

CHAMBER ACTION

1 The Health & Families Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to assisted care communities; creating ch.
7 429, F.S., entitled "Assisted Care Communities," and
8 transferring pt. III of ch. 400, F.S., relating to
9 assisted living facilities, to pt. I of ch. 429, F.S., pt.
10 VII of ch. 400, F.S., relating to adult family-care homes,
11 to pt. II of ch. 429, F.S., and pt. V of ch. 400, F.S.,
12 relating to adult day care centers, to pt. III of ch. 429,
13 F.S.; amending ss. 101.655, 189.428, 196.1975, 202.125,
14 205.1965, 212.031, 212.08, 296.02, 381.0035, 394.455,
15 394.4574, 394.463, 400.0063, 400.0069, 400.0073, 400.0077,
16 400.0239, 400.119, 400.141, 400.142, 400.191, 400.215,
17 400.23, 400.232, 400.401, 400.402, 400.404, 400.407,
18 400.408, 400.411, 400.412, 400.414, 400.415, 400.417,
19 400.4174, 400.4176, 400.4177, 400.4178, 400.418, 400.419,
20 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,
21 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,
22 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,
23 400.431, 400.434, 400.441, 400.442, 400.444, 400.4445,

HB 467 CS

2005
CS

24 400.447, 400.451, 400.452, 400.453, 400.462, 400.464,
 25 400.497, 400.552, 400.555, 400.556, 400.557, 400.5572,
 26 400.601, 400.618, 400.6194, 400.621, 400.628, 400.93,
 27 400.962, 400.980, 400.9905, 400.9935, 401.23, 402.164,
 28 408.033, 408.831, 409.212, 409.221, 409.907, 410.031,
 29 410.034, 415.1111, 419.001, 430.601, 430.703, 435.03,
 30 435.04, 440.13, 456.0375, 465.0235, 468.505, 477.025,
 31 509.032, 509.241, 627.732, 651.011, 651.022, 651.023,
 32 651.055, 651.095, 651.118, 765.1103, 765.205, 768.735, and
 33 943.0585, F.S.; conforming references to changes made by
 34 the act; providing a directive to the Division of
 35 Statutory Revision to make necessary conforming changes to
 36 the Florida Statutes; providing an effective date.

37

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

39

40 Section 1. Chapter 429, Florida Statutes, is created and
 41 shall be entitled "Assisted Care Communities."

42 Section 2. Sections 400.401, 400.402, 400.404, 400.407,
 43 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417,
 44 400.4174, 400.4176, 400.4177, 400.4178, 400.418, 400.419,
 45 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424, 400.4255,
 46 400.4256, 400.426, 400.427, 400.4275, 400.428, 400.429,
 47 400.4293, 400.4294, 400.4295, 400.4296, 400.4297, 400.4298,
 48 400.431, 400.434, 400.435, 400.441, 400.422, 400.444, 400.4445,
 49 400.447, 400.449, 400.451, 400.452, 400.453, and 400.454,
 50 Florida Statutes, are renumbered as sections 429.01, 429.02,
 51 429.04, 429.07, 429.075, 429.08, 429.11, 429.12, 429.14, 429.15,

52 429.17, 429.174, 429.176, 429.177, 429.178, 429.18, 429.19,
 53 429.195, 429.20, 429.21, 429.22, 429.23, 429.24, 429.255,
 54 429.256, 429.26, 429.27, 429.275, 429.28, 429.29, 429.293,
 55 429.294, 429.295, 429.296, 429.297, 429.298, 429.31, 429.34,
 56 429.35, 429.41, 429.42, 429.44, 429.445, 429.47, 429.49, 429.51,
 57 429.52, 429.53, and 429.54, Florida Statutes, respectively, and
 58 designated as part I of chapter 429, Florida Statutes, entitled
 59 "ASSISTED LIVING FACILITIES."

60 Section 3. Sections 400.616, 400.617, 400.618, 400.619,
 61 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625,
 62 400.6255, 400.628, and 400.629, Florida Statutes, are renumbered
 63 as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71,
 64 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87,
 65 Florida Statutes, respectively, and designated as part II of
 66 chapter 429, Florida Statutes, entitled "ADULT FAMILY-CARE
 67 HOMES."

68 Section 4. Sections 400.55, 400.551, 400.552, 400.553,
 69 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
 70 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563,
 71 and 400.564, Florida Statutes, are renumbered as sections
 72 429.90, 429.901, 429.903, 429.905, 429.907, 429.909, 429.911,
 73 429.913, 429.915, 429.917, 429.919, 429.921, 429.923, 429.925,
 74 429.927, 429.929, 429.931, and 429.933, Florida Statutes, and
 75 designated as part III of chapter 429, Florida Statutes,
 76 entitled "ADULT DAY CARE CENTERS."

77 Section 5. Subsection (1) of section 101.655, Florida
 78 Statutes, is amended to read:

HB 467 CS

2005
CS

79 | 101.655 Supervised voting by absent electors in certain
80 | facilities.--

81 | (1) The supervisor of elections of a county shall provide
82 | supervised voting for absent electors residing in any assisted
83 | living facility, as defined in s. 429.02 ~~400.402~~, or nursing
84 | home facility, as defined in s. 400.021, within that county at
85 | the request of any administrator of such a facility. Such
86 | request for supervised voting in the facility shall be made by
87 | submitting a written request to the supervisor of elections no
88 | later than 21 days prior to the election for which that request
89 | is submitted. The request shall specify the name and address of
90 | the facility and the name of the electors who wish to vote
91 | absentee in that election. If the request contains the names of
92 | fewer than five voters, the supervisor of elections is not
93 | required to provide supervised voting.

94 | Section 6. Subsection (9) of section 189.428, Florida
95 | Statutes, is amended to read:

96 | 189.428 Special districts; oversight review process.--

97 | (9) This section does not apply to a deepwater port listed
98 | in s. 311.09(1) which is in compliance with a port master plan
99 | adopted pursuant to s. 163.3178(2)(k), or to an airport
100 | authority operating in compliance with an airport master plan
101 | approved by the Federal Aviation Administration, or to any
102 | special district organized to operate health systems and
103 | facilities licensed under chapter 395, ~~or~~ chapter 400, or
104 | chapter 429.

105 | Section 7. Paragraph (b) of subsection (2) of section
106 | 196.1975, Florida Statutes, is amended to read:

HB 467 CS

2005
CS

107 | 196.1975 Exemption for property used by nonprofit homes
108 | for the aged.--Nonprofit homes for the aged are exempt to the
109 | extent that they meet the following criteria:

110 | (2) A facility will not qualify as a "home for the aged"
111 | unless at least 75 percent of the occupants are over the age of
112 | 62 years or totally and permanently disabled. For homes for the
113 | aged which are exempt from paying income taxes to the United
114 | States as specified in subsection (1), licensing by the Agency
115 | for Health Care Administration is required for ad valorem tax
116 | exemption hereunder only if the home:

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

119 | Section 8. Paragraph (c) of subsection (4) of section
120 | 202.125, Florida Statutes, is amended to read:

121 | 202.125 Sales of communications services; specified
122 | exemptions.--

123 | (4) The sale of communications services to a home for the
124 | aged, religious institution or educational institution that is
125 | exempt from federal income tax under s. 501(c)(3) of the
126 | Internal Revenue Code, or by a religious institution that is
127 | exempt from federal income tax under s. 501(c)(3) of the
128 | Internal Revenue Code having an established physical place for
129 | worship at which nonprofit religious services and activities are
130 | regularly conducted and carried on, is exempt from the taxes
131 | imposed or administered pursuant to ss. 202.12 and 202.19. As
132 | used in this subsection, the term:

133 | (c) "Home for the aged" includes any nonprofit
134 | corporation:

HB 467 CS

2005
CS

135 1. In which at least 75 percent of the occupants are 62
136 years of age or older or totally and permanently disabled; which
137 qualifies for an ad valorem property tax exemption under s.
138 196.196, s. 196.197, or s. 196.1975; and which is exempt from
139 the sales tax imposed under chapter 212.

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

143 Section 9. Section 205.1965, Florida Statutes, is amended
144 to read:

145 205.1965 Assisted living facilities.--A county or
146 municipality may not issue an occupational license for the
147 operation of an assisted living facility pursuant to ~~part III of~~
148 chapter 429 ~~400~~ without first ascertaining that the applicant
149 has been licensed by the Agency for Health Care Administration
150 to operate such facility at the specified location or locations.
151 The Agency for Health Care Administration shall furnish to local
152 agencies responsible for issuing occupational licenses
153 sufficient instructions for making the above required
154 determinations.

155 Section 10. Paragraph (b) of subsection (1) of section
156 212.031, Florida Statutes, is amended to read:

157 212.031 Tax on rental or license fee for use of real
158 property.--

159 (1)

160 (b) When a lease involves multiple use of real property
161 wherein a part of the real property is subject to the tax
162 herein, and a part of the property would be excluded from the

163 tax under subparagraph (a)1., subparagraph (a)2., subparagraph
 164 (a)3., or subparagraph (a)5., the department shall determine,
 165 from the lease or license and such other information as may be
 166 available, that portion of the total rental charge which is
 167 exempt from the tax imposed by this section. The portion of the
 168 premises leased or rented by a for-profit entity providing a
 169 residential facility for the aged will be exempt on the basis of
 170 a pro rata portion calculated by combining the square footage of
 171 the areas used for residential units by the aged and for the
 172 care of such residents and dividing the resultant sum by the
 173 total square footage of the rented premises. For purposes of
 174 this section, the term "residential facility for the aged" means
 175 a facility that is licensed or certified in whole or in part
 176 under chapter 400, chapter 429, or chapter 651; or that provides
 177 residences to the elderly and is financed by a mortgage or loan
 178 made or insured by the United States Department of Housing and
 179 Urban Development under s. 202, s. 202 with a s. 8 subsidy, s.
 180 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act;
 181 or other such similar facility that provides residences
 182 primarily for the elderly.

183 Section 11. Paragraph (i) of subsection (7) of section
 184 212.08, Florida Statutes, is amended to read:

185 212.08 Sales, rental, use, consumption, distribution, and
 186 storage tax; specified exemptions.--The sale at retail, the
 187 rental, the use, the consumption, the distribution, and the
 188 storage to be used or consumed in this state of the following
 189 are hereby specifically exempt from the tax imposed by this
 190 chapter.

191 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
 192 entity by this chapter do not inure to any transaction that is
 193 otherwise taxable under this chapter when payment is made by a
 194 representative or employee of the entity by any means,
 195 including, but not limited to, cash, check, or credit card, even
 196 when that representative or employee is subsequently reimbursed
 197 by the entity. In addition, exemptions provided to any entity by
 198 this subsection do not inure to any transaction that is
 199 otherwise taxable under this chapter unless the entity has
 200 obtained a sales tax exemption certificate from the department
 201 or the entity obtains or provides other documentation as
 202 required by the department. Eligible purchases or leases made
 203 with such a certificate must be in strict compliance with this
 204 subsection and departmental rules, and any person who makes an
 205 exempt purchase with a certificate that is not in strict
 206 compliance with this subsection and the rules is liable for and
 207 shall pay the tax. The department may adopt rules to administer
 208 this subsection.

209 (i) Hospital meals and rooms.--Also exempt from payment of
 210 the tax imposed by this chapter on rentals and meals are
 211 patients and inmates of any hospital or other physical plant or
 212 facility designed and operated primarily for the care of persons
 213 who are ill, aged, infirm, mentally or physically incapacitated,
 214 or otherwise dependent on special care or attention. Residents
 215 of a home for the aged are exempt from payment of taxes on meals
 216 provided through the facility. A home for the aged is defined
 217 as a facility that is licensed or certified in part or in whole
 218 under chapter 400, chapter 429, or chapter 651, or that is

HB 467 CS

2005
CS

219 | financed by a mortgage loan made or insured by the United States
 220 | Department of Housing and Urban Development under s. 202, s. 202
 221 | with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of
 222 | the National Housing Act, or other such similar facility
 223 | designed and operated primarily for the care of the aged.

224 | Section 12. Subsection (5) of section 296.02, Florida
 225 | Statutes, is amended to read:

226 | 296.02 Definitions.--For the purposes of this part, except
 227 | where the context clearly indicates otherwise:

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

230 | Section 13. Subsections (1) and (3) of section 381.0035,
 231 | Florida Statutes, are amended to read:

232 | 381.0035 Educational course on HIV and AIDS; employees and
 233 | clients of certain health care facilities.--

234 | (1) The Department of Health shall require all employees
 235 | and clients of facilities licensed under chapters 393, 394, and
 236 | 397 and employees of facilities licensed under chapter 395, ~~and~~
 237 | parts II, ~~III~~, IV, and VI of chapter 400, and chapter 429 to
 238 | complete, biennially, a continuing educational course on the
 239 | modes of transmission, infection control procedures, clinical
 240 | management, and prevention of human immunodeficiency virus and
 241 | acquired immune deficiency syndrome with an emphasis on
 242 | appropriate behavior and attitude change. Such instruction shall
 243 | include information on current Florida law and its impact on
 244 | testing, confidentiality of test results, and treatment of
 245 | patients and any protocols and procedures applicable to human
 246 | immunodeficiency counseling and testing, reporting, the offering

HB 467 CS

2005
CS

247 of HIV testing to pregnant women, and partner notification
248 issues pursuant to ss. 381.004 and 384.25.

249 (3) Facilities licensed under chapters 393, 394, 395, and
250 397, ~~and~~ parts II, ~~III~~, IV, and VI of chapter 400, and chapter
251 429 shall maintain a record of employees and dates of attendance
252 at human immunodeficiency virus and acquired immune deficiency
253 syndrome educational courses.

254 Section 14. Subsection (10) of section 394.455, Florida
255 Statutes, is amended to read:

256 394.455 Definitions.--As used in this part, unless the
257 context clearly requires otherwise, the term:

258 (10) "Facility" means any hospital, community facility,
259 public or private facility, or receiving or treatment facility
260 providing for the evaluation, diagnosis, care, treatment,
261 training, or hospitalization of persons who appear to have a
262 mental illness or have been diagnosed as having a mental
263 illness. "Facility" does not include any program or entity
264 licensed pursuant to chapter 400 or chapter 429.

265 Section 15. Paragraphs (b), (c), and (e) of subsection (2)
266 of section 394.4574, Florida Statutes, are amended to read:

267 394.4574 Department responsibilities for a mental health
268 resident who resides in an assisted living facility that holds a
269 limited mental health license.--

270 (2) The department must ensure that:

271 (b) A cooperative agreement, as required in s. 429.075
272 ~~400.4075~~, is developed between the mental health care services
273 provider that serves a mental health resident and the
274 administrator of the assisted living facility with a limited

275 | mental health license in which the mental health resident is
 276 | living. Any entity that provides Medicaid prepaid health plan
 277 | services shall ensure the appropriate coordination of health
 278 | care services with an assisted living facility in cases where a
 279 | Medicaid recipient is both a member of the entity's prepaid
 280 | health plan and a resident of the assisted living facility. If
 281 | the entity is at risk for Medicaid targeted case management and
 282 | behavioral health services, the entity shall inform the assisted
 283 | living facility of the procedures to follow should an emergent
 284 | condition arise.

285 | (c) The community living support plan, as defined in s.
 286 | 429.02 ~~400.402~~, has been prepared by a mental health resident
 287 | and a mental health case manager of that resident in
 288 | consultation with the administrator of the facility or the
 289 | administrator's designee. The plan must be provided to the
 290 | administrator of the assisted living facility with a limited
 291 | mental health license in which the mental health resident lives.
 292 | The support plan and the agreement may be in one document.

293 | (e) The mental health services provider assigns a case
 294 | manager to each mental health resident who lives in an assisted
 295 | living facility with a limited mental health license. The case
 296 | manager is responsible for coordinating the development of and
 297 | implementation of the community living support plan defined in
 298 | s. 429.02 ~~400.402~~. The plan must be updated at least annually.

