standards under s. 429.174 ~~400.4174~~(2) who does not
10 meet the screening standards of s. 435.03 and for whom
11 exemptions from disqualification have not been provided by the
12 agency.

13 (g) A determination that an employee, volunteer,
14 administrator, or owner, or person who otherwise has access to
15 the residents of a facility does not meet the criteria
16 specified in s. 435.03(2), and the owner or administrator has
17 not taken action to remove the person. Exemptions from
18 disqualification may be granted as set forth in s. 435.07. No
19 administrative action may be taken against the facility if the
20 person is granted an exemption.

21 (h) Violation of a moratorium.

22 (i) Failure of the license applicant, the licensee
23 during relicensure, or a licensee that holds a provisional
24 license to meet the minimum license requirements of this
25 chapter part, or related rules, at the time of license
26 application or renewal.

27 (j) A fraudulent statement or omission of any material
28 fact on an application for a license or any other document
29 required by the agency, including the submission of a license
30 application that conceals the fact that any board member,
31 officer, or person owning 5 percent or more of the facility

1 may not meet the background screening requirements of s.
2 429.174 ~~400.4174~~, or that the applicant has been excluded,
3 permanently suspended, or terminated from the Medicaid or
4 Medicare programs.

5 (k) An intentional or negligent life-threatening act
6 in violation of the uniform firesafety standards for assisted
7 living facilities or other firesafety standards that threatens
8 the health, safety, or welfare of a resident of a facility, as
9 communicated to the agency by the local authority having
10 jurisdiction or the State Fire Marshal.

11 (l) Exclusion, permanent suspension, or termination
12 from the Medicare or Medicaid programs.

13 (m) Knowingly operating any unlicensed facility or
14 providing without a license any service that must be licensed
15 under this chapter or chapter 400.

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

18
19 Administrative proceedings challenging agency action under
20 this subsection shall be reviewed on the basis of the facts
21 and conditions that resulted in the agency action.

22 (3) The agency may deny a license to any applicant or
23 to any officer or board member of an applicant who is a firm,
24 corporation, partnership, or association or who owns 5 percent
25 or more of the facility, if the applicant, officer, or board
26 member has or had a 25-percent or greater financial or
27 ownership interest in any other facility licensed under this
28 chapter ~~part~~, or in any entity licensed by this state or
29 another state to provide health or residential care, which
30 facility or entity during the 5 years prior to the application
31 for a license closed due to financial inability to operate;

1 had a receiver appointed or a license denied, suspended, or
2 revoked; was subject to a moratorium on admissions; had an
3 injunctive proceeding initiated against it; or has an
4 outstanding fine assessed under this chapter or chapter 400.

5 (5) An action taken by the agency to suspend, deny, or
6 revoke a facility's license under this chapter part, in which
7 the agency claims that the facility owner or an employee of
8 the facility has threatened the health, safety, or welfare of
9 a resident of the facility be heard by the Division of
10 Administrative Hearings of the Department of Management
11 Services within 120 days after receipt of the facility's
12 request for a hearing, unless that time limitation is waived
13 by both parties. The administrative law judge must render a
14 decision within 30 days after receipt of a proposed
15 recommended order.

16 Section 36. Section 400.415, Florida Statutes, is
17 renumbered as section 429.15, Florida Statutes, and subsection
18 (1) is amended to read:

19 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
20 agency may impose an immediate moratorium on admissions to any
21 assisted living facility if the agency determines that any
22 condition in the facility presents a threat to the health,
23 safety, or welfare of the residents in the facility.

24 (1) A facility the license of which is denied,
25 revoked, or suspended pursuant to s. 429.14 ~~400.414~~ may be
26 subject to immediate imposition of a moratorium on admissions
27 to run concurrently with licensure denial, revocation, or
28 suspension.

29 Section 37. Section 400.417, Florida Statutes, is
30 renumbered as section 429.17, Florida Statutes, and
31 subsections (2) and (3) are amended to read:

1 429.17 ~~400.417~~ Expiration of license; renewal;
2 conditional license.--

3 (2) A license shall be renewed within 90 days upon the
4 timely filing of an application on forms furnished by the
5 agency and the provision of satisfactory proof of ability to
6 operate and conduct the facility in accordance with the
7 requirements of this chapter ~~part~~ and adopted rules, including
8 proof that the facility has received a satisfactory firesafety
9 inspection, conducted by the local authority having
10 jurisdiction or the State Fire Marshal, within the preceding
11 12 months and an affidavit of compliance with the background
12 screening requirements of s. 429.174 ~~400.4174~~.

13 (3) An applicant for renewal of a license who has
14 complied with the provisions of s. 429.11 ~~400.411~~ with respect
15 to proof of financial ability to operate shall not be required
16 to provide further proof unless the facility or any other
17 facility owned or operated in whole or in part by the same
18 person has demonstrated financial instability as provided
19 under s. 429.47 ~~400.447~~(2) or unless the agency suspects that
20 the facility is not financially stable as a result of the
21 annual survey or complaints from the public or a report from
22 the State Long-Term Care Ombudsman Council. Each facility
23 must report to the agency any adverse court action concerning
24 the facility's financial viability, within 7 days after its
25 occurrence. The agency shall have access to books, records,
26 and any other financial documents maintained by the facility
27 to the extent necessary to determine the facility's financial
28 stability. A license for the operation of a facility shall
29 not be renewed if the licensee has any outstanding fines
30 assessed pursuant to this chapter ~~part~~ which are in final
31 order status.

1 Section 38. Section 400.4174, Florida Statutes, is
2 renumbered as section 429.174, Florida Statutes, and
3 subsection (2) is amended to read:

4 429.174 ~~400.4174~~ Background screening; exemptions.--

5 (2) The owner or administrator of an assisted living
6 facility must conduct level 1 background screening, as set
7 forth in chapter 435, on all employees hired on or after
8 October 1, 1998, who perform personal services as defined in
9 s. 429.02 ~~400.402~~(17). The agency may exempt an individual
10 from employment disqualification as set forth in chapter 435.
11 Such persons shall be considered as having met this
12 requirement if:

13 (a) Proof of compliance with level 1 screening
14 requirements obtained to meet any professional license
15 requirements in this state is provided and accompanied, under
16 penalty of perjury, by a copy of the person's current
17 professional license and an affidavit of current compliance
18 with the background screening requirements.

19 (b) The person required to be screened has been
20 continuously employed in the same type of occupation for which
21 the person is seeking employment without a breach in service
22 which exceeds 180 days, and proof of compliance with the level
23 1 screening requirement which is no more than 2 years old is
24 provided. Proof of compliance shall be provided directly from
25 one employer or contractor to another, and not from the person
26 screened. Upon request, a copy of screening results shall be
27 provided by the employer retaining documentation of the
28 screening to the person screened.

29 (c) The person required to be screened is employed by
30 a corporation or business entity or related corporation or
31 business entity that owns, operates, or manages more than one

1 facility or agency licensed under this chapter or chapter 400,
2 and for whom a level 1 screening was conducted by the
3 corporation or business entity as a condition of initial or
4 continued employment.

5 Section 39. Section 400.4176, Florida Statutes, is
6 renumbered as section 429.176, Florida Statutes, and amended
7 to read:

8 429.176 ~~400.4176~~ Notice of change of
9 administrator.--If, during the period for which a license is
10 issued, the owner changes administrators, the owner must
11 notify the agency of the change within 10 days and provide
12 documentation within 90 days that the new administrator has
13 completed the applicable core educational requirements under
14 s. 429.52 ~~400.452~~. Background screening shall be completed on
15 any new administrator as specified in s. 429.174 ~~400.4174~~.

16 Section 40. Section 400.4177, Florida Statutes, is
17 renumbered as section 429.177, Florida Statutes, and amended
18 to read:

19 429.177 ~~400.4177~~ Patients with Alzheimer's disease or
20 other related disorders; certain disclosures.--A facility
21 licensed under this chapter ~~part~~ which claims that it provides
22 special care for persons who have Alzheimer's disease or other
23 related disorders must disclose in its advertisements or in a
24 separate document those services that distinguish the care as
25 being especially applicable to, or suitable for, such
26 persons. The facility must give a copy of all such
27 advertisements or a copy of the document to each person who
28 requests information about programs and services for persons
29 with Alzheimer's disease or other related disorders offered by
30 the facility and must maintain a copy of all such
31 advertisements and documents in its records. The agency shall

1 examine all such advertisements and documents in the
2 facility's records as part of the license renewal procedure.

3 Section 41. Section 400.4178, Florida Statutes, is
4 renumbered as section 429.178, Florida Statutes, and
5 paragraphs (a) and (b) of subsection (2) are amended to read:

6 429.178 ~~400.4178~~ Special care for persons with
7 Alzheimer's disease or other related disorders.--

8 (2)(a) An individual who is employed by a facility
9 that provides special care for residents with Alzheimer's
10 disease or other related disorders, and who has regular
11 contact with such residents, must complete up to 4 hours of
12 initial dementia-specific training developed or approved by
13 the department. The training shall be completed within 3
14 months after beginning employment and shall satisfy the core
15 training requirements of s. 429.52 ~~400.452~~(2)(g).

16 (b) A direct caregiver who is employed by a facility
17 that provides special care for residents with Alzheimer's
18 disease or other related disorders, and who provides direct
19 care to such residents, must complete the required initial
20 training and 4 additional hours of training developed or
21 approved by the department. The training shall be completed
22 within 9 months after beginning employment and shall satisfy
23 the core training requirements of s. 429.52 ~~400.452~~(2)(g).

24 Section 42. Section 400.418, Florida Statutes, is
25 renumbered as section 429.18, Florida Statutes, and amended to
26 read:

27 429.18 ~~400.418~~ Disposition of fees and administrative
28 fines.--

29 (1) Income from license fees, inspection fees, late
30 fees, and administrative fines generated pursuant to ss.
31 429.07, 429.08, 429.17, 429.19, and 429.31 ~~400.407, 400.408,~~

1 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health
2 Care Trust Fund administered by the agency. Such funds shall
3 be directed to and used by the agency for the following
4 purposes:

5 (a) Up to 50 percent of the trust funds accrued each
6 fiscal year under this chapter ~~part~~ may be used to offset the
7 expenses of receivership, pursuant to s. 429.22 ~~400.422~~, if
8 the court determines that the income and assets of the
9 facility are insufficient to provide for adequate management
10 and operation.

11 (b) An amount of \$5,000 of the trust funds accrued
12 each year under this chapter ~~part~~ shall be allocated to pay
13 for inspection-related physical and mental health examinations
14 requested by the agency pursuant to s. 429.26 ~~400.426~~ for
15 residents who are either recipients of supplemental security
16 income or have monthly incomes not in excess of the maximum
17 combined federal and state cash subsidies available to
18 supplemental security income recipients, as provided for in s.
19 409.212. Such funds shall only be used where the resident is
20 ineligible for Medicaid.

21 (c) Any trust funds accrued each year under this
22 chapter ~~part~~ and not used for the purposes specified in
23 paragraphs (a) and (b) shall be used to offset the costs of
24 the licensure program, including the costs of conducting
25 background investigations, verifying information submitted,
26 defraying the costs of processing the names of applicants, and
27 conducting inspections and monitoring visits pursuant to this
28 chapter ~~part~~.

29 (2) Income from fees generated pursuant to s. 429.41
30 ~~400.441~~(5) shall be deposited in the Health Care Trust Fund
31 and used to offset the costs of printing and postage.

1 Section 43. Section 400.419, Florida Statutes, is
2 renumbered as section 429.19, Florida Statutes, and
3 subsections (1), (2), (9), (10), (11), and (12) are amended to
4 read:

5 429.19 ~~400.419~~ Violations; imposition of
6 administrative fines; grounds.--

7 (1) The agency shall impose an administrative fine in
8 the manner provided in chapter 120 for any of the actions or
9 violations as set forth within this section by an assisted
10 living facility, for the actions of any person subject to
11 level 2 background screening under s. 429.174 ~~400.4174~~, for
12 the actions of any facility employee, or for an intentional or
13 negligent act seriously affecting the health, safety, or
14 welfare of a resident of the facility.

15 (2) Each violation of this chapter part and adopted
16 rules shall be classified according to the nature of the
17 violation and the gravity of its probable effect on facility
18 residents. The agency shall indicate the classification on the
19 written notice of the violation as follows:

20 (a) Class "I" violations are those conditions or
21 occurrences related to the operation and maintenance of a
22 facility or to the personal care of residents which the agency
23 determines present an imminent danger to the residents or
24 guests of the facility or a substantial probability that death
25 or serious physical or emotional harm would result therefrom.
26 The condition or practice constituting a class I violation
27 shall be abated or eliminated within 24 hours, unless a fixed
28 period, as determined by the agency, is required for
29 correction. The agency shall impose an administrative fine for
30 a cited class I violation in an amount not less than \$5,000
31

1 and not exceeding \$10,000 for each violation. A fine may be
2 levied notwithstanding the correction of the violation.

3 (b) Class "II" violations are those conditions or
4 occurrences related to the operation and maintenance of a
5 facility or to the personal care of residents which the agency
6 determines directly threaten the physical or emotional health,
7 safety, or security of the facility residents, other than
8 class I violations. The agency shall impose an administrative
9 fine for a cited class II violation in an amount not less than
10 \$1,000 and not exceeding \$5,000 for each violation. A fine
11 shall be levied notwithstanding the correction of the
12 violation.

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

26 (d) Class "IV" violations are those conditions or
27 occurrences related to the operation and maintenance of a
28 building or to required reports, forms, or documents that do
29 not have the potential of negatively affecting residents.
30 These violations are of a type that the agency determines do
31 not threaten the health, safety, or security of residents of

1 | the facility. The agency shall impose an administrative fine
2 | for a cited class IV violation in an amount not less than \$100
3 | and not exceeding \$200 for each violation. A citation for a
4 | class IV violation must specify the time within which the
5 | violation is required to be corrected. If a class IV violation
6 | is corrected within the time specified, no fine shall be
7 | imposed. Any class IV violation that is corrected during the
8 | time an agency survey is being conducted will be identified as
9 | an agency finding and not as a violation.

10 | (9) Any facility whose owner fails to apply for a
11 | change-of-ownership license in accordance with s. 429.12
12 | ~~400.412~~ and operates the facility under the new ownership is
13 | subject to a fine of \$5,000.

14 | (10) In addition to any administrative fines imposed,
15 | the agency may assess a survey fee, equal to the lesser of one
16 | half of the facility's biennial license and bed fee or \$500,
17 | to cover the cost of conducting initial complaint
18 | investigations that result in the finding of a violation that
19 | was the subject of the complaint or monitoring visits
20 | conducted under s. 429.28 ~~400.428~~(3)(c) to verify the
21 | correction of the violations.

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

1 faith effort to remedy each violation by a specific date,
2 subject to the approval of the agency.