299 | Section 16. Paragraph (b) of subsection (2) of section
 300 | 394.463, Florida Statutes, is amended to read:

301 | 394.463 Involuntary examination.--

302 | (2) INVOLUNTARY EXAMINATION.--

303 (b) A person shall not be removed from any program or
 304 residential placement licensed under chapter 400 or chapter 429
 305 and transported to a receiving facility for involuntary
 306 examination unless an ex parte order, a professional
 307 certificate, or a law enforcement officer's report is first
 308 prepared. If the condition of the person is such that
 309 preparation of a law enforcement officer's report is not
 310 practicable before removal, the report shall be completed as
 311 soon as possible after removal, but in any case before the
 312 person is transported to a receiving facility. A receiving
 313 facility admitting a person for involuntary examination who is
 314 not accompanied by the required ex parte order, professional
 315 certificate, or law enforcement officer's report shall notify
 316 the Agency for Health Care Administration of such admission by
 317 certified mail no later than the next working day. The
 318 provisions of this paragraph do not apply when transportation is
 319 provided by the patient's family or guardian.

320 Section 17. Paragraph (b) of subsection (3) of section
 321 400.0063, Florida Statutes, is amended to read:

322 400.0063 Establishment of Office of State Long-Term Care
 323 Ombudsman; designation of ombudsman and legal advocate.--

324 (3)

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

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

HB 467 CS

2005
CS

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

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

335 4. Serving as legal counsel to the state and local
336 ombudsman councils, or individual members thereof, against whom
337 any suit or other legal action is initiated in connection with
338 the performance of the official duties of the councils or an
339 individual member.

340 Section 18. Subsection (3) of section 400.0069, Florida
341 Statutes, is amended to read:

342 400.0069 Local long-term care ombudsman councils; duties;
343 membership.--

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

349 Section 19. Paragraphs (c) and (f) of subsection (5) and
350 subsection (6) of section 400.0073, Florida Statutes, are
351 amended to read:

352 400.0073 State and local ombudsman council
353 investigations.--

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

356 (c) Inspections shall be conducted in a manner which will
357 impose no unreasonable burden on nursing homes or long-term care

358 facilities, consistent with the underlying purposes of this part
 359 and chapter 429. Unnecessary duplication of efforts among
 360 council members or the councils shall be reduced to the extent
 361 possible.

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

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

370 Section 20. Subsection (4) of section 400.0077, Florida
 371 Statutes, is amended to read:

372 400.0077 Confidentiality.--

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

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

379 400.0239 Quality of Long-Term Care Facility Improvement
 380 Trust Fund.--

381 (1) There is created within the Agency for Health Care
 382 Administration a Quality of Long-Term Care Facility Improvement
 383 Trust Fund to support activities and programs directly related
 384 to improvement of the care of nursing home and assisted living
 385 facility residents. The trust fund shall be funded through

386 | proceeds generated pursuant to ss. 400.0238 and 429.298
 387 | ~~400.4298~~, through funds specifically appropriated by the
 388 | Legislature, through gifts, endowments, and other charitable
 389 | contributions allowed under federal and state law, and through
 390 | federal nursing home civil monetary penalties collected by the
 391 | Centers for Medicare and Medicaid Services and returned to the
 392 | state. These funds must be utilized in accordance with federal
 393 | requirements.

394 | Section 22. Subsections (1) and (4) of section 400.119,
 395 | Florida Statutes, are amended to read:

396 | 400.119 Confidentiality of records and meetings of risk
 397 | management and quality assurance committees.--

398 | (1) Records of meetings of the risk management and quality
 399 | assurance committee of a long-term care facility licensed under
 400 | this part or ~~part III of this~~ chapter 429, as well as incident
 401 | reports filed with the facility's risk manager and
 402 | administrator, notifications of the occurrence of an adverse
 403 | incident, and adverse incident reports from the facility are
 404 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 405 | of the State Constitution. However, if the Agency for Health
 406 | Care Administration has a reasonable belief that conduct by a
 407 | staff member or employee of a facility is criminal activity or
 408 | grounds for disciplinary action by a regulatory board, the
 409 | agency may disclose such records to the appropriate law
 410 | enforcement agency or regulatory board.

411 | (4) The meetings of an internal risk management and
 412 | quality assurance committee of a long-term care facility
 413 | licensed under this part or ~~part III of this~~ chapter 429 are

HB 467 CS

2005
CS

414 exempt from s. 286.011 and s. 24(b), Art. I of the State
415 Constitution and are not open to the public.

416 Section 23. Subsections (4) and (7) of section 400.141,
417 Florida Statutes, are amended to read:

418 400.141 Administration and management of nursing home
419 facilities.--Every licensed facility shall comply with all
420 applicable standards and rules of the agency and shall:

421 (4) Provide for resident use of a community pharmacy as
422 specified in s. 400.022(1)(q). Any other law to the contrary
423 notwithstanding, a registered pharmacist licensed in Florida,
424 that is under contract with a facility licensed under this
425 chapter or chapter 429, shall repackage a nursing facility
426 resident's bulk prescription medication which has been packaged
427 by another pharmacist licensed in any state in the United States
428 into a unit dose system compatible with the system used by the
429 nursing facility, if the pharmacist is requested to offer such
430 service. In order to be eligible for the repackaging, a resident
431 or the resident's spouse must receive prescription medication
432 benefits provided through a former employer as part of his or
433 her retirement benefits, a qualified pension plan as specified
434 in s. 4972 of the Internal Revenue Code, a federal retirement
435 program as specified under 5 C.F.R. s. 831, or a long-term care
436 policy as defined in s. 627.9404(1). A pharmacist who correctly
437 repackages and relabels the medication and the nursing facility
438 which correctly administers such repackaged medication under the
439 provisions of this subsection shall not be held liable in any
440 civil or administrative action arising from the repackaging. In
441 order to be eligible for the repackaging, a nursing facility

442 resident for whom the medication is to be repackaged shall sign
 443 an informed consent form provided by the facility which includes
 444 an explanation of the repackaging process and which notifies the
 445 resident of the immunities from liability provided herein. A
 446 pharmacist who repackages and relabels prescription medications,
 447 as authorized under this subsection, may charge a reasonable fee
 448 for costs resulting from the implementation of this provision.

449 (7) If the facility has a standard license or is a Gold
 450 Seal facility, exceeds the minimum required hours of licensed
 451 nursing and certified nursing assistant direct care per resident
 452 per day, and is part of a continuing care facility licensed
 453 under chapter 651 or a retirement community that offers other
 454 services pursuant to ~~part III~~, part IV, or part V of this
 455 chapter or chapter 429 on a single campus, be allowed to share
 456 programming and staff. At the time of inspection and in the
 457 semiannual report required pursuant to subsection (15), a
 458 continuing care facility or retirement community that uses this
 459 option must demonstrate through staffing records that minimum
 460 staffing requirements for the facility were met. Licensed nurses
 461 and certified nursing assistants who work in the nursing home
 462 facility may be used to provide services elsewhere on campus if
 463 the facility exceeds the minimum number of direct care hours
 464 required per resident per day and the total number of residents
 465 receiving direct care services from a licensed nurse or a
 466 certified nursing assistant does not cause the facility to
 467 violate the staffing ratios required under s. 400.23(3)(a).
 468 Compliance with the minimum staffing ratios shall be based on
 469 total number of residents receiving direct care services,

HB 467 CS

2005
CS

470 | regardless of where they reside on campus. If the facility
 471 | receives a conditional license, it may not share staff until the
 472 | conditional license status ends. This subsection does not
 473 | restrict the agency's authority under federal or state law to
 474 | require additional staff if a facility is cited for deficiencies
 475 | in care which are caused by an insufficient number of certified
 476 | nursing assistants or licensed nurses. The agency may adopt
 477 | rules for the documentation necessary to determine compliance
 478 | with this provision.

479 |
 480 | Facilities that have been awarded a Gold Seal under the program
 481 | established in s. 400.235 may develop a plan to provide
 482 | certified nursing assistant training as prescribed by federal
 483 | regulations and state rules and may apply to the agency for
 484 | approval of their program.

485 | Section 24. Subsection (1) of section 400.142, Florida
 486 | Statutes, is amended to read:

487 | 400.142 Emergency medication kits; orders not to
 488 | resuscitate.--

489 | (1) Other provisions of this chapter or of chapter 429,
 490 | chapter 465, chapter 499, or chapter 893 to the contrary
 491 | notwithstanding, each nursing home operating pursuant to a
 492 | license issued by the agency may maintain an emergency
 493 | medication kit for the purpose of storing medicinal drugs to be
 494 | administered under emergency conditions to residents residing in
 495 | such facility.

496 | Section 25. Paragraph (a) of subsection (2) of section
 497 | 400.191, Florida Statutes, is amended to read:

HB 467 CS

2005
CS

498 | 400.191 Availability, distribution, and posting of reports
499 | and records.--

500 | (2) The agency shall provide additional information in
501 | consumer-friendly printed and electronic formats to assist
502 | consumers and their families in comparing and evaluating nursing
503 | home facilities.

504 | (a) The agency shall provide an Internet site which shall
505 | include at least the following information either directly or
506 | indirectly through a link to another established site or sites
507 | of the agency's choosing:

508 | 1. A list by name and address of all nursing home
509 | facilities in this state.

510 | 2. Whether such nursing home facilities are proprietary or
511 | nonproprietary.

512 | 3. The current owner of the facility's license and the
513 | year that that entity became the owner of the license.

514 | 4. The name of the owner or owners of each facility and
515 | whether the facility is affiliated with a company or other
516 | organization owning or managing more than one nursing facility
517 | in this state.

518 | 5. The total number of beds in each facility.

519 | 6. The number of private and semiprivate rooms in each
520 | facility.

521 | 7. The religious affiliation, if any, of each facility.

522 | 8. The languages spoken by the administrator and staff of
523 | each facility.

524 | 9. Whether or not each facility accepts Medicare or
525 | Medicaid recipients or insurance, health maintenance

526 organization, Veterans Administration, CHAMPUS program, or
527 workers' compensation coverage.

528 10. Recreational and other programs available at each
529 facility.

530 11. Special care units or programs offered at each
531 facility.

532 12. Whether the facility is a part of a retirement
533 community that offers other services pursuant to ~~part III~~, part
534 IV, or part V of this chapter or chapter 429.

535 13. Survey and deficiency information contained on the
536 Online Survey Certification and Reporting (OSCAR) system of the
537 federal Health Care Financing Administration, including annual
538 survey, revisit, and complaint survey information, for each
539 facility for the past 45 months. For noncertified nursing
540 homes, state survey and deficiency information, including annual
541 survey, revisit, and complaint survey information for the past
542 45 months shall be provided.

543 14. A summary of the Online Survey Certification and
544 Reporting (OSCAR) data for each facility over the past 45
545 months. Such summary may include a score, rating, or comparison
546 ranking with respect to other facilities based on the number of
547 citations received by the facility of annual, revisit, and
548 complaint surveys; the severity and scope of the citations; and
549 the number of annual recertification surveys the facility has
550 had during the past 45 months. The score, rating, or comparison
551 ranking may be presented in either numeric or symbolic form for
552 the intended consumer audience.

553 Section 26. Paragraph (b) of subsection (2) of section
554 400.215, Florida Statutes, is amended to read:

555 400.215 Personnel screening requirement.--

556 (2) Employers and employees shall comply with the
557 requirements of s. 435.05.

558 (b) Employees qualified under the provisions of paragraph
559 (a) who have not maintained continuous residency within the
560 state for the 5 years immediately preceding the date of request
561 for background screening must complete level 2 screening, as
562 provided in chapter 435. Such employees may work in a
563 conditional status up to 180 days pending the receipt of written
564 findings evidencing the completion of level 2 screening. Level 2
565 screening shall not be required of employees or prospective
566 employees who attest in writing under penalty of perjury that
567 they meet the residency requirement. Completion of level 2
568 screening shall require the employee or prospective employee to
569 furnish to the nursing facility a full set of fingerprints to
570 enable a criminal background investigation to be conducted. The
571 nursing facility shall submit the completed fingerprint card to
572 the agency. The agency shall establish a record of the request
573 in the database provided for in paragraph (c) and forward the
574 request to the Department of Law Enforcement, which is
575 authorized to submit the fingerprints to the Federal Bureau of
576 Investigation for a national criminal history records check. The
577 results of the national criminal history records check shall be
578 returned to the agency, which shall maintain the results in the
579 database provided for in paragraph (c). The agency shall notify
580 the administrator of the requesting nursing facility or the

HB 467 CS

2005
CS

581 administrator of any other facility licensed under chapter 393,
582 chapter 394, chapter 395, chapter 397, chapter 429, or this
583 chapter, as requested by such facility, as to whether or not the
584 employee has qualified under level 1 or level 2 screening. An
585 employee or prospective employee who has qualified under level 2
586 screening and has maintained such continuous residency within
587 the state shall not be required to complete a subsequent level 2
588 screening as a condition of employment at another facility.

589 Section 27. Paragraph (f) of subsection (2) of section
590 400.23, Florida Statutes, is amended to read:

591 400.23 Rules; evaluation and deficiencies; licensure
592 status.--

593 (2) Pursuant to the intention of the Legislature, the
594 agency, in consultation with the Department of Health and the
595 Department of Elderly Affairs, shall adopt and enforce rules to
596 implement this part, which shall include reasonable and fair
597 criteria in relation to:

598 (f) The care, treatment, and maintenance of residents and
599 measurement of the quality and adequacy thereof, based on rules
600 developed under this chapter or chapter 429 and the Omnibus
601 Budget Reconciliation Act of 1987 (Pub. L. No. 100-203)
602 (December 22, 1987), Title IV (Medicare, Medicaid, and Other
603 Health-Related Programs), Subtitle C (Nursing Home Reform), as
604 amended.

605 Section 28. Section 400.232, Florida Statutes, is amended
606 to read:

607 400.232 Review and approval of plans; fees and costs.--The
608 design, construction, erection, alteration, modification,

609 repair, and demolition of all public and private health care
 610 facilities are governed by the Florida Building Code and the
 611 Florida Fire Prevention Code under ss. 553.73 and 633.022. In
 612 addition to the requirements of ss. 553.79 and 553.80, the
 613 agency shall review the facility plans and survey the
 614 construction of facilities licensed under this chapter or
 615 chapter 429.

616 (1) The agency shall approve or disapprove the plans and
 617 specifications within 60 days after receipt of the final plans
 618 and specifications. The agency may be granted one 15-day
 619 extension for the review period, if the director of the agency
 620 so approves. If the agency fails to act within the specified
 621 time, it shall be deemed to have approved the plans and
 622 specifications. When the agency disapproves plans and
 623 specifications, it shall set forth in writing the reasons for
 624 disapproval. Conferences and consultations may be provided as
 625 necessary.

626 (2) The agency is authorized to charge an initial fee of
 627 \$2,000 for review of plans and construction on all projects, no
 628 part of which is refundable. The agency may also collect a fee,
 629 not to exceed 1 percent of the estimated construction cost or
 630 the actual cost of review, whichever is less, for the portion of
 631 the review which encompasses initial review through the initial
 632 revised construction document review. The agency is further
 633 authorized to collect its actual costs on all subsequent
 634 portions of the review and construction inspections. Initial
 635 fee payment shall accompany the initial submission of plans and
 636 specifications. Any subsequent payment that is due is payable

HB 467 CS

2005
CS

637 upon receipt of the invoice from the agency. Notwithstanding any
 638 other provisions of law to the contrary, all money received by
 639 the agency pursuant to the provisions of this section shall be
 640 deemed to be trust funds, to be held and applied solely for the
 641 operations required under this section.

642 Section 29. Section 400.401, Florida Statutes, is
 643 renumbered as section 429.01, Florida Statutes, and subsection
 644 (3) is amended to read:

645 429.01 ~~400.401~~ Popular name ~~Short title~~; purpose.--

646 (3) The principle that a license issued under this chapter
 647 ~~part~~ is a public trust and a privilege and is not an entitlement
 648 should guide the finder of fact or trier of law at any
 649 administrative proceeding or in a court action initiated by the
 650 Agency for Health Care Administration to enforce this chapter
 651 ~~part~~.