3 (12) Administrative fines paid by any facility under
4 this section shall be deposited into the Health Care Trust
5 Fund and expended as provided in s. 429.18 ~~400.418~~.

6 Section 44. Section 400.4195, Florida Statutes, is
7 renumbered as section 429.195, Florida Statutes, and
8 subsection (1) is amended to read:

9 429.195 ~~400.4195~~ Rebates prohibited; penalties.--

10 (1) It is unlawful for any assisted living facility
11 licensed under this chapter part to contract or promise to pay
12 or receive any commission, bonus, kickback, or rebate or
13 engage in any split-fee arrangement in any form whatsoever
14 with any physician, surgeon, organization, agency, or person,
15 either directly or indirectly, for residents referred to an
16 assisted living facility licensed under this chapter part. A
17 facility may employ or contract with persons to market the
18 facility, provided the employee or contract provider clearly
19 indicates that he or she represents the facility. A person or
20 agency independent of the facility may provide placement or
21 referral services for a fee to individuals seeking assistance
22 in finding a suitable facility; however, any fee paid for
23 placement or referral services must be paid by the individual
24 looking for a facility, not by the facility.

25 Section 45. Section 400.42, Florida Statutes, is
26 renumbered as section 429.20, Florida Statutes, and
27 subsection (3) is amended to read:

28 429.20 ~~400.42~~ Certain solicitation prohibited;
29 third-party supplementation.--

30 (3) The admission or maintenance of assisted living
31 facility residents whose care is supported, in whole or in

1 part, by state funds may not be conditioned upon the receipt
2 of any manner of contribution or donation from any person. The
3 solicitation or receipt of contributions in violation of this
4 subsection is grounds for denial, suspension, or revocation of
5 license, as provided in s. 429.14 ~~400.414~~, for any assisted
6 living facility by or on behalf of which such contributions
7 were solicited.

8 Section 46. Section 400.421, Florida Statutes, is
9 renumbered as section 429.21, Florida Statutes, and
10 subsection (1) is amended to read:

11 429.21 ~~400.421~~ Injunctive proceedings.--

12 (1) The agency may institute injunctive proceedings in
13 a court of competent jurisdiction to:

14 (a) Enforce the provisions of this chapter ~~part~~ or any
15 minimum standard, rule, or order issued or entered into
16 pursuant thereto when the attempt by the agency to correct a
17 violation through administrative fines has failed or when the
18 violation materially affects the health, safety, or welfare of
19 residents; or

20 (b) Terminate the operation of a facility when
21 violations of any provisions of this chapter ~~part~~ or of any
22 standard or rule promulgated pursuant thereto exist which
23 materially affect the health, safety, or welfare of residents.

24 Section 47. Section 400.422, Florida Statutes, is
25 renumbered as section 429.22, Florida Statutes, and paragraph
26 (a) of subsection (1) and subsection (9) are amended to read:

27 429.22 ~~400.422~~ Receivership proceedings.--

28 (1) As an alternative to or in conjunction with an
29 injunctive proceeding, the agency may petition a court of
30 competent jurisdiction for the appointment of a receiver, if
31

1 suitable alternate placements are not available, when any of
2 the following conditions exist:

3 (a) The facility is operating without a license and
4 refuses to make application for a license as required by ss.
5 429.07 ~~400.407~~ and 429.08 ~~400.408~~.

6 (9) The court may direct the agency to allocate funds
7 from the Health Care Trust Fund to the receiver, subject to
8 the provisions of s. 429.18 ~~400.418~~(1).

9 Section 48. Section 400.423, Florida Statutes, is
10 renumbered as section 429.23, Florida Statutes, and
11 subsections (1), (2), (5), and (8) are amended to read:

12 429.23 ~~400.423~~ Internal risk management and quality
13 assurance program; adverse incidents and reporting
14 requirements.--

15 (1) Every facility licensed under this chapter ~~part~~
16 may, as part of its administrative functions, voluntarily
17 establish a risk management and quality assurance program, the
18 purpose of which is to assess resident care practices,
19 facility incident reports, deficiencies cited by the agency,
20 adverse incident reports, and resident grievances and develop
21 plans of action to correct and respond quickly to identify
22 quality differences.

23 (2) Every facility licensed under this chapter ~~part~~ is
24 required to maintain adverse incident reports. For purposes of
25 this section, the term, "adverse incident" means:

26 (a) An event over which facility personnel could
27 exercise control rather than as a result of the resident's
28 condition and results in:

- 29 1. Death;
30 2. Brain or spinal damage;
31 3. Permanent disfigurement;

1 4. Fracture or dislocation of bones or joints;
2 5. Any condition that required medical attention to
3 which the resident has not given his or her consent, including
4 failure to honor advanced directives;
5 6. Any condition that requires the transfer of the
6 resident from the facility to a unit providing more acute care
7 due to the incident rather than the resident's condition
8 before the incident.
9 (b) Abuse, neglect, or exploitation as defined in s.
10 415.102;
11 (c) Events reported to law enforcement; or
12 (d) Elopement.
13 (5) Each facility shall report monthly to the agency
14 any liability claim filed against it. The report must include
15 the name of the resident, the dates of the incident leading to
16 the claim, if applicable, and the type of injury or violation
17 of rights alleged to have occurred. This report is not
18 discoverable in any civil or administrative action, except in
19 such actions brought by the agency to enforce the provisions
20 of this chapter ~~part~~.
21 (8) If the agency, through its receipt of the adverse
22 incident reports prescribed in this chapter ~~part~~ or through
23 any investigation, has reasonable belief that conduct by a
24 staff member or employee of a licensed facility is grounds for
25 disciplinary action by the appropriate board, the agency shall
26 report this fact to such regulatory board.
27 Section 49. Section 400.424, Florida Statutes, is
28 renumbered as section 429.24, Florida Statutes, and
29 subsection (2), paragraph (a) of subsection (3), and
30 subsection (5) are amended to read:
31 429.24 ~~400.424~~ Contracts.--

1 (2) Each contract must contain express provisions
2 specifically setting forth the services and accommodations to
3 be provided by the facility; the rates or charges; provision
4 for at least 30 days' written notice of a rate increase; the
5 rights, duties, and obligations of the residents, other than
6 those specified in s. 429.28 ~~400.428~~; and other matters that
7 the parties deem appropriate. Whenever money is deposited or
8 advanced by a resident in a contract as security for
9 performance of the contract agreement or as advance rent for
10 other than the next immediate rental period:

11 (a) Such funds shall be deposited in a banking
12 institution in this state that is located, if possible, in the
13 same community in which the facility is located; shall be kept
14 separate from the funds and property of the facility; may not
15 be represented as part of the assets of the facility on
16 financial statements; and shall be used, or otherwise
17 expended, only for the account of the resident.

18 (b) The licensee shall, within 30 days of receipt of
19 advance rent or a security deposit, notify the resident or
20 residents in writing of the manner in which the licensee is
21 holding the advance rent or security deposit and state the
22 name and address of the depository where the moneys are being
23 held. The licensee shall notify residents of the facility's
24 policy on advance deposits.

25 (3)(a) The contract shall include a refund policy to
26 be implemented at the time of a resident's transfer,
27 discharge, or death. The refund policy shall provide that the
28 resident or responsible party is entitled to a prorated refund
29 based on the daily rate for any unused portion of payment
30 beyond the termination date after all charges, including the
31 cost of damages to the residential unit resulting from

1 | circumstances other than normal use, have been paid to the
2 | licensee. For the purpose of this paragraph, the termination
3 | date shall be the date the unit is vacated by the resident and
4 | cleared of all personal belongings. If the amount of
5 | belongings does not preclude renting the unit, the facility
6 | may clear the unit and charge the resident or his or her
7 | estate for moving and storing the items at a rate equal to the
8 | actual cost to the facility, not to exceed 20 percent of the
9 | regular rate for the unit, provided that 14 days' advance
10 | written notification is given. If the resident's possessions
11 | are not claimed within 45 days after notification, the
12 | facility may dispose of them. The contract shall also specify
13 | any other conditions under which claims will be made against
14 | the refund due the resident. Except in the case of death or a
15 | discharge due to medical reasons, the refunds shall be
16 | computed in accordance with the notice of relocation
17 | requirements specified in the contract. However, a resident
18 | may not be required to provide the licensee with more than 30
19 | days' notice of termination. If after a contract is
20 | terminated, the facility intends to make a claim against a
21 | refund due the resident, the facility shall notify the
22 | resident or responsible party in writing of the claim and
23 | shall provide said party with a reasonable time period of no
24 | less than 14 calendar days to respond. The facility shall
25 | provide a refund to the resident or responsible party within
26 | 45 days after the transfer, discharge, or death of the
27 | resident. The agency shall impose a fine upon a facility that
28 | fails to comply with the refund provisions of the paragraph,
29 | which fine shall be equal to three times the amount due to the
30 | resident. One-half of the fine shall be remitted to the
31 | resident or his or her estate, and the other half to the

1 Health Care Trust Fund to be used for the purpose specified in
2 s. 429.18 ~~400.418~~.

3 (5) Neither the contract nor any provision thereof
4 relieves any licensee of any requirement or obligation imposed
5 upon it by this chapter part or rules adopted under this
6 chapter part.

7 Section 50. Section 400.4255, Florida Statutes, is
8 renumbered as section 429.255, Florida Statutes, and
9 paragraphs (a) and (b) of subsection (1) and subsection (2)
10 are amended to read:

11 429.255 ~~400.4255~~ Use of personnel; emergency care.--

12 (1)(a) Persons under contract to the facility,
13 facility staff, or volunteers, who are licensed according to
14 part I of chapter 464, or those persons exempt under s.
15 464.022(1), and others as defined by rule, may administer
16 medications to residents, take residents' vital signs, manage
17 individual weekly pill organizers for residents who
18 self-administer medication, give prepackaged enemas ordered by
19 a physician, observe residents, document observations on the
20 appropriate resident's record, report observations to the
21 resident's physician, and contract or allow residents or a
22 resident's representative, designee, surrogate, guardian, or
23 attorney in fact to contract with a third party, provided
24 residents meet the criteria for appropriate placement as
25 defined in s. 429.26 ~~400.426~~. Nursing assistants certified
26 pursuant to part II of chapter 464 may take residents' vital
27 signs as directed by a licensed nurse or physician.

28 (b) All staff in facilities licensed under this
29 chapter part shall exercise their professional responsibility
30 to observe residents, to document observations on the
31 appropriate resident's record, and to report the observations

1 to the resident's physician. However, the owner or
2 administrator of the facility shall be responsible for
3 determining that the resident receiving services is
4 appropriate for residence in the facility.

5 (2) In facilities licensed to provide extended
6 congregate care, persons under contract to the facility,
7 facility staff, or volunteers, who are licensed according to
8 part I of chapter 464, or those persons exempt under s.
9 464.022(1), or those persons certified as nursing assistants
10 pursuant to part II of chapter 464, may also perform all
11 duties within the scope of their license or certification, as
12 approved by the facility administrator and pursuant to this
13 chapter ~~part~~.

14 Section 51. Section 400.4256, Florida Statutes, is
15 renumbered as section 429.256, Florida Statutes, and paragraph
16 (b) of subsection (1) is amended to read:

17 429.256 ~~400.4256~~ Assistance with self-administration
18 of medication.--

19 (1) For the purposes of this section, the term:

20 (b) "Unlicensed person" means an individual not
21 currently licensed to practice nursing or medicine who is
22 employed by or under contract to an assisted living facility
23 and who has received training with respect to assisting with
24 the self-administration of medication in an assisted living
25 facility as provided under s. 429.52 ~~400.452~~ prior to
26 providing such assistance as described in this section.

27 Section 52. Section 400.426, Florida Statutes, is
28 renumbered as section 429.26, Florida Statutes, and
29 subsections (1), (4), (5), (9), and (12) are amended to read:

30 429.26 ~~400.426~~ Appropriateness of placements;
31 examinations of residents.--

1 (1) The owner or administrator of a facility is
2 responsible for determining the appropriateness of admission
3 of an individual to the facility and for determining the
4 continued appropriateness of residence of an individual in the
5 facility. A determination shall be based upon an assessment of
6 the strengths, needs, and preferences of the resident, the
7 care and services offered or arranged for by the facility in
8 accordance with facility policy, and any limitations in law or
9 rule related to admission criteria or continued residency for
10 the type of license held by the facility under this chapter
11 ~~part~~. A resident may not be moved from one facility to another
12 without consultation with and agreement from the resident or,
13 if applicable, the resident's representative or designee or
14 the resident's family, guardian, surrogate, or attorney in
15 fact. In the case of a resident who has been placed by the
16 department or the Department of Children and Family Services,
17 the administrator must notify the appropriate contact person
18 in the applicable department.

19 (4) If possible, each resident shall have been
20 examined by a licensed physician or a licensed nurse
21 practitioner within 60 days before admission to the facility.
22 The signed and completed medical examination report shall be
23 submitted to the owner or administrator of the facility who
24 shall use the information contained therein to assist in the
25 determination of the appropriateness of the resident's
26 admission and continued stay in the facility. The medical
27 examination report shall become a permanent part of the record
28 of the resident at the facility and shall be made available to
29 the agency during inspection or upon request. An assessment
30 that has been completed through the Comprehensive Assessment
31 and Review for Long-Term Care Services (CARES) Program

1 fulfills the requirements for a medical examination under this
2 subsection and s. 429.07 ~~400.407~~(3)(b)6.

3 (5) Except as provided in s. 429.07 ~~400.407~~, if a
4 medical examination has not been completed within 60 days
5 before the admission of the resident to the facility, a
6 licensed physician or licensed nurse practitioner shall
7 examine the resident and complete a medical examination form
8 provided by the agency within 30 days following the admission
9 to the facility to enable the facility owner or administrator
10 to determine the appropriateness of the admission. The medical
11 examination form shall become a permanent part of the record
12 of the resident at the facility and shall be made available to
13 the agency during inspection by the agency or upon request.

14 (9) If, at any time after admission to a facility, a
15 resident appears to need care beyond that which the facility
16 is licensed to provide, the agency shall require the resident
17 to be physically examined by a licensed physician or licensed
18 nurse practitioner. This examination shall, to the extent
19 possible, be performed by the resident's preferred physician
20 or nurse practitioner and shall be paid for by the resident
21 with personal funds, except as provided in s. 429.18
22 ~~400.418~~(1)(b). Following this examination, the examining
23 physician or licensed nurse practitioner shall complete and
24 sign a medical form provided by the agency. The completed
25 medical form shall be submitted to the agency within 30 days
26 after the date the facility owner or administrator is notified
27 by the agency that the physical examination is required. After
28 consultation with the physician or licensed nurse practitioner
29 who performed the examination, a medical review team
30 designated by the agency shall then determine whether the
31 resident is appropriately residing in the facility. The

1 | medical review team shall base its decision on a comprehensive
2 | review of the resident's physical and functional status,
3 | including the resident's preferences, and not on an isolated
4 | health-related problem. In the case of a mental health
5 | resident, if the resident appears to have needs in addition to
6 | those identified in the community living support plan, the
7 | agency may require an evaluation by a mental health
8 | professional, as determined by the Department of Children and
9 | Family Services. A facility may not be required to retain a
10 | resident who requires more services or care than the facility
11 | is able to provide in accordance with its policies and
12 | criteria for admission and continued residency. Members of the
13 | medical review team making the final determination may not
14 | include the agency personnel who initially questioned the
15 | appropriateness of a resident's placement. Such determination
16 | is final and binding upon the facility and the resident. Any
17 | resident who is determined by the medical review team to be
18 | inappropriately residing in a facility shall be given 30 days'
19 | written notice to relocate by the owner or administrator,
20 | unless the resident's continued residence in the facility
21 | presents an imminent danger to the health, safety, or welfare
22 | of the resident or a substantial probability exists that death
23 | or serious physical harm would result to the resident if
24 | allowed to remain in the facility.

25 | (12) No resident who requires 24-hour nursing
26 | supervision, except for a resident who is an enrolled hospice
27 | patient pursuant to part VI of ~~this~~ chapter 400, shall be
28 | retained in a facility licensed under this chapter ~~part~~.

29 | Section 53. Section 400.427, Florida Statutes, is
30 | renumbered as section 429.27, Florida Statutes, and paragraph
31 | (a) of subsection (6) is amended to read:

1 429.27 ~~400.427~~ Property and personal affairs of
2 residents.--

3 (6)(a) In addition to any damages or civil penalties
4 to which a person is subject, any person who:

5 1. Intentionally withholds a resident's personal
6 funds, personal property, or personal needs allowance, or who
7 demands, beneficially receives, or contracts for payment of
8 all or any part of a resident's personal property or personal
9 needs allowance in satisfaction of the facility rate for
10 supplies and services; or

11 2. Borrows from or pledges any personal funds of a
12 resident, other than the amount agreed to by written contract
13 under s. 429.24 ~~400.424~~,

14
15 commits a misdemeanor of the first degree, punishable as
16 provided in s. 775.082 or s. 775.083.

17 Section 54. Section 400.4275, Florida Statutes, is
18 renumbered as section 429.275, Florida Statutes, and
19 subsection (2) is amended to read:

20 429.275 ~~400.4275~~ Business practice; personnel records;
21 liability insurance.--The assisted living facility shall be
22 administered on a sound financial basis that is consistent
23 with good business practices.

24 (2) The administrator or owner of a facility shall
25 maintain personnel records for each staff member which
26 contain, at a minimum, documentation of background screening,
27 if applicable, documentation of compliance with all training
28 requirements of this chapter part ~~part~~ or applicable rule, and a
29 copy of all licenses or certification held by each staff who
30 performs services for which licensure or certification is
31 required under this chapter part ~~part~~ or rule.

1 Section 55. Section 400.428, Florida Statutes, is
2 renumbered as section 429.28, Florida Statutes, and paragraph
3 (f) of subsection (1), subsection (2), paragraph (e) of
4 subsection (3), paragraph (c) of subsection (5), and
5 subsection (7) are amended to read:

6 429.28 ~~400.428~~ Resident bill of rights.--

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

12 (f) Manage his or her financial affairs unless the
13 resident or, if applicable, the resident's representative,
14 designee, surrogate, guardian, or attorney in fact authorizes
15 the administrator of the facility to provide safekeeping for
16 funds as provided in s. 429.27 ~~400.427~~.

17 (2) The administrator of a facility shall ensure that
18 a written notice of the rights, obligations, and prohibitions
19 set forth in this chapter part is posted in a prominent place
20 in each facility and read or explained to residents who cannot
21 read. This notice shall include the name, address, and
22 telephone numbers of the local ombudsman council and central
23 abuse hotline and, when applicable, the Advocacy Center for
24 Persons with Disabilities, Inc., and the Florida local
25 advocacy council, where complaints may be lodged. The
26 facility must ensure a resident's access to a telephone to
27 call the local ombudsman council, central abuse hotline,
28 Advocacy Center for Persons with Disabilities, Inc., and the
29 Florida local advocacy council.

30 (3)
31

1 (e) The agency may conduct complaint investigations as
2 warranted to investigate any allegations of noncompliance with
3 requirements required under this chapter part or rules adopted
4 under this chapter part.

5 (5) No facility or employee of a facility may serve
6 notice upon a resident to leave the premises or take any other
7 retaliatory action against any person who:

8 (c) Files a civil action alleging a violation of the
9 provisions of this chapter part or notifies a state attorney
10 or the Attorney General of a possible violation of such
11 provisions.

12 (7) Any person who submits or reports a complaint
13 concerning a suspected violation of the provisions of this
14 chapter part or concerning services and conditions in
15 facilities, or who testifies in any administrative or judicial
16 proceeding arising from such a complaint, shall have immunity
17 from any civil or criminal liability therefor, unless such
18 person has acted in bad faith or with malicious purpose or the
19 court finds that there was a complete absence of a justiciable
20 issue of either law or fact raised by the losing party.

21 Section 56. Section 400.429, Florida Statutes, is
22 renumbered as section 429.29, Florida Statutes, and
23 subsections (1), (2), and (7) are amended to read:

24 429.29 ~~400.429~~ Civil actions to enforce rights.--

25 (1) Any person or resident whose rights as specified
26 in this chapter part are violated shall have a cause of
27 action. The action may be brought by the resident or his or
28 her guardian, or by a person or organization acting on behalf
29 of a resident with the consent of the resident or his or her
30 guardian, or by the personal representative of the estate of a
31 deceased resident regardless of the cause of death. If the

1 | action alleges a claim for the resident's rights or for
2 | negligence that caused the death of the resident, the claimant
3 | shall be required to elect either survival damages pursuant to
4 | s. 46.021 or wrongful death damages pursuant to s. 768.21. If
5 | the action alleges a claim for the resident's rights or for
6 | negligence that did not cause the death of the resident, the
7 | personal representative of the estate may recover damages for
8 | the negligence that caused injury to the resident. The action
9 | may be brought in any court of competent jurisdiction to
10 | enforce such rights and to recover actual damages, and
11 | punitive damages for violation of the rights of a resident or
12 | negligence. Any resident who prevails in seeking injunctive
13 | relief or a claim for an administrative remedy is entitled to
14 | recover the costs of the action and a reasonable attorney's
15 | fee assessed against the defendant not to exceed \$25,000. Fees
16 | shall be awarded solely for the injunctive or administrative
17 | relief and not for any claim or action for damages whether
18 | such claim or action is brought together with a request for an
19 | injunction or administrative relief or as a separate action,
20 | except as provided under s. 768.79 or the Florida Rules of
21 | Civil Procedure. Sections 429.29-429.298 ~~400.429-400.4303~~
22 | provide the exclusive remedy for a cause of action for
23 | recovery of damages for the personal injury or death of a
24 | resident arising out of negligence or a violation of rights
25 | specified in s. 429.28 ~~400.428~~. This section does not preclude
26 | theories of recovery not arising out of negligence or s.
27 | 429.28 ~~400.428~~ which are available to a resident or to the
28 | agency. The provisions of chapter 766 do not apply to any
29 | cause of action brought under ss. 429.29-429.298
30 | ~~400.429-400.4303~~.

31 |

1 (2) In any claim brought pursuant to this chapter part
2 alleging a violation of resident's rights or negligence
3 causing injury to or the death of a resident, the claimant
4 shall have the burden of proving, by a preponderance of the
5 evidence, that:

6 (a) The defendant owed a duty to the resident;

7 (b) The defendant breached the duty to the resident;

8 (c) The breach of the duty is a legal cause of loss,
9 injury, death, or damage to the resident; and

10 (d) The resident sustained loss, injury, death, or
11 damage as a result of the breach.

12
13 Nothing in this chapter part shall be interpreted to create
14 strict liability. A violation of the rights set forth in s.
15 429.28 ~~400.428~~ or in any other standard or guidelines
16 specified in this chapter part or in any applicable
17 administrative standard or guidelines of this state or a
18 federal regulatory agency shall be evidence of negligence but
19 shall not be considered negligence per se.

20 (7) The resident or the resident's legal
21 representative shall serve a copy of any complaint alleging in
22 whole or in part a violation of any rights specified in this
23 chapter part to the Agency for Health Care Administration at
24 the time of filing the initial complaint with the clerk of the
25 court for the county in which the action is pursued. The
26 requirement of providing a copy of the complaint to the agency
27 does not impair the resident's legal rights or ability to seek
28 relief for his or her claim.

29 Section 57. Section 400.4293, Florida Statutes, is
30 renumbered as section 429.293, Florida Statutes, and paragraph
31

1 (a) of subsection (1) and subsections (2) and (10) are amended
2 to read:

3 429.293 ~~400.4293~~ Presuit notice; investigation;
4 notification of violation of residents' rights or alleged
5 negligence; claims evaluation procedure; informal discovery;
6 review; settlement offer; mediation.--

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

8 (a) "Claim for residents' rights violation or
9 negligence" means a negligence claim alleging injury to or the
10 death of a resident arising out of an asserted violation of
11 the rights of a resident under s. 429.28 ~~400.428~~ or an
12 asserted deviation from the applicable standard of care.

13 (2) Prior to filing a claim for a violation of a
14 resident's rights or a claim for negligence, a claimant
15 alleging injury to or the death of a resident shall notify
16 each prospective defendant by certified mail, return receipt
17 requested, of an asserted violation of a resident's rights
18 provided in s. 429.28 ~~400.428~~ or deviation from the standard
19 of care. Such notification shall include an identification of
20 the rights the prospective defendant has violated and the
21 negligence alleged to have caused the incident or incidents
22 and a brief description of the injuries sustained by the
23 resident which are reasonably identifiable at the time of
24 notice. The notice shall contain a certificate of counsel that
25 counsel's reasonable investigation gave rise to a good faith
26 belief that grounds exist for an action against each
27 prospective defendant.

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

1 Section 58. Section 400.4294, Florida Statutes, is
2 renumbered as section 429.294, Florida Statutes, and
3 subsection (1) is amended to read:

4 429.294 ~~400.4294~~ Availability of facility records for
5 investigation of resident's rights violations and defenses;
6 penalty.--

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

15 Section 59. Section 400.4295, Florida Statutes, is
16 renumbered as section 429.295, Florida Statutes, and amended
17 to read:

18 429.295 ~~400.4295~~ Certain provisions not applicable to
19 actions under this chapter ~~part~~.--An action under this chapter
20 ~~part~~ for a violation of rights or negligence recognized herein
21 is not a claim for medical malpractice, and the provisions of
22 s. 768.21(8) do not apply to a claim alleging death of the
23 resident.

24 Section 60. Section 400.4296, Florida Statutes, is
25 renumbered as section 429.296, Florida Statutes, and
26 subsection (1) is amended to read:

27 429.296 ~~400.4296~~ Statute of limitations.--

28 (1) Any action for damages brought under this chapter
29 ~~part~~ shall be commenced within 2 years from the time the
30 incident giving rise to the action occurred or within 2 years
31 from the time the incident is discovered, or should have been

1 | discovered with the exercise of due diligence; however, in no
2 | event shall the action be commenced later than 4 years from
3 | the date of the incident or occurrence out of which the cause
4 | of action accrued.

5 | Section 61. Section 400.4297, Florida Statutes, is
6 | renumbered as section 429.297, Florida Statutes, and
7 | subsection (1) is amended to read:

8 | 429.297 ~~400.4297~~ Punitive damages; pleading; burden of
9 | proof.--

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

23 | Section 62. Section 400.431, Florida Statutes, is
24 | renumbered as section 429.31, Florida Statutes, and
25 | subsections (1) and (5) are amended to read:

26 | 429.31 ~~400.431~~ Closing of facility; notice; penalty.--

27 | (1) Whenever a facility voluntarily discontinues
28 | operation, it shall inform the agency in writing at least 90
29 | days prior to the discontinuance of operation. The facility
30 | shall also inform each resident or the next of kin, legal
31 | representative, or agency acting on each resident's behalf, of

1 | the fact and the proposed time of such discontinuance,
2 | following the notification requirements provided in s. 429.28
3 | ~~400.428~~(1)(k). In the event a resident has no person to
4 | represent him or her, the facility shall be responsible for
5 | referral to an appropriate social service agency for
6 | placement.

7 | (5) The agency may levy a fine in an amount no greater
8 | than \$5,000 upon each person or business entity that owns any
9 | interest in a facility that terminates operation without
10 | providing notice to the agency and the residents of the
11 | facility at least 30 days before operation ceases. This fine
12 | shall not be levied against any facility involuntarily closed
13 | at the initiation of the agency. The agency shall use the
14 | proceeds of the fines to operate the facility until all
15 | residents of the facility are relocated and shall deposit any
16 | balance of the proceeds into the Health Care Trust Fund
17 | established pursuant to s. 429.18 ~~400.418~~.

18 | Section 63. Section 400.434, Florida Statutes, is
19 | renumbered as section 429.34, Florida Statutes, and amended to
20 | read:

21 | 429.34 ~~400.434~~ Right of entry and inspection.--Any
22 | duly designated officer or employee of the department, the
23 | Department of Children and Family Services, the agency, the
24 | Medicaid Fraud Control Unit of the Department of Legal
25 | Affairs, the state or local fire marshal, or a member of the
26 | state or local long-term care ombudsman council shall have the
27 | right to enter unannounced upon and into the premises of any
28 | facility licensed pursuant to this chapter part in order to
29 | determine the state of compliance with the provisions of this
30 | chapter part and of rules or standards in force pursuant
31 | thereto. The right of entry and inspection shall also extend

1 | to any premises which the agency has reason to believe is
2 | being operated or maintained as a facility without a license;
3 | but no such entry or inspection of any premises may be made
4 | without the permission of the owner or person in charge
5 | thereof, unless a warrant is first obtained from the circuit
6 | court authorizing such entry. The warrant requirement shall
7 | extend only to a facility which the agency has reason to
8 | believe is being operated or maintained as a facility without
9 | a license. Any application for a license or renewal thereof
10 | made pursuant to this chapter ~~part~~ shall constitute permission
11 | for, and complete acquiescence in, any entry or inspection of
12 | the premises for which the license is sought, in order to
13 | facilitate verification of the information submitted on or in
14 | connection with the application; to discover, investigate, and
15 | determine the existence of abuse or neglect; or to elicit,
16 | receive, respond to, and resolve complaints. Any current valid
17 | license shall constitute unconditional permission for, and
18 | complete acquiescence in, any entry or inspection of the
19 | premises by authorized personnel. The agency shall retain the
20 | right of entry and inspection of facilities that have had a
21 | license revoked or suspended within the previous 24 months, to
22 | ensure that the facility is not operating unlawfully. However,
23 | before entering the facility, a statement of probable cause
24 | must be filed with the director of the agency, who must
25 | approve or disapprove the action within 48 hours. Probable
26 | cause shall include, but is not limited to, evidence that the
27 | facility holds itself out to the public as a provider of
28 | personal care services or the receipt of a complaint by the
29 | long-term care ombudsman council about the facility. Data
30 | collected by the state or local long-term care ombudsman
31 | councils or the state or local advocacy councils may be used

1 | by the agency in investigations involving violations of
2 | regulatory standards.