652 Section 30. Section 400.402, Florida Statutes, is
 653 renumbered as section 429.02, Florida Statutes, and amended to
 654 read:

655 429.02 ~~400.402~~ Definitions.--When used in this chapter
 656 ~~part~~, the term:

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

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

663 (3) "Agency" means the Agency for Health Care
 664 Administration.

665 (4) "Aging in place" or "age in place" means the process
 666 of providing increased or adjusted services to a person to
 667 compensate for the physical or mental decline that may occur
 668 with the aging process, in order to maximize the person's
 669 dignity and independence and permit them to remain in a
 670 familiar, noninstitutional, residential environment for as long
 671 as possible. Such services may be provided by facility staff,
 672 volunteers, family, or friends, or through contractual
 673 arrangements with a third party.

674 (5) "Applicant" means an individual owner, corporation,
 675 partnership, firm, association, or governmental entity that
 676 applies for a license.

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

684 (7) "Chemical restraint" means a pharmacologic drug that
 685 physically limits, restricts, or deprives an individual of
 686 movement or mobility, and is used for discipline or convenience
 687 and not required for the treatment of medical symptoms.

688 (8) "Community living support plan" means a written
 689 document prepared by a mental health resident and the resident's
 690 mental health case manager in consultation with the
 691 administrator of an assisted living facility with a limited
 692 mental health license or the administrator's designee. A copy

693 | must be provided to the administrator. The plan must include
 694 | information about the supports, services, and special needs of
 695 | the resident which enable the resident to live in the assisted
 696 | living facility and a method by which facility staff can
 697 | recognize and respond to the signs and symptoms particular to
 698 | that resident which indicate the need for professional services.

699 | (9) "Cooperative agreement" means a written statement of
 700 | understanding between a mental health care provider and the
 701 | administrator of the assisted living facility with a limited
 702 | mental health license in which a mental health resident is
 703 | living. The agreement must specify directions for accessing
 704 | emergency and after-hours care for the mental health resident. A
 705 | single cooperative agreement may service all mental health
 706 | residents who are clients of the same mental health care
 707 | provider.

708 | (10) "Department" means the Department of Elderly Affairs.

709 | (11) "Emergency" means a situation, physical condition, or
 710 | method of operation which presents imminent danger of death or
 711 | serious physical or mental harm to facility residents.

712 | (12) "Extended congregate care" means acts beyond those
 713 | authorized in subsection (17) that may be performed pursuant to
 714 | part I of chapter 464 by persons licensed thereunder while
 715 | carrying out their professional duties, and other supportive
 716 | services which may be specified by rule. The purpose of such
 717 | services is to enable residents to age in place in a residential
 718 | environment despite mental or physical limitations that might
 719 | otherwise disqualify them from residency in a facility licensed
 720 | under this chapter ~~part~~.

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

724 (14) "Limited nursing services" means acts that may be
 725 performed pursuant to part I of chapter 464 by persons licensed
 726 thereunder while carrying out their professional duties but
 727 limited to those acts which the department specifies by rule.
 728 Acts which may be specified by rule as allowable limited nursing
 729 services shall be for persons who meet the admission criteria
 730 established by the department for assisted living facilities and
 731 shall not be complex enough to require 24-hour nursing
 732 supervision and may include such services as the application and
 733 care of routine dressings, and care of casts, braces, and
 734 splints.

735 (15) "Managed risk" means the process by which the
 736 facility staff discuss the service plan and the needs of the
 737 resident with the resident and, if applicable, the resident's
 738 representative or designee or the resident's surrogate,
 739 guardian, or attorney in fact, in such a way that the
 740 consequences of a decision, including any inherent risk, are
 741 explained to all parties and reviewed periodically in
 742 conjunction with the service plan, taking into account changes
 743 in the resident's status and the ability of the facility to
 744 respond accordingly.

745 (16) "Mental health resident" means an individual who
 746 receives social security disability income due to a mental
 747 disorder as determined by the Social Security Administration or
 748 receives supplemental security income due to a mental disorder

749 as determined by the Social Security Administration and receives
750 optional state supplementation.

751 (17) "Personal services" means direct physical assistance
752 with or supervision of the activities of daily living and the
753 self-administration of medication and other similar services
754 which the department may define by rule. "Personal services"
755 shall not be construed to mean the provision of medical,
756 nursing, dental, or mental health services.

757 (18) "Physical restraint" means a device which physically
758 limits, restricts, or deprives an individual of movement or
759 mobility, including, but not limited to, a half-bed rail, a
760 full-bed rail, a geriatric chair, and a posey restraint. The
761 term "physical restraint" shall also include any device which
762 was not specifically manufactured as a restraint but which has
763 been altered, arranged, or otherwise used for this purpose. The
764 term shall not include bandage material used for the purpose of
765 binding a wound or injury.

766 (19) "Relative" means an individual who is the father,
767 mother, stepfather, stepmother, son, daughter, brother, sister,
768 grandmother, grandfather, great-grandmother, great-grandfather,
769 grandson, granddaughter, uncle, aunt, first cousin, nephew,
770 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
771 daughter-in-law, brother-in-law, sister-in-law, stepson,
772 stepdaughter, stepbrother, stepsister, half brother, or half
773 sister of an owner or administrator.

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

776 (21) "Resident's representative or designee" means a
 777 person other than the owner, or an agent or employee of the
 778 facility, designated in writing by the resident, if legally
 779 competent, to receive notice of changes in the contract executed
 780 pursuant to s. 429.24 ~~400.424~~; to receive notice of and to
 781 participate in meetings between the resident and the facility
 782 owner, administrator, or staff concerning the rights of the
 783 resident; to assist the resident in contacting the ombudsman
 784 council if the resident has a complaint against the facility; or
 785 to bring legal action on behalf of the resident pursuant to s.
 786 400.429.

787 (22) "Service plan" means a written plan, developed and
 788 agreed upon by the resident and, if applicable, the resident's
 789 representative or designee or the resident's surrogate,
 790 guardian, or attorney in fact, if any, and the administrator or
 791 designee representing the facility, which addresses the unique
 792 physical and psychosocial needs, abilities, and personal
 793 preferences of each resident receiving extended congregate care
 794 services. The plan shall include a brief written description, in
 795 easily understood language, of what services shall be provided,
 796 who shall provide the services, when the services shall be
 797 rendered, and the purposes and benefits of the services.

798 (23) "Shared responsibility" means exploring the options
 799 available to a resident within a facility and the risks involved
 800 with each option when making decisions pertaining to the
 801 resident's abilities, preferences, and service needs, thereby
 802 enabling the resident and, if applicable, the resident's
 803 representative or designee, or the resident's surrogate,

804 guardian, or attorney in fact, and the facility to develop a
 805 service plan which best meets the resident's needs and seeks to
 806 improve the resident's quality of life.

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

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

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

820 (27) "Twenty-four-hour nursing supervision" means services
 821 that are ordered by a physician for a resident whose condition
 822 requires the supervision of a physician and continued monitoring
 823 of vital signs and physical status. Such services shall be:
 824 medically complex enough to require constant supervision,
 825 assessment, planning, or intervention by a nurse; required to be
 826 performed by or under the direct supervision of licensed nursing
 827 personnel or other professional personnel for safe and effective
 828 performance; required on a daily basis; and consistent with the
 829 nature and severity of the resident's condition or the disease
 830 state or stage.

831 Section 31. Section 400.404, Florida Statutes, is
 832 renumbered as section 429.04, Florida Statutes, and amended to
 833 read:

834 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--

835 (1) For the administration of this chapter part,
 836 facilities to be licensed by the agency shall include all
 837 assisted living facilities as defined in this chapter part.

838 (2) The following are exempt from licensure under this
 839 chapter part:

840 (a) Any facility, institution, or other place operated by
 841 the Federal Government or any agency of the Federal Government.

842 (b) Any facility or part of a facility licensed under
 843 chapter 393 or chapter 394.

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

846 (d) Any person who provides housing, meals, and one or
 847 more personal services on a 24-hour basis in the person's own
 848 home to not more than two adults who do not receive optional
 849 state supplementation. The person who provides the housing,
 850 meals, and personal services must own or rent the home and
 851 reside therein.

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

855 (f) Any facility that has been incorporated in this state
 856 for 50 years or more on or before July 1, 1983, and the board of
 857 directors of which is nominated or elected by the residents,
 858 until the facility is sold or its ownership is transferred; or

HB 467 CS

2005
CS

859 any facility, with improvements or additions thereto, which has
 860 existed and operated continuously in this state for 60 years or
 861 more on or before July 1, 1989, is directly or indirectly owned
 862 and operated by a nationally recognized fraternal organization,
 863 is not open to the public, and accepts only its own members and
 864 their spouses as residents.

865 (g) Any facility certified under chapter 651, or a
 866 retirement community, may provide services authorized under this
 867 chapter part or part IV of ~~this~~ chapter 400 to its residents who
 868 live in single-family homes, duplexes, quadruplexes, or
 869 apartments located on the campus without obtaining a license to
 870 operate an assisted living facility if residential units within
 871 such buildings are used by residents who do not require staff
 872 supervision for that portion of the day when personal services
 873 are not being delivered and the owner obtains a home health
 874 license to provide such services. However, any building or
 875 distinct part of a building on the campus that is designated for
 876 persons who receive personal services and require supervision
 877 beyond that which is available while such services are being
 878 rendered must be licensed in accordance with this chapter part.
 879 If a facility provides personal services to residents who do not
 880 otherwise require supervision and the owner is not licensed as a
 881 home health agency, the buildings or distinct parts of buildings
 882 where such services are rendered must be licensed under this
 883 chapter part. A resident of a facility that obtains a home
 884 health license may contract with a home health agency of his or
 885 her choice, provided that the home health agency provides
 886 liability insurance and workers' compensation coverage for its

887 employees. Facilities covered by this exemption may establish
 888 policies that give residents the option of contracting for
 889 services and care beyond that which is provided by the facility
 890 to enable them to age in place. For purposes of this section, a
 891 retirement community consists of a facility licensed under this
 892 chapter part or under part II of chapter 400, and apartments
 893 designed for independent living located on the same campus.

894 (h) Any residential unit for independent living which is
 895 located within a facility certified under chapter 651, or any
 896 residential unit which is colocated with a nursing home licensed
 897 under part II of chapter 400 or colocated with a facility
 898 licensed under this chapter part in which services are provided
 899 through an outpatient clinic or a nursing home on an outpatient
 900 basis.

901 Section 32. Section 400.407, Florida Statutes, is
 902 renumbered as section 429.07, Florida Statutes, and paragraphs
 903 (a), (b), and (c) of subsection (3), paragraphs (b) and (c) of
 904 subsection (4), and subsection (5) are amended to read:

905 429.07 ~~400.407~~ License required; fee, display.--

906 (3) Any license granted by the agency must state the
 907 maximum resident capacity of the facility, the type of care for
 908 which the license is granted, the date the license is issued,
 909 the expiration date of the license, and any other information
 910 deemed necessary by the agency. Licenses shall be issued for one
 911 or more of the following categories of care: standard, extended
 912 congregate care, limited nursing services, or limited mental
 913 health.

914 (a) A standard license shall be issued to facilities
 915 providing one or more of the personal services identified in s.
 916 429.02 ~~400.402~~. Such facilities may also employ or contract with
 917 a person licensed under part I of chapter 464 to administer
 918 medications and perform other tasks as specified in s. 429.255
 919 ~~400.4255~~.

920 (b) An extended congregate care license shall be issued to
 921 facilities providing, directly or through contract, services
 922 beyond those authorized in paragraph (a), including acts
 923 performed pursuant to part I of chapter 464 by persons licensed
 924 thereunder, and supportive services defined by rule to persons
 925 who otherwise would be disqualified from continued residence in
 926 a facility licensed under this chapter ~~part~~.

927 1. In order for extended congregate care services to be
 928 provided in a facility licensed under this chapter ~~part~~, the
 929 agency must first determine that all requirements established in
 930 law and rule are met and must specifically designate, on the
 931 facility's license, that such services may be provided and
 932 whether the designation applies to all or part of a facility.
 933 Such designation may be made at the time of initial licensure or
 934 relicensure, or upon request in writing by a licensee under this
 935 chapter ~~part~~. Notification of approval or denial of such request
 936 shall be made within 90 days after receipt of such request and
 937 all necessary documentation. Existing facilities qualifying to
 938 provide extended congregate care services must have maintained a
 939 standard license and may not have been subject to administrative
 940 sanctions during the previous 2 years, or since initial

941 licensure if the facility has been licensed for less than 2
 942 years, for any of the following reasons:

- 943 a. A class I or class II violation;
- 944 b. Three or more repeat or recurring class III violations
 945 of identical or similar resident care standards as specified in
 946 rule from which a pattern of noncompliance is found by the
 947 agency;
- 948 c. Three or more class III violations that were not
 949 corrected in accordance with the corrective action plan approved
 950 by the agency;
- 951 d. Violation of resident care standards resulting in a
 952 requirement to employ the services of a consultant pharmacist or
 953 consultant dietitian;
- 954 e. Denial, suspension, or revocation of a license for
 955 another facility under this chapter ~~part~~ in which the applicant
 956 for an extended congregate care license has at least 25 percent
 957 ownership interest; or
- 958 f. Imposition of a moratorium on admissions or initiation
 959 of injunctive proceedings.

960 2. Facilities that are licensed to provide extended
 961 congregate care services shall maintain a written progress
 962 report on each person who receives such services, which report
 963 describes the type, amount, duration, scope, and outcome of
 964 services that are rendered and the general status of the
 965 resident's health. A registered nurse, or appropriate designee,
 966 representing the agency shall visit such facilities at least
 967 quarterly to monitor residents who are receiving extended
 968 congregate care services and to determine if the facility is in

969 compliance with this chapter ~~part~~ and with rules that relate to
 970 extended congregate care. One of these visits may be in
 971 conjunction with the regular survey. The monitoring visits may
 972 be provided through contractual arrangements with appropriate
 973 community agencies. A registered nurse shall serve as part of
 974 the team that inspects such facility. The agency may waive one
 975 of the required yearly monitoring visits for a facility that has
 976 been licensed for at least 24 months to provide extended
 977 congregate care services, if, during the inspection, the
 978 registered nurse determines that extended congregate care
 979 services are being provided appropriately, and if the facility
 980 has no class I or class II violations and no uncorrected class
 981 III violations. Before such decision is made, the agency shall
 982 consult with the long-term care ombudsman council for the area
 983 in which the facility is located to determine if any complaints
 984 have been made and substantiated about the quality of services
 985 or care. The agency may not waive one of the required yearly
 986 monitoring visits if complaints have been made and
 987 substantiated.

988 3. Facilities that are licensed to provide extended
 989 congregate care services shall:

990 a. Demonstrate the capability to meet unanticipated
 991 resident service needs.

992 b. Offer a physical environment that promotes a homelike
 993 setting, provides for resident privacy, promotes resident
 994 independence, and allows sufficient congregate space as defined
 995 by rule.

996 | c. Have sufficient staff available, taking into account
 997 | the physical plant and firesafety features of the building, to
 998 | assist with the evacuation of residents in an emergency, as
 999 | necessary.

1000 | d. Adopt and follow policies and procedures that maximize
 1001 | resident independence, dignity, choice, and decisionmaking to
 1002 | permit residents to age in place to the extent possible, so that
 1003 | moves due to changes in functional status are minimized or
 1004 | avoided.

1005 | e. Allow residents or, if applicable, a resident's
 1006 | representative, designee, surrogate, guardian, or attorney in
 1007 | fact to make a variety of personal choices, participate in
 1008 | developing service plans, and share responsibility in
 1009 | decisionmaking.

1010 | f. Implement the concept of managed risk.

1011 | g. Provide, either directly or through contract, the
 1012 | services of a person licensed pursuant to part I of chapter 464.