3 | Section 64. Section 400.441, Florida Statutes, is
4 | renumbered as section 429.41, Florida Statutes, and
5 | subsections (1) and (2), paragraph (b) of subsection (3), and
6 | subsection (5) are amended to read:

7 | 429.41 ~~400.441~~ Rules establishing standards.--

8 | (1) It is the intent of the Legislature that rules
9 | published and enforced pursuant to this section shall include
10 | criteria by which a reasonable and consistent quality of
11 | resident care and quality of life may be ensured and the
12 | results of such resident care may be demonstrated. Such rules
13 | shall also ensure a safe and sanitary environment that is
14 | residential and noninstitutional in design or nature. It is
15 | further intended that reasonable efforts be made to
16 | accommodate the needs and preferences of residents to enhance
17 | the quality of life in a facility. In order to provide safe
18 | and sanitary facilities and the highest quality of resident
19 | care accommodating the needs and preferences of residents, the
20 | department, in consultation with the agency, the Department of
21 | Children and Family Services, and the Department of Health,
22 | shall adopt rules, policies, and procedures to administer this
23 | ~~chapter part~~, which must include reasonable and fair minimum
24 | standards in relation to:

25 | (a) The requirements for and maintenance of
26 | facilities, not in conflict with the provisions of chapter
27 | 553, relating to plumbing, heating, cooling, lighting,
28 | ventilation, living space, and other housing conditions, which
29 | will ensure the health, safety, and comfort of residents and
30 | protection from fire hazard, including adequate provisions for
31 | fire alarm and other fire protection suitable to the size of

1 | the structure. Uniform firesafety standards shall be
2 | established and enforced by the State Fire Marshal in
3 | cooperation with the agency, the department, and the
4 | Department of Health.

5 | 1. Evacuation capability determination.--

6 | a. The provisions of the National Fire Protection
7 | Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
8 | for determining the ability of the residents, with or without
9 | staff assistance, to relocate from or within a licensed
10 | facility to a point of safety as provided in the fire codes
11 | adopted herein. An evacuation capability evaluation for
12 | initial licensure shall be conducted within 6 months after the
13 | date of licensure. For existing licensed facilities that are
14 | not equipped with an automatic fire sprinkler system, the
15 | administrator shall evaluate the evacuation capability of
16 | residents at least annually. The evacuation capability
17 | evaluation for each facility not equipped with an automatic
18 | fire sprinkler system shall be validated, without liability,
19 | by the State Fire Marshal, by the local fire marshal, or by
20 | the local authority having jurisdiction over firesafety,
21 | before the license renewal date. If the State Fire Marshal,
22 | local fire marshal, or local authority having jurisdiction
23 | over firesafety has reason to believe that the evacuation
24 | capability of a facility as reported by the administrator may
25 | have changed, it may, with assistance from the facility
26 | administrator, reevaluate the evacuation capability through
27 | timed exiting drills. Translation of timed fire exiting drills
28 | to evacuation capability may be determined:

29 | (I) Three minutes or less: prompt.

30 | (II) More than 3 minutes, but not more than 13
31 | minutes: slow.

1 (III) More than 13 minutes: impractical.

2 b. The Office of the State Fire Marshal shall provide
3 or cause the provision of training and education on the proper
4 application of Chapter 5, NFPA 101A, 1995 edition, to its
5 employees, to staff of the Agency for Health Care
6 Administration who are responsible for regulating facilities
7 under this chapter part, and to local governmental inspectors.
8 The Office of the State Fire Marshal shall provide or cause
9 the provision of this training within its existing budget, but
10 may charge a fee for this training to offset its costs. The
11 initial training must be delivered within 6 months after July
12 1, 1995, and as needed thereafter.

13 c. The Office of the State Fire Marshal, in
14 cooperation with provider associations, shall provide or cause
15 the provision of a training program designed to inform
16 facility operators on how to properly review bid documents
17 relating to the installation of automatic fire sprinklers. The
18 Office of the State Fire Marshal shall provide or cause the
19 provision of this training within its existing budget, but may
20 charge a fee for this training to offset its costs. The
21 initial training must be delivered within 6 months after July
22 1, 1995, and as needed thereafter.

23 d. The administrator of a licensed facility shall sign
24 an affidavit verifying the number of residents occupying the
25 facility at the time of the evacuation capability evaluation.

26 2. Firesafety requirements.--

27 a. Except for the special applications provided
28 herein, effective January 1, 1996, the provisions of the
29 National Fire Protection Association, Life Safety Code, NFPA
30 101, 1994 edition, Chapter 22 for new facilities and Chapter
31 23 for existing facilities shall be the uniform fire code

1 applied by the State Fire Marshal for assisted living
2 facilities, pursuant to s. 633.022.

3 b. Any new facility, regardless of size, that applies
4 for a license on or after January 1, 1996, must be equipped
5 with an automatic fire sprinkler system. The exceptions as
6 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
7 adopted herein, apply to any new facility housing eight or
8 fewer residents. On July 1, 1995, local governmental entities
9 responsible for the issuance of permits for construction shall
10 inform, without liability, any facility whose permit for
11 construction is obtained prior to January 1, 1996, of this
12 automatic fire sprinkler requirement. As used in this chapter
13 ~~part~~, the term "a new facility" does not mean an existing
14 facility that has undergone change of ownership.

15 c. Notwithstanding any provision of s. 633.022 or of
16 the National Fire Protection Association, NFPA 101A, Chapter
17 5, 1995 edition, to the contrary, any existing facility
18 housing eight or fewer residents is not required to install an
19 automatic fire sprinkler system, nor to comply with any other
20 requirement in Chapter 23, NFPA 101, 1994 edition, that
21 exceeds the firesafety requirements of NFPA 101, 1988 edition,
22 that applies to this size facility, unless the facility has
23 been classified as impractical to evacuate. Any existing
24 facility housing eight or fewer residents that is classified
25 as impractical to evacuate must install an automatic fire
26 sprinkler system within the timeframes granted in this
27 section.

28 d. Any existing facility that is required to install
29 an automatic fire sprinkler system under this paragraph need
30 not meet other firesafety requirements of Chapter 23, NFPA
31 101, 1994 edition, which exceed the provisions of NFPA 101,

1 1988 edition. The mandate contained in this paragraph which
2 requires certain facilities to install an automatic fire
3 sprinkler system supersedes any other requirement.

4 e. This paragraph does not supersede the exceptions
5 granted in NFPA 101, 1988 edition or 1994 edition.

6 f. This paragraph does not exempt facilities from
7 other firesafety provisions adopted under s. 633.022 and local
8 building code requirements in effect before July 1, 1995.

9 g. A local government may charge fees only in an
10 amount not to exceed the actual expenses incurred by local
11 government relating to the installation and maintenance of an
12 automatic fire sprinkler system in an existing and properly
13 licensed assisted living facility structure as of January 1,
14 1996.

15 h. If a licensed facility undergoes major
16 reconstruction or addition to an existing building on or after
17 January 1, 1996, the entire building must be equipped with an
18 automatic fire sprinkler system. Major reconstruction of a
19 building means repair or restoration that costs in excess of
20 50 percent of the value of the building as reported on the tax
21 rolls, excluding land, before reconstruction. Multiple
22 reconstruction projects within a 5-year period the total costs
23 of which exceed 50 percent of the initial value of the
24 building at the time the first reconstruction project was
25 permitted are to be considered as major reconstruction.
26 Application for a permit for an automatic fire sprinkler
27 system is required upon application for a permit for a
28 reconstruction project that creates costs that go over the
29 50-percent threshold.

30 i. Any facility licensed before January 1, 1996, that
31 is required to install an automatic fire sprinkler system

1 shall ensure that the installation is completed within the
2 following timeframes based upon evacuation capability of the
3 facility as determined under subparagraph 1.:

4 (I) Impractical evacuation capability, 24 months.

5 (II) Slow evacuation capability, 48 months.

6 (III) Prompt evacuation capability, 60 months.

7
8 The beginning date from which the deadline for the automatic
9 fire sprinkler installation requirement must be calculated is
10 upon receipt of written notice from the local fire official
11 that an automatic fire sprinkler system must be installed. The
12 local fire official shall send a copy of the document
13 indicating the requirement of a fire sprinkler system to the
14 Agency for Health Care Administration.

15 j. It is recognized that the installation of an
16 automatic fire sprinkler system may create financial hardship
17 for some facilities. The appropriate local fire official
18 shall, without liability, grant two 1-year extensions to the
19 timeframes for installation established herein, if an
20 automatic fire sprinkler installation cost estimate and proof
21 of denial from two financial institutions for a construction
22 loan to install the automatic fire sprinkler system are
23 submitted. However, for any facility with a class I or class
24 II, or a history of uncorrected class III, firesafety
25 deficiencies, an extension must not be granted. The local fire
26 official shall send a copy of the document granting the time
27 extension to the Agency for Health Care Administration.

28 k. A facility owner whose facility is required to be
29 equipped with an automatic fire sprinkler system under Chapter
30 23, NFPA 101, 1994 edition, as adopted herein, must disclose
31 to any potential buyer of the facility that an installation of

1 | an automatic fire sprinkler requirement exists. The sale of
2 | the facility does not alter the timeframe for the installation
3 | of the automatic fire sprinkler system.

4 | 1. Existing facilities required to install an
5 | automatic fire sprinkler system as a result of
6 | construction-type restrictions in Chapter 23, NFPA 101, 1994
7 | edition, as adopted herein, or evacuation capability
8 | requirements shall be notified by the local fire official in
9 | writing of the automatic fire sprinkler requirement, as well
10 | as the appropriate date for final compliance as provided in
11 | this subparagraph. The local fire official shall send a copy
12 | of the document to the Agency for Health Care Administration.

13 | m. Except in cases of life-threatening fire hazards,
14 | if an existing facility experiences a change in the evacuation
15 | capability, or if the local authority having jurisdiction
16 | identifies a construction-type restriction, such that an
17 | automatic fire sprinkler system is required, it shall be
18 | afforded time for installation as provided in this
19 | subparagraph.

20 |
21 | Facilities that are fully sprinkled and in compliance with
22 | other firesafety standards are not required to conduct more
23 | than one of the required fire drills between the hours of 11
24 | p.m. and 7 a.m., per year. In lieu of the remaining drills,
25 | staff responsible for residents during such hours may be
26 | required to participate in a mock drill that includes a review
27 | of evacuation procedures. Such standards must be included or
28 | referenced in the rules adopted by the State Fire Marshal.
29 | Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
30 | final administrative authority for firesafety standards
31 | established and enforced pursuant to this section. All

1 licensed facilities must have an annual fire inspection
2 conducted by the local fire marshal or authority having
3 jurisdiction.

4 3. Resident elopement requirements.--Facilities are
5 required to conduct a minimum of two resident elopement
6 prevention and response drills per year. All administrators
7 and direct care staff must participate in the drills which
8 shall include a review of procedures to address resident
9 elopement. Facilities must document the implementation of the
10 drills and ensure that the drills are conducted in a manner
11 consistent with the facility's resident elopement policies and
12 procedures.

13 (b) The preparation and annual update of a
14 comprehensive emergency management plan. Such standards must
15 be included in the rules adopted by the department after
16 consultation with the Department of Community Affairs. At a
17 minimum, the rules must provide for plan components that
18 address emergency evacuation transportation; adequate
19 sheltering arrangements; postdisaster activities, including
20 provision of emergency power, food, and water; postdisaster
21 transportation; supplies; staffing; emergency equipment;
22 individual identification of residents and transfer of
23 records; communication with families; and responses to family
24 inquiries. The comprehensive emergency management plan is
25 subject to review and approval by the local emergency
26 management agency. During its review, the local emergency
27 management agency shall ensure that the following agencies, at
28 a minimum, are given the opportunity to review the plan: the
29 Department of Elderly Affairs, the Department of Health, the
30 Agency for Health Care Administration, and the Department of
31 Community Affairs. Also, appropriate volunteer organizations

1 | must be given the opportunity to review the plan. The local
2 | emergency management agency shall complete its review within
3 | 60 days and either approve the plan or advise the facility of
4 | necessary revisions.

5 | (c) The number, training, and qualifications of all
6 | personnel having responsibility for the care of
7 | residents. The rules must require adequate staff to provide
8 | for the safety of all residents. Facilities licensed for 17
9 | or more residents are required to maintain an alert staff for
10 | 24 hours per day.

11 | (d) All sanitary conditions within the facility and
12 | its surroundings which will ensure the health and comfort of
13 | residents. The rules must clearly delineate the
14 | responsibilities of the agency's licensure and survey staff,
15 | the county health departments, and the local authority having
16 | jurisdiction over fire safety and ensure that inspections are
17 | not duplicative. The agency may collect fees for food service
18 | inspections conducted by the county health departments and
19 | transfer such fees to the Department of Health.

20 | (e) License application and license renewal, transfer
21 | of ownership, proper management of resident funds and personal
22 | property, surety bonds, resident contracts, refund policies,
23 | financial ability to operate, and facility and staff records.

24 | (f) Inspections, complaint investigations,
25 | moratoriums, classification of deficiencies, levying and
26 | enforcement of penalties, and use of income from fees and
27 | fines.

28 | (g) The enforcement of the resident bill of rights
29 | specified in s. 429.28 ~~400-428~~.

30 | (h) The care and maintenance of residents, which must
31 | include, but is not limited to:

- 1 1. The supervision of residents;
- 2 2. The provision of personal services;
- 3 3. The provision of, or arrangement for, social and
- 4 leisure activities;
- 5 4. The arrangement for appointments and transportation
- 6 to appropriate medical, dental, nursing, or mental health
- 7 services, as needed by residents;
- 8 5. The management of medication;
- 9 6. The nutritional needs of residents;
- 10 7. Resident records; and
- 11 8. Internal risk management and quality assurance.
- 12 (i) Facilities holding a limited nursing, extended
- 13 congregate care, or limited mental health license.
- 14 (j) The establishment of specific criteria to define
- 15 appropriateness of resident admission and continued residency
- 16 in a facility holding a standard, limited nursing, extended
- 17 congregate care, and limited mental health license.
- 18 (k) The use of physical or chemical restraints. The
- 19 use of physical restraints is limited to half-bed rails as
- 20 prescribed and documented by the resident's physician with the
- 21 consent of the resident or, if applicable, the resident's
- 22 representative or designee or the resident's surrogate,
- 23 guardian, or attorney in fact. The use of chemical restraints
- 24 is limited to prescribed dosages of medications authorized by
- 25 the resident's physician and must be consistent with the
- 26 resident's diagnosis. Residents who are receiving medications
- 27 that can serve as chemical restraints must be evaluated by
- 28 their physician at least annually to assess:
- 29 1. The continued need for the medication.
- 30 2. The level of the medication in the resident's
- 31 blood.

1 3. The need for adjustments in the prescription.

2 (1) The establishment of specific policies and
3 procedures on resident elopement. Facilities shall conduct a
4 minimum of two resident elopement drills each year. All
5 administrators and direct care staff shall participate in the
6 drills. Facilities shall document the drills.

7 (2) In adopting any rules pursuant to this chapter
8 ~~part~~, the department, in conjunction with the agency, shall
9 make distinct standards for facilities based upon facility
10 size; the types of care provided; the physical and mental
11 capabilities and needs of residents; the type, frequency, and
12 amount of services and care offered; and the staffing
13 characteristics of the facility. Rules developed pursuant to
14 this section shall not restrict the use of shared staffing and
15 shared programming in facilities that are part of retirement
16 communities that provide multiple levels of care and otherwise
17 meet the requirements of law and rule. Except for uniform
18 firesafety standards, the department shall adopt by rule
19 separate and distinct standards for facilities with 16 or
20 fewer beds and for facilities with 17 or more beds. The
21 standards for facilities with 16 or fewer beds shall be
22 appropriate for a noninstitutional residential environment,
23 provided that the structure is no more than two stories in
24 height and all persons who cannot exit the facility unassisted
25 in an emergency reside on the first floor. The department, in
26 conjunction with the agency, may make other distinctions among
27 types of facilities as necessary to enforce the provisions of
28 this chapter ~~part~~. Where appropriate, the agency shall offer
29 alternate solutions for complying with established standards,
30 based on distinctions made by the department and the agency

31

1 relative to the physical characteristics of facilities and the
2 types of care offered therein.

3 (3) The department shall submit a copy of proposed
4 rules to the Speaker of the House of Representatives, the
5 President of the Senate, and appropriate committees of
6 substance for review and comment prior to the promulgation
7 thereof.

8 (b) The agency, in consultation with the department,
9 may waive rules promulgated pursuant to this chapter ~~part~~ in
10 order to demonstrate and evaluate innovative or cost-effective
11 congregate care alternatives which enable individuals to age
12 in place. Such waivers may be granted only in instances where
13 there is reasonable assurance that the health, safety, or
14 welfare of residents will not be endangered. To apply for a
15 waiver, the licensee shall submit to the agency a written
16 description of the concept to be demonstrated, including
17 goals, objectives, and anticipated benefits; the number and
18 types of residents who will be affected, if applicable; a
19 brief description of how the demonstration will be evaluated;
20 and any other information deemed appropriate by the
21 agency. Any facility granted a waiver shall submit a report
22 of findings to the agency and the department within 12
23 months. At such time, the agency may renew or revoke the
24 waiver or pursue any regulatory or statutory changes necessary
25 to allow other facilities to adopt the same practices. The
26 department may by rule clarify terms and establish waiver
27 application procedures, criteria for reviewing waiver
28 proposals, and procedures for reporting findings, as necessary
29 to implement this subsection.

30 (5) A fee shall be charged by the department to any
31 person requesting a copy of this chapter ~~part~~ or rules

1 promulgated under this ~~chapter part~~. Such fees shall not
2 exceed the actual cost of duplication and postage.

3 Section 65. Section 400.442, Florida Statutes, is
4 renumbered as section 429.42, Florida Statutes, and
5 subsections (1) and (3) are amended to read:

6 429.42 ~~400.442~~ Pharmacy and dietary services.--

7 (1) Any assisted living facility in which the agency
8 has documented a class I or class II deficiency or uncorrected
9 class III deficiencies regarding medicinal drugs or
10 over-the-counter preparations, including their storage, use,
11 delivery, or administration, or dietary services, or both,
12 during a biennial survey or a monitoring visit or an
13 investigation in response to a complaint, shall, in addition
14 to or as an alternative to any penalties imposed under s.
15 429.19 ~~400.419~~, be required to employ the consultant services
16 of a licensed pharmacist, a licensed registered nurse, or a
17 registered or licensed dietitian, as applicable. The
18 consultant shall, at a minimum, provide onsite quarterly
19 consultation until the inspection team from the agency
20 determines that such consultation services are no longer
21 required.

22 (3) The agency shall employ at least two pharmacists
23 licensed pursuant to chapter 465 among its personnel who
24 biennially inspect assisted living facilities licensed under
25 this ~~chapter part~~, to participate in biennial inspections or
26 consult with the agency regarding deficiencies relating to
27 medicinal drugs or over-the-counter preparations.

28 Section 66. Section 400.444, Florida Statutes, is
29 renumbered as section 429.44, Florida Statutes, and subsection
30 (2) is amended to read:

31

1 429.44 ~~400.444~~ Construction and renovation;
2 requirements.--

3 (2) Upon notification by the local authority having
4 jurisdiction over life-threatening violations which seriously
5 threaten the health, safety, or welfare of a resident of a
6 facility, the agency shall take action as specified in s.
7 429.14 ~~400.414~~.

8 Section 67. Section 400.4445, Florida Statutes, is
9 renumbered as section 429.445, Florida Statutes, and amended
10 to read:

11 429.445 ~~400.4445~~ Compliance with local zoning
12 requirements.--No facility licensed under this chapter ~~part~~
13 may commence any construction which will expand the size of
14 the existing structure unless the licensee first submits to
15 the agency proof that such construction will be in compliance
16 with applicable local zoning requirements. Facilities with a
17 licensed capacity of less than 15 persons shall comply with
18 the provisions of chapter 419.

19 Section 68. Section 400.447, Florida Statutes, is
20 renumbered as section 429.47, Florida Statutes, and
21 subsections (2), (5), and (7) are amended to read:

22 429.47 ~~400.447~~ Prohibited acts; penalties for
23 violation.--

24 (2) It is unlawful for any holder of a license issued
25 pursuant to the provisions of this act to withhold from the
26 agency any evidence of financial instability, including, but
27 not limited to, bad checks, delinquent accounts, nonpayment of
28 withholding taxes, unpaid utility expenses, nonpayment for
29 essential services, or adverse court action concerning the
30 financial viability of the facility or any other facility
31

1 licensed under part II of chapter 400 or under ~~part III~~ of
2 this chapter which is owned by the licensee.

3 (5) A freestanding facility shall not advertise or
4 imply that any part of it is a nursing home. For the purpose
5 of this subsection, "freestanding facility" means a facility
6 that is not operated in conjunction with a nursing home to
7 which residents of the facility are given priority when
8 nursing care is required. A person who violates this
9 subsection is subject to fine as specified in s. 429.19

10 ~~400.419~~.

11 (7) A facility licensed under this chapter ~~part~~ which
12 is not part of a facility authorized under chapter 651 shall
13 include the facility's license number as given by the agency
14 in all advertising. A company or person owning more than one
15 facility shall include at least one license number per
16 advertisement. All advertising shall include the term
17 "assisted living facility" before the license number.

18 Section 69. Section 400.451, Florida Statutes, is
19 renumbered as section 429.51, Florida Statutes, and amended to
20 read:

21 429.51 ~~400.451~~ Existing facilities to be given
22 reasonable time to comply with rules and standards.--Any
23 facility as defined in this chapter ~~part~~ which is in operation
24 at the time of promulgation of any applicable rules or
25 standards adopted or amended pursuant to this chapter ~~part~~ may
26 be given a reasonable time, not to exceed 6 months, within
27 which to comply with such rules and standards.

28 Section 70. Section 400.452, Florida Statutes, is
29 renumbered as section 429.52, Florida Statutes, and
30 subsections (3) and (5) are amended to read:

31

1 429.52 ~~400.452~~ Staff training and educational
2 programs; core educational requirement.--

3 (3) Effective January 1, 2004, a new facility
4 administrator must complete the required training and
5 education, including the competency test, within a reasonable
6 time after being employed as an administrator, as determined
7 by the department. Failure to do so is a violation of this
8 chapter part and subjects the violator to an administrative
9 fine as prescribed in s. 429.19 ~~400.419~~. Administrators
10 licensed in accordance with chapter 468, part II, are exempt
11 from this requirement. Other licensed professionals may be
12 exempted, as determined by the department by rule.

13 (5) Staff involved with the management of medications
14 and assisting with the self-administration of medications
15 under s. 429.256 ~~400.4256~~ must complete a minimum of 4
16 additional hours of training provided by a registered nurse,
17 licensed pharmacist, or department staff. The department shall
18 establish by rule the minimum requirements of this additional
19 training.

20 Section 71. Section 400.453, Florida Statutes, is
21 renumbered as section 429.53, Florida Statutes, and paragraph
22 (b) of subsection (1) and paragraphs (a), (e), and (f) of
23 subsection (2) are amended to read:

24 429.53 ~~400.453~~ Consultation by the agency.--

25 (1) The area offices of licensure and certification of
26 the agency shall provide consultation to the following upon
27 request:

28 (b) A person interested in obtaining a license to
29 operate a facility under this chapter part.

30 (2) As used in this section, "consultation" includes:
31

1 (a) An explanation of the requirements of this chapter
2 ~~part~~ and rules adopted pursuant thereto;

3 (e) Any other information which the agency deems
4 necessary to promote compliance with the requirements of this
5 chapter part; and

6 (f) A preconstruction review of a facility to ensure
7 compliance with agency rules and this chapter part.

8 Section 72. Subsections (1), (7), and (15) of section
9 400.462, Florida Statutes, are amended to read:

10 400.462 Definitions.--As used in this part, the term:

11 (1) "Administrator" means a direct employee of the
12 home health agency or a related organization, or of a
13 management company that has a contract to manage the home
14 health agency, to whom the governing body has delegated the
15 responsibility for day-to-day administration of the home
16 health agency. The administrator must be a licensed
17 physician, physician assistant, or registered nurse licensed
18 to practice in this state or an individual having at least 1
19 year of supervisory or administrative experience in home
20 health care or in a facility licensed under chapter 395, ~~or~~
21 ~~under part II or part III~~ of this chapter, or under chapter
22 429. An administrator may manage a maximum of five licensed
23 home health agencies located within one agency service
24 district or within an immediately contiguous county. If the
25 home health agency is licensed under this chapter and is part
26 of a retirement community that provides multiple levels of
27 care, an employee of the retirement community may administer
28 the home health agency and up to a maximum of four entities
29 licensed under this chapter or chapter 429 that are owned,
30 operated, or managed by the same corporate entity. An
31 administrator shall designate, in writing, for each licensed

1 entity, a qualified alternate administrator to serve during
2 absences.

3 (7) "Director of nursing" means a registered nurse and
4 direct employee of the agency or related business entity who
5 is a graduate of an approved school of nursing and is licensed
6 in this state; who has at least 1 year of supervisory
7 experience as a registered nurse in a licensed home health
8 agency, a facility licensed under chapter 395, or a facility
9 licensed under part II ~~or part III~~ of this chapter or under
10 chapter 429; and who is responsible for overseeing the
11 professional nursing and home health aid delivery of services
12 of the agency. An employee may be the director of nursing of a
13 maximum of five licensed home health agencies operated by a
14 related business entity and located within one agency service
15 district or within an immediately contiguous county. If the
16 home health agency is licensed under this chapter and is part
17 of a retirement community that provides multiple levels of
18 care, an employee of the retirement community may serve as the
19 director of nursing of the home health agency and of up to
20 four entities licensed under this chapter or chapter 429 which
21 are owned, operated, or managed by the same corporate entity.
22 A director of nursing shall designate, in writing, for each
23 licensed entity, a qualified alternate registered nurse to
24 serve during the absence of the director of nursing.

25 (15) "Nurse registry" means any person that procures,
26 offers, promises, or attempts to secure health-care-related
27 contracts for registered nurses, licensed practical nurses,
28 certified nursing assistants, home health aides, companions,
29 or homemakers, who are compensated by fees as independent
30 contractors, including, but not limited to, contracts for the
31 provision of services to patients and contracts to provide

1 private duty or staffing services to health care facilities
2 licensed under chapter 395, ~~or this chapter,~~ or chapter 429,
3 or other business entities.

4 Section 73. Paragraph (h) of subsection (5) of section
5 400.464, Florida Statutes, is amended to read:

6 400.464 Home health agencies to be licensed;
7 expiration of license; exemptions; unlawful acts; penalties.--

8 (5) The following are exempt from the licensure
9 requirements of this part:

10 (h) The delivery of assisted living facility services
11 for which the assisted living facility is licensed under ~~part~~
12 ~~III of this chapter 429,~~ to serve its residents in its
13 facility.

14 Section 74. Subsection (2) of section 400.497, Florida
15 Statutes, is amended to read:

16 400.497 Rules establishing minimum standards.--The
17 agency shall adopt, publish, and enforce rules to implement
18 this part, including, as applicable, ss. 400.506 and 400.509,
19 which must provide reasonable and fair minimum standards
20 relating to:

21 (2) Shared staffing. The agency shall allow shared
22 staffing if the home health agency is part of a retirement
23 community that provides multiple levels of care, is located on
24 one campus, is licensed under this chapter or chapter 429, and
25 otherwise meets the requirements of law and rule.

26 Section 75. Paragraph (c) of subsection (2) of section
27 400.556, Florida Statutes, is amended to read:

28 400.556 Denial, suspension, revocation of license;
29 administrative fines; investigations and inspections.--

30 (2) Each of the following actions by the owner of an
31 adult day care center or by its operator or employee is a

1 ground for action by the agency against the owner of the
2 center or its operator or employee:

3 (c) A failure of persons subject to level 2 background
4 screening under s. 429.174 ~~400.4174~~(1) to meet the screening
5 standards of s. 435.04, or the retention by the center of an
6 employee subject to level 1 background screening standards
7 under s. 429.174 ~~400.4174~~(2) who does not meet the screening
8 standards of s. 435.03 and for whom exemptions from
9 disqualification have not been provided by the agency.

10 Section 76. Paragraph (c) of subsection (2) of section
11 400.5572, Florida Statutes, is amended to read:

12 400.5572 Background screening.--

13 (2) The owner or administrator of an adult day care
14 center must conduct level 1 background screening as set forth
15 in chapter 435 on all employees hired on or after October 1,
16 1998, who provide basic services or supportive and optional
17 services to the participants. Such persons satisfy this
18 requirement if:

19 (c) The person required to be screened is employed by
20 a corporation or business entity or related corporation or
21 business entity that owns, operates, or manages more than one
22 facility or agency licensed under this chapter or chapter 429,
23 and for whom a level 1 screening was conducted by the
24 corporation or business entity as a condition of initial or
25 continued employment.