1013 | h. In addition to the training mandated in s. 429.52
 1014 | ~~400.452~~, provide specialized training as defined by rule for
 1015 | facility staff.

1016 | 4. Facilities licensed to provide extended congregate care
 1017 | services are exempt from the criteria for continued residency as
 1018 | set forth in rules adopted under s. 429.41 ~~400.441~~. Facilities
 1019 | so licensed shall adopt their own requirements within guidelines
 1020 | for continued residency set forth by the department in rule.
 1021 | However, such facilities may not serve residents who require 24-
 1022 | hour nursing supervision. Facilities licensed to provide
 1023 | extended congregate care services shall provide each resident

HB 467 CS

2005
CS

1024 | with a written copy of facility policies governing admission and
1025 | retention.

1026 | 5. The primary purpose of extended congregate care
1027 | services is to allow residents, as they become more impaired,
1028 | the option of remaining in a familiar setting from which they
1029 | would otherwise be disqualified for continued residency. A
1030 | facility licensed to provide extended congregate care services
1031 | may also admit an individual who exceeds the admission criteria
1032 | for a facility with a standard license, if the individual is
1033 | determined appropriate for admission to the extended congregate
1034 | care facility.

1035 | 6. Before admission of an individual to a facility
1036 | licensed to provide extended congregate care services, the
1037 | individual must undergo a medical examination as provided in s.
1038 | 429.26 ~~400.426~~(4) and the facility must develop a preliminary
1039 | service plan for the individual.

1040 | 7. When a facility can no longer provide or arrange for
1041 | services in accordance with the resident's service plan and
1042 | needs and the facility's policy, the facility shall make
1043 | arrangements for relocating the person in accordance with s.
1044 | 429.28 ~~400.428~~(1)(k).

1045 | 8. Failure to provide extended congregate care services
1046 | may result in denial of extended congregate care license
1047 | renewal.

1048 | 9. No later than January 1 of each year, the department,
1049 | in consultation with the agency, shall prepare and submit to the
1050 | Governor, the President of the Senate, the Speaker of the House
1051 | of Representatives, and the chairs of appropriate legislative

HB 467 CS

2005
CS

1052 | committees, a report on the status of, and recommendations
 1053 | related to, extended congregate care services. The status report
 1054 | must include, but need not be limited to, the following
 1055 | information:

1056 | a. A description of the facilities licensed to provide
 1057 | such services, including total number of beds licensed under
 1058 | this chapter ~~part~~.

1059 | b. The number and characteristics of residents receiving
 1060 | such services.

1061 | c. The types of services rendered that could not be
 1062 | provided through a standard license.

1063 | d. An analysis of deficiencies cited during licensure
 1064 | inspections.

1065 | e. The number of residents who required extended
 1066 | congregate care services at admission and the source of
 1067 | admission.

1068 | f. Recommendations for statutory or regulatory changes.

1069 | g. The availability of extended congregate care to state
 1070 | clients residing in facilities licensed under this chapter ~~part~~
 1071 | and in need of additional services, and recommendations for
 1072 | appropriations to subsidize extended congregate care services
 1073 | for such persons.

1074 | h. Such other information as the department considers
 1075 | appropriate.

1076 | (c) A limited nursing services license shall be issued to
 1077 | a facility that provides services beyond those authorized in
 1078 | paragraph (a) and as specified in this paragraph.

1079 1. In order for limited nursing services to be provided in
 1080 a facility licensed under this chapter part, the agency must
 1081 first determine that all requirements established in law and
 1082 rule are met and must specifically designate, on the facility's
 1083 license, that such services may be provided. Such designation
 1084 may be made at the time of initial licensure or relicensure, or
 1085 upon request in writing by a licensee under this chapter part.
 1086 Notification of approval or denial of such request shall be made
 1087 within 90 days after receipt of such request and all necessary
 1088 documentation. Existing facilities qualifying to provide limited
 1089 nursing services shall have maintained a standard license and
 1090 may not have been subject to administrative sanctions that
 1091 affect the health, safety, and welfare of residents for the
 1092 previous 2 years or since initial licensure if the facility has
 1093 been licensed for less than 2 years.

1094 2. Facilities that are licensed to provide limited nursing
 1095 services shall maintain a written progress report on each person
 1096 who receives such nursing services, which report describes the
 1097 type, amount, duration, scope, and outcome of services that are
 1098 rendered and the general status of the resident's health. A
 1099 registered nurse representing the agency shall visit such
 1100 facilities at least twice a year to monitor residents who are
 1101 receiving limited nursing services and to determine if the
 1102 facility is in compliance with applicable provisions of this
 1103 chapter part and with related rules. The monitoring visits may
 1104 be provided through contractual arrangements with appropriate
 1105 community agencies. A registered nurse shall also serve as part
 1106 of the team that inspects such facility.

1107 3. A person who receives limited nursing services under
 1108 this chapter ~~part~~ must meet the admission criteria established
 1109 by the agency for assisted living facilities. When a resident
 1110 no longer meets the admission criteria for a facility licensed
 1111 under this chapter ~~part~~, arrangements for relocating the person
 1112 shall be made in accordance with s. 429.28 ~~400.428~~(1)(k), unless
 1113 the facility is licensed to provide extended congregate care
 1114 services.

1115 (4)

1116 (b) In addition to the total fee assessed under paragraph
 1117 (a), the agency shall require facilities that are licensed to
 1118 provide extended congregate care services under this chapter
 1119 ~~part~~ to pay an additional fee per licensed facility. The amount
 1120 of the biennial fee shall be \$400 per license, with an
 1121 additional fee of \$10 per resident based on the total licensed
 1122 resident capacity of the facility. No part of this fee shall be
 1123 returned to the facility. The agency may adjust the per bed
 1124 license fee and the annual license fee once each year by not
 1125 more than the average rate of inflation for the 12 months
 1126 immediately preceding the increase.

1127 (c) In addition to the total fee assessed under paragraph
 1128 (a), the agency shall require facilities that are licensed to
 1129 provide limited nursing services under this chapter ~~part~~ to pay
 1130 an additional fee per licensed facility. The amount of the
 1131 biennial fee shall be \$250 per license, with an additional fee
 1132 of \$10 per resident based on the total licensed resident
 1133 capacity of the facility. No part of this fee shall be returned
 1134 to the facility. The agency may adjust the per bed license fee

1135 and the biennial license fee once each year by not more than the
1136 average rate of inflation for the 12 months immediately
1137 preceding the increase.

1138 (5) Counties or municipalities applying for licenses under
1139 this chapter ~~part~~ are exempt from the payment of license fees.

1140 Section 33. Section 400.408, Florida Statutes, is
1141 renumbered as section 429.08, Florida Statutes, and paragraphs
1142 (a), (d), (e), (f), and (g) of subsection (1) and paragraph (f)
1143 of subsection (2) are amended to read:

1144 400.408 Unlicensed facilities; referral of person for
1145 residency to unlicensed facility; penalties; verification of
1146 licensure status.--

1147 (1)(a) It is unlawful to own, operate, or maintain an
1148 assisted living facility without obtaining a license under this
1149 chapter ~~part~~.

1150 (d) Any person who owns, operates, or maintains an
1151 unlicensed assisted living facility due to a change in this
1152 chapter ~~part~~ or a modification in department rule within 6
1153 months after the effective date of such change and who, within
1154 10 working days after receiving notification from the agency,
1155 fails to cease operation or apply for a license under this
1156 chapter ~~part~~ commits a felony of the third degree, punishable as
1157 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
1158 continued operation is a separate offense.

1159 (e) Any facility that fails to cease operation after
1160 agency notification may be fined for each day of noncompliance
1161 pursuant to s. 429.19 ~~400.419~~.

1162 (f) When a licensee has an interest in more than one
 1163 assisted living facility, and fails to license any one of these
 1164 facilities, the agency may revoke the license, impose a
 1165 moratorium, or impose a fine pursuant to s. 429.19 ~~400.419~~, on
 1166 any or all of the licensed facilities until such time as the
 1167 unlicensed facility is licensed or ceases operation.

1168 (g) If the agency determines that an owner is operating or
 1169 maintaining an assisted living facility without obtaining a
 1170 license and determines that a condition exists in the facility
 1171 that poses a threat to the health, safety, or welfare of a
 1172 resident of the facility, the owner is subject to the same
 1173 actions and fines imposed against a licensed facility as
 1174 specified in ss. 429.14 and 429.19 ~~400.414 and 400.419~~.

1175 (2) It is unlawful to knowingly refer a person for
 1176 residency to an unlicensed assisted living facility; to an
 1177 assisted living facility the license of which is under denial or
 1178 has been suspended or revoked; or to an assisted living facility
 1179 that has a moratorium on admissions. Any person who violates
 1180 this subsection commits a noncriminal violation, punishable by a
 1181 fine not exceeding \$500 as provided in s. 775.083.

1182 (f) At least annually, the agency shall notify, in
 1183 appropriate trade publications, physicians licensed under
 1184 chapter 458 or chapter 459, hospitals licensed under chapter
 1185 395, nursing home facilities licensed under part II of ~~this~~
 1186 chapter 400, and employees of the agency or the department, or
 1187 the Department of Children and Family Services, who are
 1188 responsible for referring persons for residency, that it is
 1189 unlawful to knowingly refer a person for residency to an

HB 467 CS

2005
CS

1190 | unlicensed assisted living facility and shall notify them of the
 1191 | penalty for violating such prohibition. The department and the
 1192 | Department of Children and Family Services shall, in turn,
 1193 | notify service providers under contract to the respective
 1194 | departments who have responsibility for resident referrals to
 1195 | facilities. Further, the notice must direct each noticed
 1196 | facility and individual to contact the appropriate agency office
 1197 | in order to verify the licensure status of any facility prior to
 1198 | referring any person for residency. Each notice must include the
 1199 | name, telephone number, and mailing address of the appropriate
 1200 | office to contact.

1201 | Section 34. Section 400.411, Florida Statutes, is
 1202 | renumbered as section 429.11, Florida Statutes, and paragraph
 1203 | (c) of subsection (3) and subsections (4), (11), and (13) are
 1204 | amended to read:

1205 | 429.11 ~~400.411~~ Initial application for license;
 1206 | provisional license.--

1207 | (3) The application must be signed by the applicant under
 1208 | oath and must contain the following:

1209 | (c) The name and address of any long-term care facility
 1210 | with which the applicant, administrator, or financial officer
 1211 | has been affiliated through ownership or employment within 5
 1212 | years of the date of this license application; and a signed
 1213 | affidavit disclosing any financial or ownership interest that
 1214 | the applicant, or any person listed in paragraph (a), holds or
 1215 | has held within the last 5 years in any facility licensed under
 1216 | this chapter ~~part~~, or in any other entity licensed by this state
 1217 | or another state to provide health or residential care, which

1218 facility or entity closed or ceased to operate as a result of
 1219 financial problems, or has had a receiver appointed or a license
 1220 denied, suspended or revoked, or was subject to a moratorium on
 1221 admissions, or has had an injunctive proceeding initiated
 1222 against it.

1223 (4) The applicant shall furnish satisfactory proof of
 1224 financial ability to operate and conduct the facility in
 1225 accordance with the requirements of this chapter part. A
 1226 certificate of authority, pursuant to chapter 651, may be
 1227 provided as proof of financial ability.

1228 (11) The applicant must furnish proof of compliance with
 1229 level 2 background screening as required under s. 429.174
 1230 ~~400.4174~~.

1231 (13) A county or municipality may not issue an
 1232 occupational license that is being obtained for the purpose of
 1233 operating a facility regulated under this chapter part without
 1234 first ascertaining that the applicant has been licensed to
 1235 operate such facility at the specified location or locations by
 1236 the agency. The agency shall furnish to local agencies
 1237 responsible for issuing occupational licenses sufficient
 1238 instruction for making such determinations.

1239 Section 35. Section 400.412, Florida Statutes, is
 1240 renumbered as section 429.12, Florida Statutes, and subsection
 1241 (1) is amended to read:

1242 429.12 ~~400.412~~ Sale or transfer of ownership of a
 1243 facility.--It is the intent of the Legislature to protect the
 1244 rights of the residents of an assisted living facility when the
 1245 facility is sold or the ownership thereof is transferred.

1246 Therefore, whenever a facility is sold or the ownership thereof
1247 is transferred, including leasing:

1248 (1) The transferee shall make application to the agency
1249 for a new license at least 60 days before the date of transfer
1250 of ownership. The application must comply with the provisions of
1251 s. 429.11 ~~400.411~~.

1252 Section 36. Section 400.414, Florida Statutes, is
1253 renumbered as section 429.14, Florida Statutes, and subsections
1254 (1), (3), and (5) are amended to read:

1255 429.14 ~~400.414~~ Denial, revocation, or suspension of
1256 license; imposition of administrative fine; grounds.--

1257 (1) The agency may deny, revoke, or suspend any license
1258 issued under this chapter ~~part~~, or impose an administrative fine
1259 in the manner provided in chapter 120, for any of the following
1260 actions by an assisted living facility, for the actions of any
1261 person subject to level 2 background screening under s. 429.174
1262 ~~400.4174~~, or for the actions of any facility employee:

1263 (a) An intentional or negligent act seriously affecting
1264 the health, safety, or welfare of a resident of the facility.

1265 (b) The determination by the agency that the owner lacks
1266 the financial ability to provide continuing adequate care to
1267 residents.

1268 (c) Misappropriation or conversion of the property of a
1269 resident of the facility.

1270 (d) Failure to follow the criteria and procedures provided
1271 under part I of chapter 394 relating to the transportation,
1272 voluntary admission, and involuntary examination of a facility
1273 resident.

1274 (e) A citation of any of the following deficiencies as
 1275 defined in s. 429.19 ~~400.419~~:

- 1276 1. One or more cited class I deficiencies.
- 1277 2. Three or more cited class II deficiencies.
- 1278 3. Five or more cited class III deficiencies that have
 1279 been cited on a single survey and have not been corrected within
 1280 the times specified.

1281 (f) A determination that a person subject to level 2
 1282 background screening under s. 429.174 ~~400.4174~~(1) does not meet
 1283 the screening standards of s. 435.04 or that the facility is
 1284 retaining an employee subject to level 1 background screening
 1285 standards under s. 429.174 ~~400.4174~~(2) who does not meet the
 1286 screening standards of s. 435.03 and for whom exemptions from
 1287 disqualification have not been provided by the agency.

1288 (g) A determination that an employee, volunteer,
 1289 administrator, or owner, or person who otherwise has access to
 1290 the residents of a facility does not meet the criteria specified
 1291 in s. 435.03(2), and the owner or administrator has not taken
 1292 action to remove the person. Exemptions from disqualification
 1293 may be granted as set forth in s. 435.07. No administrative
 1294 action may be taken against the facility if the person is
 1295 granted an exemption.

1296 (h) Violation of a moratorium.

1297 (i) Failure of the license applicant, the licensee during
 1298 relicensure, or a licensee that holds a provisional license to
 1299 meet the minimum license requirements of this chapter ~~part~~, or
 1300 related rules, at the time of license application or renewal.

HB 467 CS

2005
CS

1301 (j) A fraudulent statement or omission of any material
 1302 fact on an application for a license or any other document
 1303 required by the agency, including the submission of a license
 1304 application that conceals the fact that any board member,
 1305 officer, or person owning 5 percent or more of the facility may
 1306 not meet the background screening requirements of s. 429.174
 1307 ~~400.4174~~, or that the applicant has been excluded, permanently
 1308 suspended, or terminated from the Medicaid or Medicare programs.

1309 (k) An intentional or negligent life-threatening act in
 1310 violation of the uniform firesafety standards for assisted
 1311 living facilities or other firesafety standards that threatens
 1312 the health, safety, or welfare of a resident of a facility, as
 1313 communicated to the agency by the local authority having
 1314 jurisdiction or the State Fire Marshal.

1315 (l) Exclusion, permanent suspension, or termination from
 1316 the Medicare or Medicaid programs.

1317 (m) Knowingly operating any unlicensed facility or
 1318 providing without a license any service that must be licensed
 1319 under this chapter or chapter 400.

1320 (n) Any act constituting a ground upon which application
 1321 for a license may be denied.

1322
 1323 Administrative proceedings challenging agency action under this
 1324 subsection shall be reviewed on the basis of the facts and
 1325 conditions that resulted in the agency action.

1326 (3) The agency may deny a license to any applicant or to
 1327 any officer or board member of an applicant who is a firm,
 1328 corporation, partnership, or association or who owns 5 percent

1329 or more of the facility, if the applicant, officer, or board
 1330 member has or had a 25-percent or greater financial or ownership
 1331 interest in any other facility licensed under this chapter part,
 1332 or in any entity licensed by this state or another state to
 1333 provide health or residential care, which facility or entity
 1334 during the 5 years prior to the application for a license closed
 1335 due to financial inability to operate; had a receiver appointed
 1336 or a license denied, suspended, or revoked; was subject to a
 1337 moratorium on admissions; had an injunctive proceeding initiated
 1338 against it; or has an outstanding fine assessed under this
 1339 chapter or chapter 400.

1340 (5) An action taken by the agency to suspend, deny, or
 1341 revoke a facility's license under this chapter part, in which
 1342 the agency claims that the facility owner or an employee of the
 1343 facility has threatened the health, safety, or welfare of a
 1344 resident of the facility be heard by the Division of
 1345 Administrative Hearings of the Department of Management Services
 1346 within 120 days after receipt of the facility's request for a
 1347 hearing, unless that time limitation is waived by both parties.
 1348 The administrative law judge must render a decision within 30
 1349 days after receipt of a proposed recommended order.

1350 Section 37. Section 400.415, Florida Statutes, is
 1351 renumbered as section 429.15, Florida Statutes, and subsection
 1352 (1) is amended to read:

1353 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
 1354 agency may impose an immediate moratorium on admissions to any
 1355 assisted living facility if the agency determines that any

HB 467 CS

2005
CS

1356 | condition in the facility presents a threat to the health,
1357 | safety, or welfare of the residents in the facility.

1358 | (1) A facility the license of which is denied, revoked, or
1359 | suspended pursuant to s. 429.14 ~~400.414~~ may be subject to
1360 | immediate imposition of a moratorium on admissions to run
1361 | concurrently with licensure denial, revocation, or suspension.

1362 | Section 38. Section 400.417, Florida Statutes, is
1363 | renumbered as section 429.17, Florida Statutes, and subsections
1364 | (2) and (3) are amended to read:

1365 | 429.17 ~~400.417~~ Expiration of license; renewal; conditional
1366 | license.--

1367 | (2) A license shall be renewed within 90 days upon the
1368 | timely filing of an application on forms furnished by the agency
1369 | and the provision of satisfactory proof of ability to operate
1370 | and conduct the facility in accordance with the requirements of
1371 | this chapter ~~part~~ and adopted rules, including proof that the
1372 | facility has received a satisfactory firesafety inspection,
1373 | conducted by the local authority having jurisdiction or the
1374 | State Fire Marshal, within the preceding 12 months and an
1375 | affidavit of compliance with the background screening
1376 | requirements of s. 429.174 ~~400.4174~~.

1377 | (3) An applicant for renewal of a license who has complied
1378 | with the provisions of s. 429.11 ~~400.411~~ with respect to proof
1379 | of financial ability to operate shall not be required to provide
1380 | further proof unless the facility or any other facility owned or
1381 | operated in whole or in part by the same person has demonstrated
1382 | financial instability as provided under s. 429.47 ~~400.447(2)~~ or
1383 | unless the agency suspects that the facility is not financially

HB 467 CS

2005
CS

1384 | stable as a result of the annual survey or complaints from the
 1385 | public or a report from the State Long-Term Care Ombudsman
 1386 | Council. Each facility must report to the agency any adverse
 1387 | court action concerning the facility's financial viability,
 1388 | within 7 days after its occurrence. The agency shall have
 1389 | access to books, records, and any other financial documents
 1390 | maintained by the facility to the extent necessary to determine
 1391 | the facility's financial stability. A license for the operation
 1392 | of a facility shall not be renewed if the licensee has any
 1393 | outstanding fines assessed pursuant to this chapter ~~part~~ which
 1394 | are in final order status.

1395 | Section 39. Section 400.4174, Florida Statutes, is
 1396 | renumbered as section 429.174, Florida Statutes, and subsection
 1397 | (2) is amended to read:

1398 | 429.174 ~~400.4174~~ Background screening; exemptions.--

1399 | (2) The owner or administrator of an assisted living
 1400 | facility must conduct level 1 background screening, as set forth
 1401 | in chapter 435, on all employees hired on or after October 1,
 1402 | 1998, who perform personal services as defined in s. 429.02
 1403 | ~~400.402~~(17). The agency may exempt an individual from employment
 1404 | disqualification as set forth in chapter 435. Such persons shall
 1405 | be considered as having met this requirement if:

1406 | (a) Proof of compliance with level 1 screening
 1407 | requirements obtained to meet any professional license
 1408 | requirements in this state is provided and accompanied, under
 1409 | penalty of perjury, by a copy of the person's current
 1410 | professional license and an affidavit of current compliance with
 1411 | the background screening requirements.

1412 (b) The person required to be screened has been
 1413 continuously employed in the same type of occupation for which
 1414 the person is seeking employment without a breach in service
 1415 which exceeds 180 days, and proof of compliance with the level 1
 1416 screening requirement which is no more than 2 years old is
 1417 provided. Proof of compliance shall be provided directly from
 1418 one employer or contractor to another, and not from the person
 1419 screened. Upon request, a copy of screening results shall be
 1420 provided by the employer retaining documentation of the
 1421 screening to the person screened.

1422 (c) The person required to be screened is employed by a
 1423 corporation or business entity or related corporation or
 1424 business entity that owns, operates, or manages more than one
 1425 facility or agency licensed under this chapter or chapter 400,
 1426 and for whom a level 1 screening was conducted by the
 1427 corporation or business entity as a condition of initial or
 1428 continued employment.

1429 Section 40. Section 400.4176, Florida Statutes, is
 1430 renumbered as section 429.176, Florida Statutes, and amended to
 1431 read:

1432 429.176 ~~400.4176~~ Notice of change of administrator.--If,
 1433 during the period for which a license is issued, the owner
 1434 changes administrators, the owner must notify the agency of the
 1435 change within 10 days and provide documentation within 90 days
 1436 that the new administrator has completed the applicable core
 1437 educational requirements under s. 429.52 ~~400.452~~. Background
 1438 screening shall be completed on any new administrator as
 1439 specified in s. 429.174 ~~400.4174~~.

HB 467 CS

2005
CS

1440 Section 41. Section 400.4177, Florida Statutes, is
1441 renumbered as section 429.177, Florida Statutes, and amended to
1442 read:

1443 429.177 ~~400.4177~~ Patients with Alzheimer's disease or
1444 other related disorders; certain disclosures.--A facility
1445 licensed under this chapter ~~part~~ which claims that it provides
1446 special care for persons who have Alzheimer's disease or other
1447 related disorders must disclose in its advertisements or in a
1448 separate document those services that distinguish the care as
1449 being especially applicable to, or suitable for, such persons.
1450 The facility must give a copy of all such advertisements or a
1451 copy of the document to each person who requests information
1452 about programs and services for persons with Alzheimer's disease
1453 or other related disorders offered by the facility and must
1454 maintain a copy of all such advertisements and documents in its
1455 records. The agency shall examine all such advertisements and
1456 documents in the facility's records as part of the license
1457 renewal procedure.

1458 Section 42. Section 400.4178, Florida Statutes, is
1459 renumbered as section 429.178, Florida Statutes, and paragraphs
1460 (a) and (b) of subsection (2) are amended to read:

1461 429.178 ~~400.4178~~ Special care for persons with Alzheimer's
1462 disease or other related disorders.--

1463 (2)(a) An individual who is employed by a facility that
1464 provides special care for residents with Alzheimer's disease or
1465 other related disorders, and who has regular contact with such
1466 residents, must complete up to 4 hours of initial dementia-
1467 specific training developed or approved by the department. The

HB 467 CS

2005
CS

1468 training shall be completed within 3 months after beginning
 1469 employment and shall satisfy the core training requirements of
 1470 s. 429.52 ~~400.452~~(2)(g).

1471 (b) A direct caregiver who is employed by a facility that
 1472 provides special care for residents with Alzheimer's disease or
 1473 other related disorders, and who provides direct care to such
 1474 residents, must complete the required initial training and 4
 1475 additional hours of training developed or approved by the
 1476 department. The training shall be completed within 9 months
 1477 after beginning employment and shall satisfy the core training
 1478 requirements of s. 429.52 ~~400.452~~(2)(g).

1479 Section 43. Section 400.418, Florida Statutes, is
 1480 renumbered as section 429.18, Florida Statutes, and amended to
 1481 read:

1482 429.18 ~~400.418~~ Disposition of fees and administrative
 1483 fines.--

1484 (1) Income from license fees, inspection fees, late fees,
 1485 and administrative fines generated pursuant to ss. 429.07,
 1486 429.08, 429.17, 429.19, and 429.31 ~~400.407, 400.408, 400.417,
 1487 ~~400.419, and 400.431~~ shall be deposited in the Health Care Trust
 1488 Fund administered by the agency. Such funds shall be directed
 1489 to and used by the agency for the following purposes:~~

1490 (a) Up to 50 percent of the trust funds accrued each
 1491 fiscal year under this chapter ~~part~~ may be used to offset the
 1492 expenses of receivership, pursuant to s. 429.22 ~~400.422~~, if the
 1493 court determines that the income and assets of the facility are
 1494 insufficient to provide for adequate management and operation.

1495 (b) An amount of \$5,000 of the trust funds accrued each
 1496 year under this chapter ~~part~~ shall be allocated to pay for
 1497 inspection-related physical and mental health examinations
 1498 requested by the agency pursuant to s. 429.26 ~~400.426~~ for
 1499 residents who are either recipients of supplemental security
 1500 income or have monthly incomes not in excess of the maximum
 1501 combined federal and state cash subsidies available to
 1502 supplemental security income recipients, as provided for in s.
 1503 409.212. Such funds shall only be used where the resident is
 1504 ineligible for Medicaid.

1505 (c) Any trust funds accrued each year under this chapter
 1506 ~~part~~ and not used for the purposes specified in paragraphs (a)
 1507 and (b) shall be used to offset the costs of the licensure
 1508 program, including the costs of conducting background
 1509 investigations, verifying information submitted, defraying the
 1510 costs of processing the names of applicants, and conducting
 1511 inspections and monitoring visits pursuant to this chapter ~~part~~.

1512 (2) Income from fees generated pursuant to s. 429.41
 1513 ~~400.441~~(5) shall be deposited in the Health Care Trust Fund and
 1514 used to offset the costs of printing and postage.

1515 Section 44. Section 400.419, Florida Statutes, is
 1516 renumbered as section 429.19, Florida Statutes, and subsections
 1517 (1), (2), (9), (10), (11), and (12) are amended to read:

1518 429.19 ~~400.419~~ Violations; imposition of administrative
 1519 fines; grounds.--

1520 (1) The agency shall impose an administrative fine in the
 1521 manner provided in chapter 120 for any of the actions or
 1522 violations as set forth within this section by an assisted

1523 living facility, for the actions of any person subject to level
 1524 2 background screening under s. 429.174 ~~400.4174~~, for the
 1525 actions of any facility employee, or for an intentional or
 1526 negligent act seriously affecting the health, safety, or welfare
 1527 of a resident of the facility.

1528 (2) Each violation of this chapter ~~part~~ and adopted rules
 1529 shall be classified according to the nature of the violation and
 1530 the gravity of its probable effect on facility residents. The
 1531 agency shall indicate the classification on the written notice
 1532 of the violation as follows:

1533 (a) Class "I" violations are those conditions or
 1534 occurrences related to the operation and maintenance of a
 1535 facility or to the personal care of residents which the agency
 1536 determines present an imminent danger to the residents or guests
 1537 of the facility or a substantial probability that death or
 1538 serious physical or emotional harm would result therefrom. The
 1539 condition or practice constituting a class I violation shall be
 1540 abated or eliminated within 24 hours, unless a fixed period, as
 1541 determined by the agency, is required for correction. The agency
 1542 shall impose an administrative fine for a cited class I
 1543 violation in an amount not less than \$5,000 and not exceeding
 1544 \$10,000 for each violation. A fine may be levied notwithstanding
 1545 the correction of the violation.

1546 (b) Class "II" violations are those conditions or
 1547 occurrences related to the operation and maintenance of a
 1548 facility or to the personal care of residents which the agency
 1549 determines directly threaten the physical or emotional health,
 1550 safety, or security of the facility residents, other than class

HB 467 CS

2005
CS

1551 I violations. The agency shall impose an administrative fine for
 1552 a cited class II violation in an amount not less than \$1,000 and
 1553 not exceeding \$5,000 for each violation. A fine shall be levied
 1554 notwithstanding the correction of the violation.

1555 (c) Class "III" violations are those conditions or
 1556 occurrences related to the operation and maintenance of a
 1557 facility or to the personal care of residents which the agency
 1558 determines indirectly or potentially threaten the physical or
 1559 emotional health, safety, or security of facility residents,
 1560 other than class I or class II violations. The agency shall
 1561 impose an administrative fine for a cited class III violation in
 1562 an amount not less than \$500 and not exceeding \$1,000 for each
 1563 violation. A citation for a class III violation must specify the
 1564 time within which the violation is required to be corrected. If
 1565 a class III violation is corrected within the time specified, no
 1566 fine may be imposed, unless it is a repeated offense.

1567 (d) Class "IV" violations are those conditions or
 1568 occurrences related to the operation and maintenance of a
 1569 building or to required reports, forms, or documents that do not
 1570 have the potential of negatively affecting residents. These
 1571 violations are of a type that the agency determines do not
 1572 threaten the health, safety, or security of residents of the
 1573 facility. The agency shall impose an administrative fine for a
 1574 cited class IV violation in an amount not less than \$100 and not
 1575 exceeding \$200 for each violation. A citation for a class IV
 1576 violation must specify the time within which the violation is
 1577 required to be corrected. If a class IV violation is corrected
 1578 within the time specified, no fine shall be imposed. Any class

HB 467 CS

2005
CS

1579 | IV violation that is corrected during the time an agency survey
1580 | is being conducted will be identified as an agency finding and
1581 | not as a violation.

1582 | (9) Any facility whose owner fails to apply for a change-
1583 | of-ownership license in accordance with s. 429.12 ~~400.412~~ and
1584 | operates the facility under the new ownership is subject to a
1585 | fine of \$5,000.

1586 | (10) In addition to any administrative fines imposed, the
1587 | agency may assess a survey fee, equal to the lesser of one half
1588 | of the facility's biennial license and bed fee or \$500, to cover
1589 | the cost of conducting initial complaint investigations that
1590 | result in the finding of a violation that was the subject of the
1591 | complaint or monitoring visits conducted under s. 429.28
1592 | ~~400.428~~(3)(c) to verify the correction of the violations.

1593 | (11) The agency, as an alternative to or in conjunction
1594 | with an administrative action against a facility for violations
1595 | of this chapter ~~part~~ and adopted rules, shall make a reasonable
1596 | attempt to discuss each violation and recommended corrective
1597 | action with the owner or administrator of the facility, prior to
1598 | written notification. The agency, instead of fixing a period
1599 | within which the facility shall enter into compliance with
1600 | standards, may request a plan of corrective action from the
1601 | facility which demonstrates a good faith effort to remedy each
1602 | violation by a specific date, subject to the approval of the
1603 | agency.

1604 | (12) Administrative fines paid by any facility under this
1605 | section shall be deposited into the Health Care Trust Fund and
1606 | expended as provided in s. 429.18 ~~400.418~~.