26 Section 77. Subsection (5) of section 400.601, Florida
27 Statutes, is amended to read:

28 400.601 Definitions.--As used in this part, the term:

29 (5) "Hospice residential unit" means a homelike living
30 facility, other than a facility licensed under other parts of
31 this chapter, ~~or~~ under chapter 395, or under chapter 429, that

1 is operated by a hospice for the benefit of its patients and
2 is considered by a patient who lives there to be his or her
3 primary residence.

4 Section 78. Paragraph (c) of subsection (2) of section
5 400.618, Florida Statutes, is amended to read:

6 400.618 Definitions.--As used in this part, the term:

7 (2) "Adult family-care home" means a full-time,
8 family-type living arrangement, in a private home, under which
9 a person who owns or rents the home provides room, board, and
10 personal care, on a 24-hour basis, for no more than five
11 disabled adults or frail elders who are not relatives. The
12 following family-type living arrangements are not required to
13 be licensed as an adult family-care home:

14 (c) An establishment that is licensed as an assisted
15 living facility under chapter 429 ~~part III~~.

16 Section 79. Paragraph (f) of subsection (1) of section
17 400.628, Florida Statutes, is amended to read:

18 400.628 Residents' bill of rights.--

19 (1) A resident of an adult family-care home may not be
20 deprived of any civil or legal rights, benefits, or privileges
21 guaranteed by law, the State Constitution, or the Constitution
22 of the United States solely by reason of status as a resident
23 of the home. Each resident has the right to:

24 (f) Manage the resident's own financial affairs unless
25 the resident or the resident's guardian authorizes the
26 provider to provide safekeeping for funds in accordance with
27 procedures equivalent to those provided in s. 429.27 ~~400.427~~.

28 Section 80. Paragraph (c) of subsection (5) of section
29 400.93, Florida Statutes, is amended to read:

30 400.93 Licensure required; exemptions; unlawful acts;
31 penalties.--

1 (5) The following are exempt from home medical
2 equipment provider licensure, unless they have a separate
3 company, corporation, or division that is in the business of
4 providing home medical equipment and services for sale or rent
5 to consumers at their regular or temporary place of residence
6 pursuant to the provisions of this part:

7 (c) Assisted living facilities licensed under chapter
8 429 ~~part III~~, when serving their residents.

9 Section 81. Subsection (3) and paragraph (c) of
10 subsection (10) of section 400.962, Florida Statutes, are
11 amended to read:

12 400.962 License required; license application.--

13 (3) The basic license fee collected shall be deposited
14 in the Health Care Trust Fund, established for carrying out
15 the purposes of this chapter or chapter 429.

16 (10)

17 (c) Proof of compliance with the level 2 background
18 screening requirements of chapter 435 which has been submitted
19 within the previous 5 years in compliance with any other
20 licensure requirements under this chapter or chapter 429
21 satisfies the requirements of paragraph (a). Proof of
22 compliance with background screening which has been submitted
23 within the previous 5 years to fulfill the requirements of the
24 Financial Services Commission and the Office of Insurance
25 Regulation under chapter 651 as part of an application for a
26 certificate of authority to operate a continuing care
27 retirement community satisfies the requirements for the
28 Department of Law Enforcement and Federal Bureau of
29 Investigation background checks.

30 Section 82. Paragraph (b) of subsection (1) of section
31 400.980, Florida Statutes, is amended to read:

1 400.980 Health care services pools.--

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

3 (b) "Health care services pool" means any person,
4 firm, corporation, partnership, or association engaged for
5 hire in the business of providing temporary employment in
6 health care facilities, residential facilities, and agencies
7 for licensed, certified, or trained health care personnel
8 including, without limitation, nursing assistants, nurses'
9 aides, and orderlies. However, the term does not include
10 nursing registries, a facility licensed under this chapter or
11 chapter 429 ~~400~~, a health care services pool established
12 within a health care facility to provide services only within
13 the confines of such facility, or any individual contractor
14 directly providing temporary services to a health care
15 facility without use or benefit of a contracting agent.

16 Section 83. Paragraphs (a), (b), (c), and (d) of
17 subsection (4) of section 400.9905, Florida Statutes, are
18 amended to read:

19 400.9905 Definitions.--

20 (4) "Clinic" means an entity at which health care
21 services are provided to individuals and which tenders charges
22 for reimbursement for such services, including a mobile clinic
23 and a portable equipment provider. For purposes of this part,
24 the term does not include and the licensure requirements of
25 this part do not apply to:

26 (a) Entities licensed or registered by the state under
27 chapter 395; or entities licensed or registered by the state
28 and providing only health care services within the scope of
29 services authorized under their respective licenses granted
30 under ss. 383.30-383.335, chapter 390, chapter 394, chapter
31 397, this chapter except part XIII, chapter 429, chapter 463,

1 chapter 465, chapter 466, chapter 478, part I of chapter 483,
2 chapter 484, or chapter 651; end-stage renal disease providers
3 authorized under 42 C.F.R. part 405, subpart U; or providers
4 certified under 42 C.F.R. part 485, subpart B or subpart H; or
5 any entity that provides neonatal or pediatric hospital-based
6 health care services by licensed practitioners solely within a
7 hospital licensed under chapter 395.

8 (b) Entities that own, directly or indirectly,
9 entities licensed or registered by the state pursuant to
10 chapter 395; or entities that own, directly or indirectly,
11 entities licensed or registered by the state and providing
12 only health care services within the scope of services
13 authorized pursuant to their respective licenses granted under
14 ss. 383.30-383.335, chapter 390, chapter 394, chapter 397,
15 this chapter except part XIII, chapter 429, chapter 463,
16 chapter 465, chapter 466, chapter 478, part I of chapter 483,
17 chapter 484, chapter 651; end-stage renal disease providers
18 authorized under 42 C.F.R. part 405, subpart U; or providers
19 certified under 42 C.F.R. part 485, subpart B or subpart H; or
20 any entity that provides neonatal or pediatric hospital-based
21 health care services by licensed practitioners solely within a
22 hospital licensed under chapter 395.

23 (c) Entities that are owned, directly or indirectly,
24 by an entity licensed or registered by the state pursuant to
25 chapter 395; or entities that are owned, directly or
26 indirectly, by an entity licensed or registered by the state
27 and providing only health care services within the scope of
28 services authorized pursuant to their respective licenses
29 granted under ss. 383.30-383.335, chapter 390, chapter 394,
30 chapter 397, this chapter except part XIII, chapter 429,
31 chapter 463, chapter 465, chapter 466, chapter 478, part I of

1 chapter 483, chapter 484, or chapter 651; end-stage renal
2 disease providers authorized under 42 C.F.R. part 405, subpart
3 U; or providers certified under 42 C.F.R. part 485, subpart B
4 or subpart H; or any entity that provides neonatal or
5 pediatric hospital-based health care services by licensed
6 practitioners solely within a hospital under chapter 395.

7 (d) Entities that are under common ownership, directly
8 or indirectly, with an entity licensed or registered by the
9 state pursuant to chapter 395; or entities that are under
10 common ownership, directly or indirectly, with an entity
11 licensed or registered by the state and providing only health
12 care services within the scope of services authorized pursuant
13 to their respective licenses granted under ss. 383.30-383.335,
14 chapter 390, chapter 394, chapter 397, this chapter except
15 part XIII, chapter 429, chapter 463, chapter 465, chapter 466,
16 chapter 478, part I of chapter 483, chapter 484, or chapter
17 651; end-stage renal disease providers authorized under 42
18 C.F.R. part 405, subpart U; or providers certified under 42
19 C.F.R. part 485, subpart B or subpart H; or any entity that
20 provides neonatal or pediatric hospital-based health care
21 services by licensed practitioners solely within a hospital
22 licensed under chapter 395.

23 Section 84. Subsection (6) of section 400.9935,
24 Florida Statutes, is amended to read:

25 400.9935 Clinic responsibilities.--

26 (6) Any licensed health care provider who violates
27 this part is subject to discipline in accordance with this
28 chapter or chapter 429 and his or her respective practice act.

29 Section 85. Subsection (12) of section 401.23, Florida
30 Statutes, is amended to read:

31 401.23 Definitions.--As used in this part, the term:

1 (12) "Interfacility transfer" means the transportation
2 by ambulance of a patient between two facilities licensed
3 under chapter 393, chapter 395, ~~or~~ chapter 400, or chapter
4 429, pursuant to this part.

5 Section 86. Paragraph (b) of subsection (2) of section
6 402.164, Florida Statutes, is amended to read:

7 402.164 Legislative intent; definitions.--

8 (2) As used in ss. 402.164-402.167, the term:

9 (b) "Client" means a client as defined in s. 393.063,
10 s. 394.67, s. 397.311, or s. 400.960, a forensic client or
11 client as defined in s. 916.106, a child or youth as defined
12 in s. 39.01, a child as defined in s. 827.01, a family as
13 defined in s. 414.0252, a participant as defined in s.
14 400.551, a resident as defined in s. 429.02 ~~400.402~~, a
15 Medicaid recipient or recipient as defined in s. 409.901, a
16 child receiving child care as defined in s. 402.302, a
17 disabled adult as defined in s. 410.032 or s. 410.603, or a
18 victim as defined in s. 39.01 or s. 415.102 as each definition
19 applies within its respective chapter.

20 Section 87. Paragraph (b) of subsection (2) of section
21 408.033, Florida Statutes, is amended to read:

22 408.033 Local and state health planning.--

23 (2) FUNDING.--

24 (b)1. A hospital licensed under chapter 395, a nursing
25 home licensed under chapter 400, and an assisted living
26 facility licensed under chapter 429 ~~400~~ shall be assessed an
27 annual fee based on number of beds.

28 2. All other facilities and organizations listed in
29 paragraph (a) shall each be assessed an annual fee of \$150.

30 3. Facilities operated by the Department of Children
31 and Family Services, the Department of Health, or the

1 Department of Corrections and any hospital which meets the
2 definition of rural hospital pursuant to s. 395.602 are exempt
3 from the assessment required in this subsection.

4 Section 88. Subsection (3) of section 408.831, Florida
5 Statutes, is amended to read:

6 408.831 Denial, suspension, or revocation of a
7 license, registration, certificate, or application.--

8 (3) This section provides standards of enforcement
9 applicable to all entities licensed or regulated by the Agency
10 for Health Care Administration. This section controls over any
11 conflicting provisions of chapters 39, 381, 383, 390, 391,
12 393, 394, 395, 400, 408, 429, 468, 483, and 641 or rules
13 adopted pursuant to those chapters.

14 Section 89. Subsection (2) of section 409.212, Florida
15 Statutes, is amended to read:

16 409.212 Optional supplementation.--

17 (2) The base rate of payment for optional state
18 supplementation shall be established by the department within
19 funds appropriated. Additional amounts may be provided for
20 mental health residents in facilities designed to provide
21 limited mental health services as provided for in s. 429.075
22 ~~400.4075~~. The base rate of payment does not include the
23 personal needs allowance.

24 Section 90. Subsection (7) and paragraph (a) of
25 subsection (8) of section 409.907, Florida Statutes, are
26 amended to read:

27 409.907 Medicaid provider agreements.--The agency may
28 make payments for medical assistance and related services
29 rendered to Medicaid recipients only to an individual or
30 entity who has a provider agreement in effect with the agency,
31 who is performing services or supplying goods in accordance

1 | with federal, state, and local law, and who agrees that no
2 | person shall, on the grounds of handicap, race, color, or
3 | national origin, or for any other reason, be subjected to
4 | discrimination under any program or activity for which the
5 | provider receives payment from the agency.

6 | (7) The agency may require, as a condition of
7 | participating in the Medicaid program and before entering into
8 | the provider agreement, that the provider submit information,
9 | in an initial and any required renewal applications,
10 | concerning the professional, business, and personal background
11 | of the provider and permit an onsite inspection of the
12 | provider's service location by agency staff or other personnel
13 | designated by the agency to perform this function. The agency
14 | shall perform a random onsite inspection, within 60 days after
15 | receipt of a fully complete new provider's application, of the
16 | provider's service location prior to making its first payment
17 | to the provider for Medicaid services to determine the
18 | applicant's ability to provide the services that the applicant
19 | is proposing to provide for Medicaid reimbursement. The agency
20 | is not required to perform an onsite inspection of a provider
21 | or program that is licensed by the agency, that provides
22 | services under waiver programs for home and community-based
23 | services, or that is licensed as a medical foster home by the
24 | Department of Children and Family Services. As a continuing
25 | condition of participation in the Medicaid program, a provider
26 | shall immediately notify the agency of any current or pending
27 | bankruptcy filing. Before entering into the provider
28 | agreement, or as a condition of continuing participation in
29 | the Medicaid program, the agency may also require that
30 | Medicaid providers reimbursed on a fee-for-services basis or
31 | fee schedule basis which is not cost-based, post a surety bond

1 | not to exceed \$50,000 or the total amount billed by the
2 | provider to the program during the current or most recent
3 | calendar year, whichever is greater. For new providers, the
4 | amount of the surety bond shall be determined by the agency
5 | based on the provider's estimate of its first year's billing.
6 | If the provider's billing during the first year exceeds the
7 | bond amount, the agency may require the provider to acquire an
8 | additional bond equal to the actual billing level of the
9 | provider. A provider's bond shall not exceed \$50,000 if a
10 | physician or group of physicians licensed under chapter 458,
11 | chapter 459, or chapter 460 has a 50 percent or greater
12 | ownership interest in the provider or if the provider is an
13 | assisted living facility licensed under ~~part III of chapter~~
14 | 429 400. The bonds permitted by this section are in addition
15 | to the bonds referenced in s. 400.179(4)(d). If the provider
16 | is a corporation, partnership, association, or other entity,
17 | the agency may require the provider to submit information
18 | concerning the background of that entity and of any principal
19 | of the entity, including any partner or shareholder having an
20 | ownership interest in the entity equal to 5 percent or
21 | greater, and any treating provider who participates in or
22 | intends to participate in Medicaid through the entity. The
23 | information must include:

24 | (a) Proof of holding a valid license or operating
25 | certificate, as applicable, if required by the state or local
26 | jurisdiction in which the provider is located or if required
27 | by the Federal Government.

28 | (b) Information concerning any prior violation, fine,
29 | suspension, termination, or other administrative action taken
30 | under the Medicaid laws, rules, or regulations of this state
31 | or of any other state or the Federal Government; any prior

1 violation of the laws, rules, or regulations relating to the
2 Medicare program; any prior violation of the rules or
3 regulations of any other public or private insurer; and any
4 prior violation of the laws, rules, or regulations of any
5 regulatory body of this or any other state.

6 (c) Full and accurate disclosure of any financial or
7 ownership interest that the provider, or any principal,
8 partner, or major shareholder thereof, may hold in any other
9 Medicaid provider or health care related entity or any other
10 entity that is licensed by the state to provide health or
11 residential care and treatment to persons.

12 (d) If a group provider, identification of all members
13 of the group and attestation that all members of the group are
14 enrolled in or have applied to enroll in the Medicaid program.

15 (8)(a) Each provider, or each principal of the
16 provider if the provider is a corporation, partnership,
17 association, or other entity, seeking to participate in the
18 Medicaid program must submit a complete set of his or her
19 fingerprints to the agency for the purpose of conducting a
20 criminal history record check. Principals of the provider
21 include any officer, director, billing agent, managing
22 employee, or affiliated person, or any partner or shareholder
23 who has an ownership interest equal to 5 percent or more in
24 the provider. However, a director of a not-for-profit
25 corporation or organization is not a principal for purposes of
26 a background investigation as required by this section if the
27 director: serves solely in a voluntary capacity for the
28 corporation or organization, does not regularly take part in
29 the day-to-day operational decisions of the corporation or
30 organization, receives no remuneration from the not-for-profit
31 corporation or organization for his or her service on the

1 board of directors, has no financial interest in the
2 not-for-profit corporation or organization, and has no family
3 members with a financial interest in the not-for-profit
4 corporation or organization; and if the director submits an
5 affidavit, under penalty of perjury, to this effect to the
6 agency and the not-for-profit corporation or organization
7 submits an affidavit, under penalty of perjury, to this effect
8 to the agency as part of the corporation's or organization's
9 Medicaid provider agreement application. Notwithstanding the
10 above, the agency may require a background check for any
11 person reasonably suspected by the agency to have been
12 convicted of a crime. This subsection shall not apply to:

- 13 1. A hospital licensed under chapter 395;
- 14 2. A nursing home licensed under chapter 400;
- 15 3. A hospice licensed under chapter 400;
- 16 4. An assisted living facility licensed under chapter
17 429 400.
- 18 5. A unit of local government, except that
19 requirements of this subsection apply to nongovernmental
20 providers and entities when contracting with the local
21 government to provide Medicaid services. The actual cost of
22 the state and national criminal history record checks must be
23 borne by the nongovernmental provider or entity; or
- 24 6. Any business that derives more than 50 percent of
25 its revenue from the sale of goods to the final consumer, and
26 the business or its controlling parent either is required to
27 file a form 10-K or other similar statement with the
28 Securities and Exchange Commission or has a net worth of \$50
29 million or more.

30 Section 91. Section 410.031, Florida Statutes, is
31 amended to read:

1 410.031 Legislative intent.--It is the intent of the
2 Legislature to encourage the provision of care for disabled
3 adults in family-type living arrangements in private homes as
4 an alternative to institutional or nursing home care for such
5 persons. The provisions of ss. 410.031-410.036 are intended to
6 be supplemental to the provisions of chapters ~~chapter~~ 400 and
7 429, relating to the licensing and regulation of nursing homes
8 and assisted living facilities, and do not exempt any person
9 who is otherwise subject to regulation under chapter 400 or
10 chapter 429.

11 Section 92. Section 410.034, Florida Statutes, is
12 amended to read:

13 410.034 Department determination of fitness to provide
14 home care.--In accordance with s. 429.02 ~~400.402~~, a person
15 caring for an adult who is related to such person by blood or
16 marriage is not subject to the Assisted Living Facilities Act.
17 If, however, the person who plans to provide home care under
18 this act is found by the department to be unable to provide
19 this care, the department shall notify the person wishing to
20 provide home care of this determination, and the person shall
21 not be eligible for subsidy payments under ss.
22 410.031-410.036.

23 Section 93. Section 415.1111, Florida Statutes, is
24 amended to read:

25 415.1111 Civil actions.--A vulnerable adult who has
26 been abused, neglected, or exploited as specified in this
27 chapter has a cause of action against any perpetrator and may
28 recover actual and punitive damages for such abuse, neglect,
29 or exploitation. The action may be brought by the vulnerable
30 adult, or that person's guardian, by a person or organization
31 acting on behalf of the vulnerable adult with the consent of

1 | that person or that person's guardian, or by the personal
2 | representative of the estate of a deceased victim without
3 | regard to whether the cause of death resulted from the abuse,
4 | neglect, or exploitation. The action may be brought in any
5 | court of competent jurisdiction to enforce such action and to
6 | recover actual and punitive damages for any deprivation of or
7 | infringement on the rights of a vulnerable adult. A party who
8 | prevails in any such action may be entitled to recover
9 | reasonable attorney's fees, costs of the action, and damages.
10 | The remedies provided in this section are in addition to and
11 | cumulative with other legal and administrative remedies
12 | available to a vulnerable adult. Notwithstanding the
13 | foregoing, any civil action for damages against any licensee
14 | or entity who establishes, controls, conducts, manages, or
15 | operates a facility licensed under part II of chapter 400
16 | relating to its operation of the licensed facility shall be
17 | brought pursuant to s. 400.023, or against any licensee or
18 | entity who establishes, controls, conducts, manages, or
19 | operates a facility licensed under ~~part III~~ of chapter 429 ~~400~~
20 | relating to its operation of the licensed facility shall be
21 | brought pursuant to s. 429.29 ~~400.429~~. Such licensee or entity
22 | shall not be vicariously liable for the acts or omissions of
23 | its employees or agents or any other third party in an action
24 | brought under this section.

25 | Section 94. Section 430.601, Florida Statutes, is
26 | amended to read:

27 | 430.601 Home care for the elderly; legislative
28 | intent.--It is the intent of the Legislature to encourage the
29 | provision of care for the elderly in family-type living
30 | arrangements in private homes as an alternative to
31 | institutional or nursing home care for such persons. The

1 provisions of ss. 430.601-430.606 are intended to be
2 supplemental to the provisions of ~~chapters~~ chapter 400 and
3 429, relating to the licensing and regulation of nursing homes
4 and assisted living facilities, and do not exempt any person
5 who is otherwise subject to regulation under those chapters
6 ~~the provisions of that chapter~~.

7 Section 95. Subsection (7) of section 430.703, Florida
8 Statutes, is amended to read:

9 430.703 Definitions.--As used in this act, the term:

10 (7) "Other qualified provider" means an entity
11 licensed under chapter 400 or chapter 429 that demonstrates a
12 long-term care continuum and meets all requirements pursuant
13 to an interagency agreement between the agency and the
14 department.

15 Section 96. Paragraph (a) of subsection (3) of section
16 435.03, Florida Statutes, is amended to read:

17 435.03 Level 1 screening standards.--

18 (3) Standards must also ensure that the person:

19 (a) For employees and employers licensed or registered
20 pursuant to chapter 400 or chapter 429, and for employees and
21 employers of developmental services institutions as defined in
22 s. 393.063, intermediate care facilities for the
23 developmentally disabled as defined in s. 393.063, and mental
24 health treatment facilities as defined in s. 394.455, meets
25 the requirements of this chapter.

26 Section 97. Paragraph (a) of subsection (4) of section
27 435.04, Florida Statutes, is amended to read:

28 435.04 Level 2 screening standards.--

29 (4) Standards must also ensure that the person:

30 (a) For employees or employers licensed or registered
31 pursuant to chapter 400 or chapter 429, does not have a

1 confirmed report of abuse, neglect, or exploitation as defined
2 in s. 415.102(6), which has been uncontested or upheld under
3 s. 415.103.

4 Section 98. Paragraph (g) of subsection (1) of section
5 440.13, Florida Statutes, is amended to read:

6 440.13 Medical services and supplies; penalty for
7 violations; limitations.--

8 (1) DEFINITIONS.--As used in this section, the term:

9 (g) "Health care facility" means any hospital licensed
10 under chapter 395 and any health care institution licensed
11 under chapter 400 or chapter 429.

12 Section 99. Paragraph (b) of subsection (1) of section
13 456.0375, Florida Statutes, is amended to read:

14 456.0375 Registration of certain clinics;
15 requirements; discipline; exemptions.--

16 (1)

17 (b) For purposes of this section, the term "clinic"
18 does not include and the registration requirements herein do
19 not apply to:

20 1. Entities licensed or registered by the state
21 pursuant to chapter 390, chapter 394, chapter 395, chapter
22 397, chapter 400, chapter 429, chapter 463, chapter 465,
23 chapter 466, chapter 478, chapter 480, chapter 484, or chapter
24 651.

25 2. Entities that own, directly or indirectly, entities
26 licensed or registered by the state pursuant to chapter 390,
27 chapter 394, chapter 395, chapter 397, chapter 400, chapter
28 429, chapter 463, chapter 465, chapter 466, chapter 478,
29 chapter 480, chapter 484, or chapter 651.

30 3. Entities that are owned, directly or indirectly, by
31 an entity licensed or registered by the state pursuant to

1 chapter 390, chapter 394, chapter 395, chapter 397, chapter
2 400, chapter 429, chapter 463, chapter 465, chapter 466,
3 chapter 478, chapter 480, chapter 484, or chapter 651.

4 4. Entities that are under common ownership, directly
5 or indirectly, with an entity licensed or registered by the
6 state pursuant to chapter 390, chapter 394, chapter 395,
7 chapter 397, chapter 400, chapter 429, chapter 463, chapter
8 465, chapter 466, chapter 478, chapter 480, chapter 484, or
9 chapter 651.

10 5. Entities exempt from federal taxation under 26
11 U.S.C. s. 501(c)(3) and community college and university
12 clinics.

13 6. Sole proprietorships, group practices,
14 partnerships, or corporations that provide health care
15 services by licensed health care practitioners pursuant to
16 chapters 457, 458, 459, 460, 461, 462, 463, 466, 467, 484,
17 486, 490, 491, or part I, part III, part X, part XIII, or part
18 XIV of chapter 468, or s. 464.012, which are wholly owned by
19 licensed health care practitioners or the licensed health care
20 practitioner and the spouse, parent, or child of a licensed
21 health care practitioner, so long as one of the owners who is
22 a licensed health care practitioner is supervising the
23 services performed therein and is legally responsible for the
24 entity's compliance with all federal and state laws. However,
25 no health care practitioner may supervise services beyond the
26 scope of the practitioner's license.

27 7. Clinical facilities affiliated with an accredited
28 medical school at which training is provided for medical
29 students, residents, or fellows.

30 Section 100. Subsection (1) of section 465.0235,
31 Florida Statutes, is amended to read:

1 465.0235 Automated pharmacy systems used by long-term
2 care facilities, hospices, or state correctional
3 institutions.--

4 (1) A pharmacy may provide pharmacy services to a
5 long-term care facility or hospice licensed under chapter 400
6 or chapter 429 or a state correctional institution operated
7 under chapter 944 through the use of an automated pharmacy
8 system that need not be located at the same location as the
9 pharmacy.

10 Section 101. Paragraph (k) of subsection (1) of
11 section 468.505, Florida Statutes, is amended to read:

12 468.505 Exemptions; exceptions.--

13 (1) Nothing in this part may be construed as
14 prohibiting or restricting the practice, services, or
15 activities of:

16 (k) A person employed by a hospital licensed under
17 chapter 395, or by a nursing home or assisted living facility
18 licensed under part II ~~or part III~~ of chapter 400 or under
19 chapter 429, or by a continuing care facility certified under
20 chapter 651, if the person is employed in compliance with the
21 laws and rules adopted thereunder regarding the operation of
22 its dietetic department.

23 Section 102. Subsection (11) of section 477.025,
24 Florida Statutes, is amended to read:

25 477.025 Cosmetology salons; specialty salons;
26 requisites; licensure; inspection; mobile cosmetology
27 salons.--

28 (11) Facilities licensed under part II ~~or part III~~ of
29 chapter 400 or under chapter 429 shall be exempt from the
30 provisions of this section and a cosmetologist licensed
31

1 pursuant to s. 477.019 may provide salon services exclusively
2 for facility residents.

3 Section 103. Paragraph (a) of subsection (2) of
4 section 509.032, Florida Statutes, is amended to read:

5 509.032 Duties.--

6 (2) INSPECTION OF PREMISES.--

7 (a) The division has responsibility and jurisdiction
8 for all inspections required by this chapter. The division
9 has responsibility for quality assurance. Each licensed
10 establishment shall be inspected at least biannually, except
11 for transient and nontransient apartments, which shall be
12 inspected at least annually, and shall be inspected at such
13 other times as the division determines is necessary to ensure
14 the public's health, safety, and welfare. The division shall
15 establish a system to determine inspection frequency. Public
16 lodging units classified as resort condominiums or resort
17 dwellings are not subject to this requirement, but shall be
18 made available to the division upon request. If, during the
19 inspection of a public lodging establishment classified for
20 renting to transient or nontransient tenants, an inspector
21 identifies vulnerable adults who appear to be victims of
22 neglect, as defined in s. 415.102, or, in the case of a
23 building that is not equipped with automatic sprinkler
24 systems, tenants or clients who may be unable to self-preserve
25 in an emergency, the division shall convene meetings with the
26 following agencies as appropriate to the individual situation:
27 the Department of Health, the Department of Elderly Affairs,
28 the area agency on aging, the local fire marshal, the landlord
29 and affected tenants and clients, and other relevant
30 organizations, to develop a plan which improves the prospects
31 for safety of affected residents and, if necessary, identifies

1 alternative living arrangements such as facilities licensed
2 under part II ~~or part III~~ of chapter 400 or under chapter 429.

3 Section 104. Subsection (1) of section 509.241,
4 Florida Statutes, is amended to read:

5 509.241 Licenses required; exceptions.--

6 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
7 establishment and public food service establishment shall
8 obtain a license from the division. Such license may not be
9 transferred from one place or individual to another. It shall
10 be a misdemeanor of the second degree, punishable as provided
11 in s. 775.082 or s. 775.083, for such an establishment to
12 operate without a license. Local law enforcement shall provide
13 immediate assistance in pursuing an illegally operating
14 establishment. The division may refuse a license, or a renewal
15 thereof, to any establishment that is not constructed and
16 maintained in accordance with law and with the rules of the
17 division. The division may refuse to issue a license, or a
18 renewal thereof, to any establishment an operator of which,
19 within the preceding 5 years, has been adjudicated guilty of,
20 or has forfeited a bond when charged with, any crime
21 reflecting on professional character, including soliciting for
22 prostitution, pandering, letting premises for prostitution,
23 keeping a disorderly place, or illegally dealing in controlled
24 substances as defined in chapter 893, whether in this state or
25 in any other jurisdiction within the United States, or has had
26 a license denied, revoked, or suspended pursuant to s. 429.14
27 ~~400.414~~. Licenses shall be renewed annually, and the division
28 shall adopt a rule establishing a staggered schedule for
29 license renewals. If any license expires while administrative
30 charges are pending against the license, the proceedings

31

1 | against the license shall continue to conclusion as if the
2 | license were still in effect.