HB 467 CS

2005
CS

1607 Section 45. Section 400.4195, Florida Statutes, is
 1608 renumbered as section 429.195, Florida Statutes, and subsection
 1609 (1) is amended to read:

1610 429.195 ~~400.4195~~ Rebates prohibited; penalties.--

1611 (1) It is unlawful for any assisted living facility
 1612 licensed under this chapter ~~part~~ to contract or promise to pay
 1613 or receive any commission, bonus, kickback, or rebate or engage
 1614 in any split-fee arrangement in any form whatsoever with any
 1615 physician, surgeon, organization, agency, or person, either
 1616 directly or indirectly, for residents referred to an assisted
 1617 living facility licensed under this chapter ~~part~~. A facility may
 1618 employ or contract with persons to market the facility, provided
 1619 the employee or contract provider clearly indicates that he or
 1620 she represents the facility. A person or agency independent of
 1621 the facility may provide placement or referral services for a
 1622 fee to individuals seeking assistance in finding a suitable
 1623 facility; however, any fee paid for placement or referral
 1624 services must be paid by the individual looking for a facility,
 1625 not by the facility.

1626 Section 46. Section 400.42, Florida Statutes, is
 1627 renumbered as section 429.20, Florida Statutes, and subsection
 1628 (3) is amended to read:

1629 429.20 ~~400.42~~ Certain solicitation prohibited; third-party
 1630 supplementation.--

1631 (3) The admission or maintenance of assisted living
 1632 facility residents whose care is supported, in whole or in part,
 1633 by state funds may not be conditioned upon the receipt of any
 1634 manner of contribution or donation from any person. The

HB 467 CS

2005
CS

1635 solicitation or receipt of contributions in violation of this
 1636 subsection is grounds for denial, suspension, or revocation of
 1637 license, as provided in s. 429.14 ~~400.414~~, for any assisted
 1638 living facility by or on behalf of which such contributions were
 1639 solicited.

1640 Section 47. Section 400.421, Florida Statutes, is
 1641 renumbered as section 429.21, Florida Statutes, and subsection
 1642 (1) is amended to read:

1643 429.21 ~~400.421~~ Injunctive proceedings.--

1644 (1) The agency may institute injunctive proceedings in a
 1645 court of competent jurisdiction to:

1646 (a) Enforce the provisions of this chapter ~~part~~ or any
 1647 minimum standard, rule, or order issued or entered into pursuant
 1648 thereto when the attempt by the agency to correct a violation
 1649 through administrative fines has failed or when the violation
 1650 materially affects the health, safety, or welfare of residents;
 1651 or

1652 (b) Terminate the operation of a facility when violations
 1653 of any provisions of this chapter ~~part~~ or of any standard or
 1654 rule promulgated pursuant thereto exist which materially affect
 1655 the health, safety, or welfare of residents.

1656 Section 48. Section 400.422, Florida Statutes, is
 1657 renumbered as section 429.22, Florida Statutes, and paragraph
 1658 (a) of subsection (1) and subsection (9) are amended to read:

1659 429.22 ~~400.422~~ Receivership proceedings.--

1660 (1) As an alternative to or in conjunction with an
 1661 injunctive proceeding, the agency may petition a court of
 1662 competent jurisdiction for the appointment of a receiver, if

HB 467 CS

2005
CS

1663 | suitable alternate placements are not available, when any of the
1664 | following conditions exist:

1665 | (a) The facility is operating without a license and
1666 | refuses to make application for a license as required by ss.
1667 | 429.07 ~~400.407~~ and 429.08 ~~400.408~~.

1668 | (9) The court may direct the agency to allocate funds from
1669 | the Health Care Trust Fund to the receiver, subject to the
1670 | provisions of s. 429.18 ~~400.418~~(1).

1671 | Section 49. Section 400.423, Florida Statutes, is
1672 | renumbered as section 429.23, Florida Statutes, and subsections
1673 | (1), (2), (5), and (8) are amended to read:

1674 | 429.23 ~~400.423~~ Internal risk management and quality
1675 | assurance program; adverse incidents and reporting
1676 | requirements.--

1677 | (1) Every facility licensed under this chapter ~~part~~ may,
1678 | as part of its administrative functions, voluntarily establish a
1679 | risk management and quality assurance program, the purpose of
1680 | which is to assess resident care practices, facility incident
1681 | reports, deficiencies cited by the agency, adverse incident
1682 | reports, and resident grievances and develop plans of action to
1683 | correct and respond quickly to identify quality differences.

1684 | (2) Every facility licensed under this chapter ~~part~~ is
1685 | required to maintain adverse incident reports. For purposes of
1686 | this section, the term, "adverse incident" means:

1687 | (a) An event over which facility personnel could exercise
1688 | control rather than as a result of the resident's condition and
1689 | results in:

1690 | 1. Death;

HB 467 CS

2005
CS

1691 2. Brain or spinal damage;

1692 3. Permanent disfigurement;

1693 4. Fracture or dislocation of bones or joints;

1694 5. Any condition that required medical attention to which

1695 the resident has not given his or her consent, including failure

1696 to honor advanced directives;

1697 6. Any condition that requires the transfer of the

1698 resident from the facility to a unit providing more acute care

1699 due to the incident rather than the resident's condition before

1700 the incident.

1701 (b) Abuse, neglect, or exploitation as defined in s.

1702 415.102;

1703 (c) Events reported to law enforcement; or

1704 (d) Elopement.

1705 (5) Each facility shall report monthly to the agency any

1706 liability claim filed against it. The report must include the

1707 name of the resident, the dates of the incident leading to the

1708 claim, if applicable, and the type of injury or violation of

1709 rights alleged to have occurred. This report is not discoverable

1710 in any civil or administrative action, except in such actions

1711 brought by the agency to enforce the provisions of this chapter

1712 ~~part~~.

1713 (8) If the agency, through its receipt of the adverse

1714 incident reports prescribed in this chapter ~~part~~ or through any

1715 investigation, has reasonable belief that conduct by a staff

1716 member or employee of a licensed facility is grounds for

1717 disciplinary action by the appropriate board, the agency shall

1718 report this fact to such regulatory board.

HB 467 CS

2005
CS

1719 Section 50. Section 400.424, Florida Statutes, is
 1720 renumbered as section 429.24, Florida Statutes, and subsection
 1721 (2), paragraph (a) of subsection (3), and subsection (5) are
 1722 amended to read:

1723 429.24 ~~400.424~~ Contracts.--

1724 (2) Each contract must contain express provisions
 1725 specifically setting forth the services and accommodations to be
 1726 provided by the facility; the rates or charges; provision for at
 1727 least 30 days' written notice of a rate increase; the rights,
 1728 duties, and obligations of the residents, other than those
 1729 specified in s. 429.28 ~~400.428~~; and other matters that the
 1730 parties deem appropriate. Whenever money is deposited or
 1731 advanced by a resident in a contract as security for performance
 1732 of the contract agreement or as advance rent for other than the
 1733 next immediate rental period:

1734 (a) Such funds shall be deposited in a banking institution
 1735 in this state that is located, if possible, in the same
 1736 community in which the facility is located; shall be kept
 1737 separate from the funds and property of the facility; may not be
 1738 represented as part of the assets of the facility on financial
 1739 statements; and shall be used, or otherwise expended, only for
 1740 the account of the resident.

1741 (b) The licensee shall, within 30 days of receipt of
 1742 advance rent or a security deposit, notify the resident or
 1743 residents in writing of the manner in which the licensee is
 1744 holding the advance rent or security deposit and state the name
 1745 and address of the depository where the moneys are being held.

HB 467 CS

2005
CS

1746 | The licensee shall notify residents of the facility's policy on
1747 | advance deposits.

1748 | (3)(a) The contract shall include a refund policy to be
1749 | implemented at the time of a resident's transfer, discharge, or
1750 | death. The refund policy shall provide that the resident or
1751 | responsible party is entitled to a prorated refund based on the
1752 | daily rate for any unused portion of payment beyond the
1753 | termination date after all charges, including the cost of
1754 | damages to the residential unit resulting from circumstances
1755 | other than normal use, have been paid to the licensee. For the
1756 | purpose of this paragraph, the termination date shall be the
1757 | date the unit is vacated by the resident and cleared of all
1758 | personal belongings. If the amount of belongings does not
1759 | preclude renting the unit, the facility may clear the unit and
1760 | charge the resident or his or her estate for moving and storing
1761 | the items at a rate equal to the actual cost to the facility,
1762 | not to exceed 20 percent of the regular rate for the unit,
1763 | provided that 14 days' advance written notification is given. If
1764 | the resident's possessions are not claimed within 45 days after
1765 | notification, the facility may dispose of them. The contract
1766 | shall also specify any other conditions under which claims will
1767 | be made against the refund due the resident. Except in the case
1768 | of death or a discharge due to medical reasons, the refunds
1769 | shall be computed in accordance with the notice of relocation
1770 | requirements specified in the contract. However, a resident may
1771 | not be required to provide the licensee with more than 30 days'
1772 | notice of termination. If after a contract is terminated, the
1773 | facility intends to make a claim against a refund due the

HB 467 CS

2005
CS

1774 resident, the facility shall notify the resident or responsible
 1775 party in writing of the claim and shall provide said party with
 1776 a reasonable time period of no less than 14 calendar days to
 1777 respond. The facility shall provide a refund to the resident or
 1778 responsible party within 45 days after the transfer, discharge,
 1779 or death of the resident. The agency shall impose a fine upon a
 1780 facility that fails to comply with the refund provisions of the
 1781 paragraph, which fine shall be equal to three times the amount
 1782 due to the resident. One-half of the fine shall be remitted to
 1783 the resident or his or her estate, and the other half to the
 1784 Health Care Trust Fund to be used for the purpose specified in
 1785 s. 429.18 ~~400.418~~.

1786 (5) Neither the contract nor any provision thereof
 1787 relieves any licensee of any requirement or obligation imposed
 1788 upon it by this chapter ~~part~~ or rules adopted under this chapter
 1789 ~~part~~.

1790 Section 51. Section 400.4255, Florida Statutes, is
 1791 renumbered as section 429.255, Florida Statutes, and paragraphs
 1792 (a) and (b) of subsection (1) and subsection (2) are amended to
 1793 read:

1794 429.255 ~~400.4255~~ Use of personnel; emergency care.--

1795 (1) (a) Persons under contract to the facility, facility
 1796 staff, or volunteers, who are licensed according to part I of
 1797 chapter 464, or those persons exempt under s. 464.022(1), and
 1798 others as defined by rule, may administer medications to
 1799 residents, take residents' vital signs, manage individual weekly
 1800 pill organizers for residents who self-administer medication,
 1801 give prepackaged enemas ordered by a physician, observe

1802 residents, document observations on the appropriate resident's
 1803 record, report observations to the resident's physician, and
 1804 contract or allow residents or a resident's representative,
 1805 designee, surrogate, guardian, or attorney in fact to contract
 1806 with a third party, provided residents meet the criteria for
 1807 appropriate placement as defined in s. 429.26 ~~400.426~~. Nursing
 1808 assistants certified pursuant to part II of chapter 464 may take
 1809 residents' vital signs as directed by a licensed nurse or
 1810 physician.

1811 (b) All staff in facilities licensed under this chapter
 1812 ~~part~~ shall exercise their professional responsibility to observe
 1813 residents, to document observations on the appropriate
 1814 resident's record, and to report the observations to the
 1815 resident's physician. However, the owner or administrator of
 1816 the facility shall be responsible for determining that the
 1817 resident receiving services is appropriate for residence in the
 1818 facility.

1819 (2) In facilities licensed to provide extended congregate
 1820 care, persons under contract to the facility, facility staff, or
 1821 volunteers, who are licensed according to part I of chapter 464,
 1822 or those persons exempt under s. 464.022(1), or those persons
 1823 certified as nursing assistants pursuant to part II of chapter
 1824 464, may also perform all duties within the scope of their
 1825 license or certification, as approved by the facility
 1826 administrator and pursuant to this chapter ~~part~~.

1827 Section 52. Section 400.4256, Florida Statutes, is
 1828 renumbered as section 429.256, Florida Statutes, and paragraph
 1829 (b) of subsection (1) is amended to read:

1830 429.256 ~~400.4256~~ Assistance with self-administration of
1831 medication.--

1832 (1) For the purposes of this section, the term:

1833 (b) "Unlicensed person" means an individual not currently
1834 licensed to practice nursing or medicine who is employed by or
1835 under contract to an assisted living facility and who has
1836 received training with respect to assisting with the self-
1837 administration of medication in an assisted living facility as
1838 provided under s. 429.52 ~~400.452~~ prior to providing such
1839 assistance as described in this section.

1840 Section 53. Section 400.426, Florida Statutes, is
1841 renumbered as section 429.26, Florida Statutes, and subsections
1842 (1), (4), (5), (9), and (12) are amended to read:

1843 429.26 ~~400.426~~ Appropriateness of placements; examinations
1844 of residents.--

1845 (1) The owner or administrator of a facility is
1846 responsible for determining the appropriateness of admission of
1847 an individual to the facility and for determining the continued
1848 appropriateness of residence of an individual in the facility. A
1849 determination shall be based upon an assessment of the
1850 strengths, needs, and preferences of the resident, the care and
1851 services offered or arranged for by the facility in accordance
1852 with facility policy, and any limitations in law or rule related
1853 to admission criteria or continued residency for the type of
1854 license held by the facility under this chapter ~~part~~. A resident
1855 may not be moved from one facility to another without
1856 consultation with and agreement from the resident or, if
1857 applicable, the resident's representative or designee or the

HB 467 CS

2005
CS

1858 resident's family, guardian, surrogate, or attorney in fact. In
 1859 the case of a resident who has been placed by the department or
 1860 the Department of Children and Family Services, the
 1861 administrator must notify the appropriate contact person in the
 1862 applicable department.

1863 (4) If possible, each resident shall have been examined by
 1864 a licensed physician or a licensed nurse practitioner within 60
 1865 days before admission to the facility. The signed and completed
 1866 medical examination report shall be submitted to the owner or
 1867 administrator of the facility who shall use the information
 1868 contained therein to assist in the determination of the
 1869 appropriateness of the resident's admission and continued stay
 1870 in the facility. The medical examination report shall become a
 1871 permanent part of the record of the resident at the facility and
 1872 shall be made available to the agency during inspection or upon
 1873 request. An assessment that has been completed through the
 1874 Comprehensive Assessment and Review for Long-Term Care Services
 1875 (CARES) Program fulfills the requirements for a medical
 1876 examination under this subsection and s. 429.07 ~~400.407~~(3)(b)6.

1877 (5) Except as provided in s. 429.07 ~~400.407~~, if a medical
 1878 examination has not been completed within 60 days before the
 1879 admission of the resident to the facility, a licensed physician
 1880 or licensed nurse practitioner shall examine the resident and
 1881 complete a medical examination form provided by the agency
 1882 within 30 days following the admission to the facility to enable
 1883 the facility owner or administrator to determine the
 1884 appropriateness of the admission. The medical examination form
 1885 shall become a permanent part of the record of the resident at

1886 | the facility and shall be made available to the agency during
1887 | inspection by the agency or upon request.

1888 | (9) If, at any time after admission to a facility, a
1889 | resident appears to need care beyond that which the facility is
1890 | licensed to provide, the agency shall require the resident to be
1891 | physically examined by a licensed physician or licensed nurse
1892 | practitioner. This examination shall, to the extent possible, be
1893 | performed by the resident's preferred physician or nurse
1894 | practitioner and shall be paid for by the resident with personal
1895 | funds, except as provided in s. 429.18 ~~400.418~~(1)(b). Following
1896 | this examination, the examining physician or licensed nurse
1897 | practitioner shall complete and sign a medical form provided by
1898 | the agency. The completed medical form shall be submitted to the
1899 | agency within 30 days after the date the facility owner or
1900 | administrator is notified by the agency that the physical
1901 | examination is required. After consultation with the physician
1902 | or licensed nurse practitioner who performed the examination, a
1903 | medical review team designated by the agency shall then
1904 | determine whether the resident is appropriately residing in the
1905 | facility. The medical review team shall base its decision on a
1906 | comprehensive review of the resident's physical and functional
1907 | status, including the resident's preferences, and not on an
1908 | isolated health-related problem. In the case of a mental health
1909 | resident, if the resident appears to have needs in addition to
1910 | those identified in the community living support plan, the
1911 | agency may require an evaluation by a mental health
1912 | professional, as determined by the Department of Children and
1913 | Family Services. A facility may not be required to retain a

1914 resident who requires more services or care than the facility is
 1915 able to provide in accordance with its policies and criteria for
 1916 admission and continued residency. Members of the medical review
 1917 team making the final determination may not include the agency
 1918 personnel who initially questioned the appropriateness of a
 1919 resident's placement. Such determination is final and binding
 1920 upon the facility and the resident. Any resident who is
 1921 determined by the medical review team to be inappropriately
 1922 residing in a facility shall be given 30 days' written notice to
 1923 relocate by the owner or administrator, unless the resident's
 1924 continued residence in the facility presents an imminent danger
 1925 to the health, safety, or welfare of the resident or a
 1926 substantial probability exists that death or serious physical
 1927 harm would result to the resident if allowed to remain in the
 1928 facility.

1929 (12) No resident who requires 24-hour nursing supervision,
 1930 except for a resident who is an enrolled hospice patient
 1931 pursuant to part VI of ~~this~~ chapter 400, shall be retained in a
 1932 facility licensed under this chapter ~~part~~.

1933 Section 54. Section 400.427, Florida Statutes, is
 1934 renumbered as section 429.27, Florida Statutes, and paragraph
 1935 (a) of subsection (6) is amended to read:

1936 429.27 ~~400.427~~ Property and personal affairs of
 1937 residents.--

1938 (6)(a) In addition to any damages or civil penalties to
 1939 which a person is subject, any person who:

1940 1. Intentionally withholds a resident's personal funds,
 1941 personal property, or personal needs allowance, or who demands,

HB 467 CS

2005
CS

1942 | beneficially receives, or contracts for payment of all or any
 1943 | part of a resident's personal property or personal needs
 1944 | allowance in satisfaction of the facility rate for supplies and
 1945 | services; or

1946 | 2. Borrows from or pledges any personal funds of a
 1947 | resident, other than the amount agreed to by written contract
 1948 | under s. 429.24 ~~400.424~~,

1949 |
 1950 | commits a misdemeanor of the first degree, punishable as
 1951 | provided in s. 775.082 or s. 775.083.

1952 | Section 55. Section 400.4275, Florida Statutes, is
 1953 | renumbered as section 429.275, Florida Statutes, and subsection
 1954 | (2) is amended to read:

1955 | 429.275 ~~400.4275~~ Business practice; personnel records;
 1956 | liability insurance.--The assisted living facility shall be
 1957 | administered on a sound financial basis that is consistent with
 1958 | good business practices.

1959 | (2) The administrator or owner of a facility shall
 1960 | maintain personnel records for each staff member which contain,
 1961 | at a minimum, documentation of background screening, if
 1962 | applicable, documentation of compliance with all training
 1963 | requirements of this chapter ~~part~~ or applicable rule, and a copy
 1964 | of all licenses or certification held by each staff who performs
 1965 | services for which licensure or certification is required under
 1966 | this chapter ~~part~~ or rule.

1967 | Section 56. Section 400.428, Florida Statutes, is
 1968 | renumbered as section 429.28, Florida Statutes, and paragraph
 1969 | (f) of subsection (1), subsection (2), paragraph (e) of

HB 467 CS

2005
CS

1970 subsection (3), paragraph (c) of subsection (5), and subsection
1971 (7) are amended to read:

1972 429.28 ~~400.428~~ Resident bill of rights.--

1973 (1) No resident of a facility shall be deprived of any
1974 civil or legal rights, benefits, or privileges guaranteed by
1975 law, the Constitution of the State of Florida, or the
1976 Constitution of the United States as a resident of a facility.
1977 Every resident of a facility shall have the right to:

1978 (f) Manage his or her financial affairs unless the
1979 resident or, if applicable, the resident's representative,
1980 designee, surrogate, guardian, or attorney in fact authorizes
1981 the administrator of the facility to provide safekeeping for
1982 funds as provided in s. 429.27 ~~400.427~~.

1983 (2) The administrator of a facility shall ensure that a
1984 written notice of the rights, obligations, and prohibitions set
1985 forth in this chapter ~~part~~ is posted in a prominent place in
1986 each facility and read or explained to residents who cannot
1987 read. This notice shall include the name, address, and telephone
1988 numbers of the local ombudsman council and central abuse hotline
1989 and, when applicable, the Advocacy Center for Persons with
1990 Disabilities, Inc., and the Florida local advocacy council,
1991 where complaints may be lodged. The facility must ensure a
1992 resident's access to a telephone to call the local ombudsman
1993 council, central abuse hotline, Advocacy Center for Persons with
1994 Disabilities, Inc., and the Florida local advocacy council.

1995 (3)

1996 (e) The agency may conduct complaint investigations as
1997 warranted to investigate any allegations of noncompliance with

1998 requirements required under this chapter ~~part~~ or rules adopted
1999 under this chapter ~~part~~.

2000 (5) No facility or employee of a facility may serve notice
2001 upon a resident to leave the premises or take any other
2002 retaliatory action against any person who:

2003 (c) Files a civil action alleging a violation of the
2004 provisions of this chapter ~~part~~ or notifies a state attorney or
2005 the Attorney General of a possible violation of such provisions.

2006 (7) Any person who submits or reports a complaint
2007 concerning a suspected violation of the provisions of this
2008 chapter ~~part~~ or concerning services and conditions in
2009 facilities, or who testifies in any administrative or judicial
2010 proceeding arising from such a complaint, shall have immunity
2011 from any civil or criminal liability therefor, unless such
2012 person has acted in bad faith or with malicious purpose or the
2013 court finds that there was a complete absence of a justiciable
2014 issue of either law or fact raised by the losing party.

2015 Section 57. Section 400.429, Florida Statutes, is
2016 renumbered as section 429.29, Florida Statutes, and subsections
2017 (1), (2), and (7) are amended to read:

2018 429.29 ~~400.429~~ Civil actions to enforce rights.--

2019 (1) Any person or resident whose rights as specified in
2020 this chapter ~~part~~ are violated shall have a cause of action.
2021 The action may be brought by the resident or his or her
2022 guardian, or by a person or organization acting on behalf of a
2023 resident with the consent of the resident or his or her
2024 guardian, or by the personal representative of the estate of a
2025 deceased resident regardless of the cause of death. If the

2026 | action alleges a claim for the resident's rights or for
 2027 | negligence that caused the death of the resident, the claimant
 2028 | shall be required to elect either survival damages pursuant to
 2029 | s. 46.021 or wrongful death damages pursuant to s. 768.21. If
 2030 | the action alleges a claim for the resident's rights or for
 2031 | negligence that did not cause the death of the resident, the
 2032 | personal representative of the estate may recover damages for
 2033 | the negligence that caused injury to the resident. The action
 2034 | may be brought in any court of competent jurisdiction to enforce
 2035 | such rights and to recover actual damages, and punitive damages
 2036 | for violation of the rights of a resident or negligence. Any
 2037 | resident who prevails in seeking injunctive relief or a claim
 2038 | for an administrative remedy is entitled to recover the costs of
 2039 | the action and a reasonable attorney's fee assessed against the
 2040 | defendant not to exceed \$25,000. Fees shall be awarded solely
 2041 | for the injunctive or administrative relief and not for any
 2042 | claim or action for damages whether such claim or action is
 2043 | brought together with a request for an injunction or
 2044 | administrative relief or as a separate action, except as
 2045 | provided under s. 768.79 or the Florida Rules of Civil
 2046 | Procedure. Sections 429.29-429.298 ~~400.429-400.4303~~ provide the
 2047 | exclusive remedy for a cause of action for recovery of damages
 2048 | for the personal injury or death of a resident arising out of
 2049 | negligence or a violation of rights specified in s. 429.28
 2050 | ~~400.428~~. This section does not preclude theories of recovery not
 2051 | arising out of negligence or s. 429.28 ~~400.428~~ which are
 2052 | available to a resident or to the agency. The provisions of

2053 chapter 766 do not apply to any cause of action brought under
2054 ss. 429.29-429.298 ~~400.429-400.4303~~.

2055 (2) In any claim brought pursuant to this chapter ~~part~~
2056 alleging a violation of resident's rights or negligence causing
2057 injury to or the death of a resident, the claimant shall have
2058 the burden of proving, by a preponderance of the evidence, that:

2059 (a) The defendant owed a duty to the resident;

2060 (b) The defendant breached the duty to the resident;

2061 (c) The breach of the duty is a legal cause of loss,
2062 injury, death, or damage to the resident; and

2063 (d) The resident sustained loss, injury, death, or damage
2064 as a result of the breach.

2065
2066 Nothing in this chapter ~~part~~ shall be interpreted to create
2067 strict liability. A violation of the rights set forth in s.
2068 429.28 ~~400.428~~ or in any other standard or guidelines specified
2069 in this chapter ~~part~~ or in any applicable administrative
2070 standard or guidelines of this state or a federal regulatory
2071 agency shall be evidence of negligence but shall not be
2072 considered negligence per se.

2073 (7) The resident or the resident's legal representative
2074 shall serve a copy of any complaint alleging in whole or in part
2075 a violation of any rights specified in this chapter ~~part~~ to the
2076 Agency for Health Care Administration at the time of filing the
2077 initial complaint with the clerk of the court for the county in
2078 which the action is pursued. The requirement of providing a copy
2079 of the complaint to the agency does not impair the resident's
2080 legal rights or ability to seek relief for his or her claim.

2081 Section 58. Section 400.4293, Florida Statutes, is
 2082 renumbered as section 429.293, Florida Statutes, and paragraph
 2083 (a) of subsection (1) and subsections (2) and (10) are amended
 2084 to read:

2085 429.293 ~~400.4293~~ Presuit notice; investigation;
 2086 notification of violation of residents' rights or alleged
 2087 negligence; claims evaluation procedure; informal discovery;
 2088 review; settlement offer; mediation.--

2089 (1) As used in this section, the term:

2090 (a) "Claim for residents' rights violation or negligence"
 2091 means a negligence claim alleging injury to or the death of a
 2092 resident arising out of an asserted violation of the rights of a
 2093 resident under s. 429.28 ~~400.428~~ or an asserted deviation from
 2094 the applicable standard of care.

2095 (2) Prior to filing a claim for a violation of a
 2096 resident's rights or a claim for negligence, a claimant alleging
 2097 injury to or the death of a resident shall notify each
 2098 prospective defendant by certified mail, return receipt
 2099 requested, of an asserted violation of a resident's rights
 2100 provided in s. 429.28 ~~400.428~~ or deviation from the standard of
 2101 care. Such notification shall include an identification of the
 2102 rights the prospective defendant has violated and the negligence
 2103 alleged to have caused the incident or incidents and a brief
 2104 description of the injuries sustained by the resident which are
 2105 reasonably identifiable at the time of notice. The notice shall
 2106 contain a certificate of counsel that counsel's reasonable
 2107 investigation gave rise to a good faith belief that grounds
 2108 exist for an action against each prospective defendant.

HB 467 CS

2005
CS

2109 (10) To the extent not inconsistent with this chapter
 2110 ~~part~~, the provisions of the Florida Mediation Code, Florida
 2111 Rules of Civil Procedure, shall be applicable to such
 2112 proceedings.

2113 Section 59. Section 400.4294, Florida Statutes, is
 2114 renumbered as section 429.294, Florida Statutes, and subsection
 2115 (1) is amended to read:

2116 429.294 ~~400.4294~~ Availability of facility records for
 2117 investigation of resident's rights violations and defenses;
 2118 penalty.--

2119 (1) Failure to provide complete copies of a resident's
 2120 records, including, but not limited to, all medical records and
 2121 the resident's chart, within the control or possession of the
 2122 facility within 10 days, in accordance with the provisions of s.
 2123 400.145, shall constitute evidence of failure of that party to
 2124 comply with good faith discovery requirements and shall waive
 2125 the good faith certificate and presuit notice requirements under
 2126 this chapter ~~part~~ by the requesting party.

2127 Section 60. Section 400.4295, Florida Statutes, is
 2128 renumbered as section 429.295, Florida Statutes, and amended to
 2129 read:

2130 429.295 ~~400.4295~~ Certain provisions not applicable to
 2131 actions under this chapter ~~part~~.--An action under this chapter
 2132 ~~part~~ for a violation of rights or negligence recognized herein
 2133 is not a claim for medical malpractice, and the provisions of s.
 2134 768.21(8) do not apply to a claim alleging death of the
 2135 resident.

2136 Section 61. Section 400.4296, Florida Statutes, is
 2137 renumbered as section 429.296, Florida Statutes, and subsection
 2138 (1) is amended to read:

2139 429.296 ~~400.4296~~ Statute of limitations.--

2140 (1) Any action for damages brought under this chapter ~~part~~
 2141 shall be commenced within 2 years from the time the incident
 2142 giving rise to the action occurred or within 2 years from the
 2143 time the incident is discovered, or should have been discovered
 2144 with the exercise of due diligence; however, in no event shall
 2145 the action be commenced later than 4 years from the date of the
 2146 incident or occurrence out of which the cause of action accrued.

2147 Section 62. Section 400.4297, Florida Statutes, is
 2148 renumbered as section 429.297, Florida Statutes, and subsection
 2149 (1) is amended to read:

2150 429.297 ~~400.4297~~ Punitive damages; pleading; burden of
 2151 proof.--

2152 (1) In any action for damages brought under this chapter
 2153 ~~part~~, no claim for punitive damages shall be permitted unless
 2154 there is a reasonable showing by evidence in the record or
 2155 proffered by the claimant which would provide a reasonable basis
 2156 for recovery of such damages. The claimant may move to amend her
 2157 or his complaint to assert a claim for punitive damages as
 2158 allowed by the rules of civil procedure. The rules of civil
 2159 procedure shall be liberally construed so as to allow the
 2160 claimant discovery of evidence which appears reasonably
 2161 calculated to lead to admissible evidence on the issue of
 2162 punitive damages. No discovery of financial worth shall proceed

HB 467 CS

2005
CS

2163 | until after the pleading concerning punitive damages is
2164 | permitted.

2165 | Section 63. Section 400.431, Florida Statutes, is
2166 | renumbered as section 429.31, Florida Statutes, and subsections
2167 | (1) and (5) are amended to read:

2168 | 429.31 ~~400.431~~ Closing of facility; notice; penalty.--

2169 | (1) Whenever a facility voluntarily discontinues
2170 | operation, it shall inform the agency in writing at least 90
2171 | days prior to the discontinuance of operation. The facility
2172 | shall also inform each resident or the next of kin, legal
2173 | representative, or agency acting on each resident's behalf, of
2174 | the fact and the proposed time of such discontinuance, following
2175 | the notification requirements provided in s. 429.28
2176 | ~~400.428~~(1)(k). In the event a resident has no person to
2177 | represent him or her, the facility shall be responsible for
2178 | referral to an appropriate social service agency for placement.

2179 | (5) The agency may levy a fine in an amount no greater
2180 | than \$5,000 upon each person or business entity that owns any
2181 | interest in a facility that terminates operation without
2182 | providing notice to the agency and the residents of the facility
2183 | at least 30 days before operation ceases. This fine shall not be
2184 | levied against any facility involuntarily closed at the
2185 | initiation of the agency. The agency shall use the proceeds of
2186 | the fines to operate the facility until all residents of the
2187 | facility are relocated and shall deposit any balance of the
2188 | proceeds into the Health Care Trust Fund established pursuant to
2189 | s. 429.18 ~~400.418~~.