3 | Section 105. Subsection (1) of section 627.732,
4 | Florida Statutes, is amended to read:

5 | 627.732 Definitions.--As used in ss. 627.730-627.7405,
6 | the term:

7 | (1) "Broker" means any person not possessing a license
8 | under chapter 395, chapter 400, chapter 429, chapter 458,
9 | chapter 459, chapter 460, chapter 461, or chapter 641 who
10 | charges or receives compensation for any use of medical
11 | equipment and is not the 100-percent owner or the 100-percent
12 | lessee of such equipment. For purposes of this section, such
13 | owner or lessee may be an individual, a corporation, a
14 | partnership, or any other entity and any of its
15 | 100-percent-owned affiliates and subsidiaries. For purposes of
16 | this subsection, the term "lessee" means a long-term lessee
17 | under a capital or operating lease, but does not include a
18 | part-time lessee. The term "broker" does not include a
19 | hospital or physician management company whose medical
20 | equipment is ancillary to the practices managed, a debt
21 | collection agency, or an entity that has contracted with the
22 | insurer to obtain a discounted rate for such services; nor
23 | does the term include a management company that has contracted
24 | to provide general management services for a licensed
25 | physician or health care facility and whose compensation is
26 | not materially affected by the usage or frequency of usage of
27 | medical equipment or an entity that is 100-percent owned by
28 | one or more hospitals or physicians. The term "broker" does
29 | not include a person or entity that certifies, upon request of
30 | an insurer, that:

31 |

1 (a) It is a clinic registered under s. 456.0375 or
2 licensed under ss. 400.990-400.995;

3 (b) It is a 100-percent owner of medical equipment;
4 and

5 (c) The owner's only part-time lease of medical
6 equipment for personal injury protection patients is on a
7 temporary basis not to exceed 30 days in a 12-month period,
8 and such lease is solely for the purposes of necessary repair
9 or maintenance of the 100-percent-owned medical equipment or
10 pending the arrival and installation of the newly purchased or
11 a replacement for the 100-percent-owned medical equipment, or
12 for patients for whom, because of physical size or
13 claustrophobia, it is determined by the medical director or
14 clinical director to be medically necessary that the test be
15 performed in medical equipment that is open-style. The leased
16 medical equipment cannot be used by patients who are not
17 patients of the registered clinic for medical treatment of
18 services. Any person or entity making a false certification
19 under this subsection commits insurance fraud as defined in s.
20 817.234. However, the 30-day period provided in this paragraph
21 may be extended for an additional 60 days as applicable to
22 magnetic resonance imaging equipment if the owner certifies
23 that the extension otherwise complies with this paragraph.

24 Section 106. Subsection (2) of section 651.011,
25 Florida Statutes, is amended to read:

26 651.011 Definitions.--For the purposes of this
27 chapter, the term:

28 (2) "Continuing care" or "care" means furnishing
29 pursuant to a contract shelter and either nursing care or
30 personal services as defined in s. 429.02 ~~400.402~~, whether
31 such nursing care or personal services are provided in the

1 facility or in another setting designated by the contract for
2 continuing care, to an individual not related by consanguinity
3 or affinity to the provider furnishing such care, upon payment
4 of an entrance fee. Other personal services provided shall be
5 designated in the continuing care contract. Contracts to
6 provide continuing care include agreements to provide care for
7 any duration, including contracts that are terminable by
8 either party.

9 Section 107. Paragraph (c) of subsection (2) of
10 section 651.022, Florida Statutes, is amended to read:

11 651.022 Provisional certificate of authority;
12 application.--

13 (2) The application for a provisional certificate of
14 authority shall be on a form prescribed by the commission and
15 shall contain the following information:

16 (c)1. Evidence that the applicant is reputable and of
17 responsible character. If the applicant is a firm,
18 association, organization, partnership, business trust,
19 corporation, or company, the form shall require evidence that
20 the members or shareholders are reputable and of responsible
21 character, and the person in charge of providing care under a
22 certificate of authority shall likewise be required to produce
23 evidence of being reputable and of responsible character.

24 2. Evidence satisfactory to the office of the ability
25 of the applicant to comply with the provisions of this chapter
26 and with rules adopted by the commission pursuant to this
27 chapter.

28 3. A statement of whether a person identified in the
29 application for a provisional certificate of authority or the
30 administrator or manager of the facility, if such person has
31

1 | been designated, or any such person living in the same
2 | location:

3 | a. Has been convicted of a felony or has pleaded nolo
4 | contendere to a felony charge, or has been held liable or has
5 | been enjoined in a civil action by final judgment, if the
6 | felony or civil action involved fraud, embezzlement,
7 | fraudulent conversion, or misappropriation of property.

8 | b. Is subject to a currently effective injunctive or
9 | restrictive order or federal or state administrative order
10 | relating to business activity or health care as a result of an
11 | action brought by a public agency or department, including,
12 | without limitation, an action affecting a license under
13 | chapter 400 or chapter 429.

14 |
15 | The statement shall set forth the court or agency, the date of
16 | conviction or judgment, and the penalty imposed or damages
17 | assessed, or the date, nature, and issuer of the
18 | order. Before determining whether a provisional certificate
19 | of authority is to be issued, the office may make an inquiry
20 | to determine the accuracy of the information submitted
21 | pursuant to subparagraphs 1. and 2.

22 | Section 108. Subsection (6) of section 651.023,
23 | Florida Statutes, is amended to read:

24 | 651.023 Certificate of authority; application.--

25 | (6) The timeframes provided under s. 651.022(5) and
26 | (6) apply to applications submitted under s. 651.021(2). The
27 | office may not issue a certificate of authority under this
28 | chapter to any facility which does not have a component which
29 | is to be licensed pursuant to part II ~~or part III~~ of chapter
30 | 400 or to chapter 429 or which will not offer personal
31 | services or nursing services through written contractual

1 agreement. Any written contractual agreement must be disclosed
2 in the continuing care contract and is subject to the
3 provisions of s. 651.1151, relating to administrative, vendor,
4 and management contracts.

5 Section 109. Subsection (8) of section 651.055,
6 Florida Statutes, is amended to read:

7 651.055 Contracts; right to rescind.--

8 (8) The provisions of this section shall control over
9 any conflicting provisions contained in part II ~~or part III~~ of
10 chapter 400 or in chapter 429.

11 Section 110. Subsection (5) of section 651.095,
12 Florida Statutes, is amended to read:

13 651.095 Advertisements; requirements; penalties.--

14 (5) The provisions of this section shall control over
15 any conflicting provisions contained in part II ~~or part III~~ of
16 chapter 400 or in chapter 429.

17 Section 111. Subsections (1), (4), (6), and (8) of
18 section 651.118, Florida Statutes, are amended to read:

19 651.118 Agency for Health Care Administration;
20 certificates of need; sheltered beds; community beds.--

21 (1) The provisions of this section shall control in
22 the case of conflict with the provisions of the Health
23 Facility and Services Development Act, ss. 408.031-408.045;
24 the provisions of chapter 395; ~~or~~ the provisions of part II
25 ~~parts II and III~~ of chapter 400; or the provisions of chapter
26 429.

27 (4) The Agency for Health Care Administration shall
28 approve one sheltered nursing home bed for every four proposed
29 residential units, including those that are licensed under
30 chapter 429 ~~part III of chapter 400~~, in the continuing care
31 facility unless the provider demonstrates the need for a

1 | lesser number of sheltered nursing home beds based on proposed
2 | utilization by prospective residents or demonstrates the need
3 | for additional sheltered nursing home beds based on actual
4 | utilization and demand by current residents.

5 | (6) Unless the provider already has a component that
6 | is to be a part of the continuing care facility and that is
7 | licensed under chapter 395, ~~or part II or part III~~ of chapter
8 | 400, or chapter 429 at the time of construction of the
9 | continuing care facility, the provider must construct the
10 | nonnursing home portion of the facility and the nursing home
11 | portion of the facility at the same time. If a provider
12 | constructs less than the number of residential units approved
13 | in the certificate of authority, the number of licensed
14 | sheltered nursing home beds shall be reduced by a
15 | proportionate share.

16 | (8) A provider may petition the Agency for Health Care
17 | Administration to use a designated number of sheltered nursing
18 | home beds to provide extended congregate care as defined in s.
19 | 429.02 ~~400.402~~ if the beds are in a distinct area of the
20 | nursing home which can be adapted to meet the requirements for
21 | extended congregate care. The provider may subsequently use
22 | such beds as sheltered beds after notifying the agency of the
23 | intended change. Any sheltered beds used to provide extended
24 | congregate care pursuant to this subsection may not qualify
25 | for funding under the Medicaid waiver. Any sheltered beds used
26 | to provide extended congregate care pursuant to this
27 | subsection may share common areas, services, and staff with
28 | beds designated for nursing home care, provided that all of
29 | the beds are under common ownership. For the purposes of this
30 | subsection, fire and life safety codes applicable to nursing
31 | home facilities shall apply.

1 Section 112. Subsection (2) of section 765.1103,
2 Florida Statutes, is amended to read:

3 765.1103 Pain management and palliative care.--

4 (2) Health care providers and practitioners regulated
5 under chapter 458, chapter 459, or chapter 464 must, as
6 appropriate, comply with a request for pain management or
7 palliative care from a patient under their care or, for an
8 incapacitated patient under their care, from a surrogate,
9 proxy, guardian, or other representative permitted to make
10 health care decisions for the incapacitated patient.
11 Facilities regulated under chapter 395, ~~or~~ chapter 400, or
12 chapter 429 must comply with the pain management or palliative
13 care measures ordered by the patient's physician.

14 Section 113. Subsection (2) of section 765.205,
15 Florida Statutes, is amended to read:

16 765.205 Responsibility of the surrogate.--

17 (2) The surrogate may authorize the release of
18 information and medical records to appropriate persons to
19 ensure the continuity of the principal's health care and may
20 authorize the admission, discharge, or transfer of the
21 principal to or from a health care facility or other facility
22 or program licensed under chapter 400 or chapter 429.

23 Section 114. Subsection (1) of section 768.735,
24 Florida Statutes, is amended to read:

25 768.735 Punitive damages; exceptions; limitation.--

26 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
27 apply to any civil action based upon child abuse, abuse of the
28 elderly under chapter 415, or abuse of the developmentally
29 disabled. Such actions are governed by applicable statutes and
30 controlling judicial precedent. This section does not apply to
31 claims brought pursuant to s. 400.023 or s. 429.29 ~~400.429~~.

1 Section 115. Paragraph (a) of subsection (4) of
2 section 943.0585, Florida Statutes, is amended to read:

3 943.0585 Court-ordered expunction of criminal history
4 records.--The courts of this state have jurisdiction over
5 their own procedures, including the maintenance, expunction,
6 and correction of judicial records containing criminal history
7 information to the extent such procedures are not inconsistent
8 with the conditions, responsibilities, and duties established
9 by this section. Any court of competent jurisdiction may order
10 a criminal justice agency to expunge the criminal history
11 record of a minor or an adult who complies with the
12 requirements of this section. The court shall not order a
13 criminal justice agency to expunge a criminal history record
14 until the person seeking to expunge a criminal history record
15 has applied for and received a certificate of eligibility for
16 expunction pursuant to subsection (2). A criminal history
17 record that relates to a violation of s. 393.135, s. 394.4593,
18 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
19 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
20 s. 847.0145, s. 893.135, s. 916.1075, or a violation
21 enumerated in s. 907.041 may not be expunged, without regard
22 to whether adjudication was withheld, if the defendant was
23 found guilty of or pled guilty or nolo contendere to the
24 offense, or if the defendant, as a minor, was found to have
25 committed, or pled guilty or nolo contendere to committing,
26 the offense as a delinquent act. The court may only order
27 expunction of a criminal history record pertaining to one
28 arrest or one incident of alleged criminal activity, except as
29 provided in this section. The court may, at its sole
30 discretion, order the expunction of a criminal history record
31 pertaining to more than one arrest if the additional arrests

1 directly relate to the original arrest. If the court intends
2 to order the expunction of records pertaining to such
3 additional arrests, such intent must be specified in the
4 order. A criminal justice agency may not expunge any record
5 pertaining to such additional arrests if the order to expunge
6 does not articulate the intention of the court to expunge a
7 record pertaining to more than one arrest. This section does
8 not prevent the court from ordering the expunction of only a
9 portion of a criminal history record pertaining to one arrest
10 or one incident of alleged criminal activity. Notwithstanding
11 any law to the contrary, a criminal justice agency may comply
12 with laws, court orders, and official requests of other
13 jurisdictions relating to expunction, correction, or
14 confidential handling of criminal history records or
15 information derived therefrom. This section does not confer
16 any right to the expunction of any criminal history record,
17 and any request for expunction of a criminal history record
18 may be denied at the sole discretion of the court.

19 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
20 criminal history record of a minor or an adult which is
21 ordered expunged by a court of competent jurisdiction pursuant
22 to this section must be physically destroyed or obliterated by
23 any criminal justice agency having custody of such record;
24 except that any criminal history record in the custody of the
25 department must be retained in all cases. A criminal history
26 record ordered expunged that is retained by the department is
27 confidential and exempt from the provisions of s. 119.07(1)
28 and s. 24(a), Art. I of the State Constitution and not
29 available to any person or entity except upon order of a court
30 of competent jurisdiction. A criminal justice agency may
31

1 retain a notation indicating compliance with an order to
2 expunge.

3 (a) The person who is the subject of a criminal
4 history record that is expunged under this section or under
5 other provisions of law, including former s. 893.14, former s.
6 901.33, and former s. 943.058, may lawfully deny or fail to
7 acknowledge the arrests covered by the expunged record, except
8 when the subject of the record:

9 1. Is a candidate for employment with a criminal
10 justice agency;

11 2. Is a defendant in a criminal prosecution;

12 3. Concurrently or subsequently petitions for relief
13 under this section or s. 943.059;

14 4. Is a candidate for admission to The Florida Bar;

15 5. Is seeking to be employed or licensed by or to
16 contract with the Department of Children and Family Services
17 or the Department of Juvenile Justice or to be employed or
18 used by such contractor or licensee in a sensitive position
19 having direct contact with children, the developmentally
20 disabled, the aged, or the elderly as provided in s.

21 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
22 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
23 916.106(10) and (13), s. 985.407, ~~or~~ chapter 400, or chapter
24 429; or

25 6. Is seeking to be employed or licensed by the
26 Department of Education, any district school board, any
27 university laboratory school, any charter school, any private
28 or parochial school, or any local governmental entity that
29 licenses child care facilities.

30 Section 116. The Division of Statutory Revision of the
31 Office of Legislative Services shall prepare a reviser's bill

1 for introduction at a subsequent session of the Legislature to
2 conform the Florida Statutes to changes made by this act.

3 Section 117. This act shall take effect July 1, 2005.
4

5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 1836

8 Transfers all sections of parts III, V, and VII of ch. 400,
9 F.S., to the newly created ch. 429, F.S.

10 Makes statutory revisions needed to accurately transfer part
11 III of ch. 400, F.S., to the new chapter and specifies each of
12 these conforming changes.

13 Directs the Division of Statutory Revision to prepare a
14 reviser's bill to make conforming changes to the Florida
15 Statutes.
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