HB 467 CS

2005
CS

2190 Section 64. Section 400.434, Florida Statutes, is
 2191 renumbered as section 429.34, Florida Statutes, and amended to
 2192 read:

2193 429.34 ~~400.434~~ Right of entry and inspection.--Any duly
 2194 designated officer or employee of the department, the Department
 2195 of Children and Family Services, the agency, the Medicaid Fraud
 2196 Control Unit of the Department of Legal Affairs, the state or
 2197 local fire marshal, or a member of the state or local long-term
 2198 care ombudsman council shall have the right to enter unannounced
 2199 upon and into the premises of any facility licensed pursuant to
 2200 this chapter part in order to determine the state of compliance
 2201 with the provisions of this chapter part and of rules or
 2202 standards in force pursuant thereto. The right of entry and
 2203 inspection shall also extend to any premises which the agency
 2204 has reason to believe is being operated or maintained as a
 2205 facility without a license; but no such entry or inspection of
 2206 any premises may be made without the permission of the owner or
 2207 person in charge thereof, unless a warrant is first obtained
 2208 from the circuit court authorizing such entry. The warrant
 2209 requirement shall extend only to a facility which the agency has
 2210 reason to believe is being operated or maintained as a facility
 2211 without a license. Any application for a license or renewal
 2212 thereof made pursuant to this chapter part shall constitute
 2213 permission for, and complete acquiescence in, any entry or
 2214 inspection of the premises for which the license is sought, in
 2215 order to facilitate verification of the information submitted on
 2216 or in connection with the application; to discover, investigate,
 2217 and determine the existence of abuse or neglect; or to elicit,

HB 467 CS

2005
CS

2218 receive, respond to, and resolve complaints. Any current valid
 2219 license shall constitute unconditional permission for, and
 2220 complete acquiescence in, any entry or inspection of the
 2221 premises by authorized personnel. The agency shall retain the
 2222 right of entry and inspection of facilities that have had a
 2223 license revoked or suspended within the previous 24 months, to
 2224 ensure that the facility is not operating unlawfully. However,
 2225 before entering the facility, a statement of probable cause must
 2226 be filed with the director of the agency, who must approve or
 2227 disapprove the action within 48 hours. Probable cause shall
 2228 include, but is not limited to, evidence that the facility holds
 2229 itself out to the public as a provider of personal care services
 2230 or the receipt of a complaint by the long-term care ombudsman
 2231 council about the facility. Data collected by the state or local
 2232 long-term care ombudsman councils or the state or local advocacy
 2233 councils may be used by the agency in investigations involving
 2234 violations of regulatory standards.

2235 Section 65. Section 400.441, Florida Statutes, is
 2236 renumbered as section 429.41, Florida Statutes, and subsections
 2237 (1) and (2), paragraph (b) of subsection (3), and subsection (5)
 2238 are amended to read:

2239 429.41 ~~400.441~~ Rules establishing standards.--

2240 (1) It is the intent of the Legislature that rules
 2241 published and enforced pursuant to this section shall include
 2242 criteria by which a reasonable and consistent quality of
 2243 resident care and quality of life may be ensured and the results
 2244 of such resident care may be demonstrated. Such rules shall
 2245 also ensure a safe and sanitary environment that is residential

2246 | and noninstitutional in design or nature. It is further
 2247 | intended that reasonable efforts be made to accommodate the
 2248 | needs and preferences of residents to enhance the quality of
 2249 | life in a facility. In order to provide safe and sanitary
 2250 | facilities and the highest quality of resident care
 2251 | accommodating the needs and preferences of residents, the
 2252 | department, in consultation with the agency, the Department of
 2253 | Children and Family Services, and the Department of Health,
 2254 | shall adopt rules, policies, and procedures to administer this
 2255 | chapter part, which must include reasonable and fair minimum
 2256 | standards in relation to:

2257 | (a) The requirements for and maintenance of facilities,
 2258 | not in conflict with the provisions of chapter 553, relating to
 2259 | plumbing, heating, cooling, lighting, ventilation, living space,
 2260 | and other housing conditions, which will ensure the health,
 2261 | safety, and comfort of residents and protection from fire
 2262 | hazard, including adequate provisions for fire alarm and other
 2263 | fire protection suitable to the size of the structure. Uniform
 2264 | firesafety standards shall be established and enforced by the
 2265 | State Fire Marshal in cooperation with the agency, the
 2266 | department, and the Department of Health.

2267 | 1. Evacuation capability determination.--

2268 | a. The provisions of the National Fire Protection
 2269 | Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
 2270 | for determining the ability of the residents, with or without
 2271 | staff assistance, to relocate from or within a licensed facility
 2272 | to a point of safety as provided in the fire codes adopted
 2273 | herein. An evacuation capability evaluation for initial

HB 467 CS

2005
CS

2274 licensure shall be conducted within 6 months after the date of
2275 licensure. For existing licensed facilities that are not
2276 equipped with an automatic fire sprinkler system, the
2277 administrator shall evaluate the evacuation capability of
2278 residents at least annually. The evacuation capability
2279 evaluation for each facility not equipped with an automatic fire
2280 sprinkler system shall be validated, without liability, by the
2281 State Fire Marshal, by the local fire marshal, or by the local
2282 authority having jurisdiction over firesafety, before the
2283 license renewal date. If the State Fire Marshal, local fire
2284 marshal, or local authority having jurisdiction over firesafety
2285 has reason to believe that the evacuation capability of a
2286 facility as reported by the administrator may have changed, it
2287 may, with assistance from the facility administrator, reevaluate
2288 the evacuation capability through timed exiting drills.
2289 Translation of timed fire exiting drills to evacuation
2290 capability may be determined:

2291 (I) Three minutes or less: prompt.

2292 (II) More than 3 minutes, but not more than 13 minutes:
2293 slow.

2294 (III) More than 13 minutes: impractical.

2295 b. The Office of the State Fire Marshal shall provide or
2296 cause the provision of training and education on the proper
2297 application of Chapter 5, NFPA 101A, 1995 edition, to its
2298 employees, to staff of the Agency for Health Care Administration
2299 who are responsible for regulating facilities under this chapter
2300 ~~part~~, and to local governmental inspectors. The Office of the
2301 State Fire Marshal shall provide or cause the provision of this

Page 83 of 137

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0467-02-c2

HB 467 CS

2005
CS

2302 training within its existing budget, but may charge a fee for
 2303 this training to offset its costs. The initial training must be
 2304 delivered within 6 months after July 1, 1995, and as needed
 2305 thereafter.

2306 c. The Office of the State Fire Marshal, in cooperation
 2307 with provider associations, shall provide or cause the provision
 2308 of a training program designed to inform facility operators on
 2309 how to properly review bid documents relating to the
 2310 installation of automatic fire sprinklers. The Office of the
 2311 State Fire Marshal shall provide or cause the provision of this
 2312 training within its existing budget, but may charge a fee for
 2313 this training to offset its costs. The initial training must be
 2314 delivered within 6 months after July 1, 1995, and as needed
 2315 thereafter.

2316 d. The administrator of a licensed facility shall sign an
 2317 affidavit verifying the number of residents occupying the
 2318 facility at the time of the evacuation capability evaluation.

2319 2. Firesafety requirements.--

2320 a. Except for the special applications provided herein,
 2321 effective January 1, 1996, the provisions of the National Fire
 2322 Protection Association, Life Safety Code, NFPA 101, 1994
 2323 edition, Chapter 22 for new facilities and Chapter 23 for
 2324 existing facilities shall be the uniform fire code applied by
 2325 the State Fire Marshal for assisted living facilities, pursuant
 2326 to s. 633.022.

2327 b. Any new facility, regardless of size, that applies for
 2328 a license on or after January 1, 1996, must be equipped with an
 2329 automatic fire sprinkler system. The exceptions as provided in

HB 467 CS

2005
CS

2330 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
 2331 apply to any new facility housing eight or fewer residents. On
 2332 July 1, 1995, local governmental entities responsible for the
 2333 issuance of permits for construction shall inform, without
 2334 liability, any facility whose permit for construction is
 2335 obtained prior to January 1, 1996, of this automatic fire
 2336 sprinkler requirement. As used in this chapter ~~part~~, the term "a
 2337 new facility" does not mean an existing facility that has
 2338 undergone change of ownership.

2339 c. Notwithstanding any provision of s. 633.022 or of the
 2340 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
 2341 edition, to the contrary, any existing facility housing eight or
 2342 fewer residents is not required to install an automatic fire
 2343 sprinkler system, nor to comply with any other requirement in
 2344 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
 2345 requirements of NFPA 101, 1988 edition, that applies to this
 2346 size facility, unless the facility has been classified as
 2347 impractical to evacuate. Any existing facility housing eight or
 2348 fewer residents that is classified as impractical to evacuate
 2349 must install an automatic fire sprinkler system within the
 2350 timeframes granted in this section.

2351 d. Any existing facility that is required to install an
 2352 automatic fire sprinkler system under this paragraph need not
 2353 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
 2354 edition, which exceed the provisions of NFPA 101, 1988 edition.
 2355 The mandate contained in this paragraph which requires certain
 2356 facilities to install an automatic fire sprinkler system
 2357 supersedes any other requirement.

- 2358 e. This paragraph does not supersede the exceptions
 2359 granted in NFPA 101, 1988 edition or 1994 edition.
- 2360 f. This paragraph does not exempt facilities from other
 2361 firesafety provisions adopted under s. 633.022 and local
 2362 building code requirements in effect before July 1, 1995.
- 2363 g. A local government may charge fees only in an amount
 2364 not to exceed the actual expenses incurred by local government
 2365 relating to the installation and maintenance of an automatic
 2366 fire sprinkler system in an existing and properly licensed
 2367 assisted living facility structure as of January 1, 1996.
- 2368 h. If a licensed facility undergoes major reconstruction
 2369 or addition to an existing building on or after January 1, 1996,
 2370 the entire building must be equipped with an automatic fire
 2371 sprinkler system. Major reconstruction of a building means
 2372 repair or restoration that costs in excess of 50 percent of the
 2373 value of the building as reported on the tax rolls, excluding
 2374 land, before reconstruction. Multiple reconstruction projects
 2375 within a 5-year period the total costs of which exceed 50
 2376 percent of the initial value of the building at the time the
 2377 first reconstruction project was permitted are to be considered
 2378 as major reconstruction. Application for a permit for an
 2379 automatic fire sprinkler system is required upon application for
 2380 a permit for a reconstruction project that creates costs that go
 2381 over the 50-percent threshold.
- 2382 i. Any facility licensed before January 1, 1996, that is
 2383 required to install an automatic fire sprinkler system shall
 2384 ensure that the installation is completed within the following

2385 | timeframes based upon evacuation capability of the facility as
 2386 | determined under subparagraph 1.:

- 2387 | (I) Impractical evacuation capability, 24 months.
- 2388 | (II) Slow evacuation capability, 48 months.
- 2389 | (III) Prompt evacuation capability, 60 months.

2390 |
 2391 | The beginning date from which the deadline for the automatic
 2392 | fire sprinkler installation requirement must be calculated is
 2393 | upon receipt of written notice from the local fire official that
 2394 | an automatic fire sprinkler system must be installed. The local
 2395 | fire official shall send a copy of the document indicating the
 2396 | requirement of a fire sprinkler system to the Agency for Health
 2397 | Care Administration.

2398 | j. It is recognized that the installation of an automatic
 2399 | fire sprinkler system may create financial hardship for some
 2400 | facilities. The appropriate local fire official shall, without
 2401 | liability, grant two 1-year extensions to the timeframes for
 2402 | installation established herein, if an automatic fire sprinkler
 2403 | installation cost estimate and proof of denial from two
 2404 | financial institutions for a construction loan to install the
 2405 | automatic fire sprinkler system are submitted. However, for any
 2406 | facility with a class I or class II, or a history of uncorrected
 2407 | class III, firesafety deficiencies, an extension must not be
 2408 | granted. The local fire official shall send a copy of the
 2409 | document granting the time extension to the Agency for Health
 2410 | Care Administration.

2411 | k. A facility owner whose facility is required to be
 2412 | equipped with an automatic fire sprinkler system under Chapter

HB 467 CS

2005
CS

2413 | 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
 2414 | any potential buyer of the facility that an installation of an
 2415 | automatic fire sprinkler requirement exists. The sale of the
 2416 | facility does not alter the timeframe for the installation of
 2417 | the automatic fire sprinkler system.

2418 | 1. Existing facilities required to install an automatic
 2419 | fire sprinkler system as a result of construction-type
 2420 | restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
 2421 | herein, or evacuation capability requirements shall be notified
 2422 | by the local fire official in writing of the automatic fire
 2423 | sprinkler requirement, as well as the appropriate date for final
 2424 | compliance as provided in this subparagraph. The local fire
 2425 | official shall send a copy of the document to the Agency for
 2426 | Health Care Administration.

2427 | m. Except in cases of life-threatening fire hazards, if an
 2428 | existing facility experiences a change in the evacuation
 2429 | capability, or if the local authority having jurisdiction
 2430 | identifies a construction-type restriction, such that an
 2431 | automatic fire sprinkler system is required, it shall be
 2432 | afforded time for installation as provided in this subparagraph.

2433 |
 2434 | Facilities that are fully sprinkled and in compliance with other
 2435 | firesafety standards are not required to conduct more than one
 2436 | of the required fire drills between the hours of 11 p.m. and 7
 2437 | a.m., per year. In lieu of the remaining drills, staff
 2438 | responsible for residents during such hours may be required to
 2439 | participate in a mock drill that includes a review of evacuation
 2440 | procedures. Such standards must be included or referenced in the

2441 rules adopted by the State Fire Marshal. Pursuant to s.
 2442 633.022(1)(b), the State Fire Marshal is the final
 2443 administrative authority for firesafety standards established
 2444 and enforced pursuant to this section. All licensed facilities
 2445 must have an annual fire inspection conducted by the local fire
 2446 marshal or authority having jurisdiction.

2447 3. Resident elopement requirements.--Facilities are
 2448 required to conduct a minimum of two resident elopement
 2449 prevention and response drills per year. All administrators and
 2450 direct care staff must participate in the drills which shall
 2451 include a review of procedures to address resident elopement.
 2452 Facilities must document the implementation of the drills and
 2453 ensure that the drills are conducted in a manner consistent with
 2454 the facility's resident elopement policies and procedures.

2455 (b) The preparation and annual update of a comprehensive
 2456 emergency management plan. Such standards must be included in
 2457 the rules adopted by the department after consultation with the
 2458 Department of Community Affairs. At a minimum, the rules must
 2459 provide for plan components that address emergency evacuation
 2460 transportation; adequate sheltering arrangements; postdisaster
 2461 activities, including provision of emergency power, food, and
 2462 water; postdisaster transportation; supplies; staffing;
 2463 emergency equipment; individual identification of residents and
 2464 transfer of records; communication with families; and responses
 2465 to family inquiries. The comprehensive emergency management
 2466 plan is subject to review and approval by the local emergency
 2467 management agency. During its review, the local emergency
 2468 management agency shall ensure that the following agencies, at a

2469 | minimum, are given the opportunity to review the plan: the
 2470 | Department of Elderly Affairs, the Department of Health, the
 2471 | Agency for Health Care Administration, and the Department of
 2472 | Community Affairs. Also, appropriate volunteer organizations
 2473 | must be given the opportunity to review the plan. The local
 2474 | emergency management agency shall complete its review within 60
 2475 | days and either approve the plan or advise the facility of
 2476 | necessary revisions.

2477 | (c) The number, training, and qualifications of all
 2478 | personnel having responsibility for the care of residents. The
 2479 | rules must require adequate staff to provide for the safety of
 2480 | all residents. Facilities licensed for 17 or more residents are
 2481 | required to maintain an alert staff for 24 hours per day.

2482 | (d) All sanitary conditions within the facility and its
 2483 | surroundings which will ensure the health and comfort of
 2484 | residents. The rules must clearly delineate the
 2485 | responsibilities of the agency's licensure and survey staff, the
 2486 | county health departments, and the local authority having
 2487 | jurisdiction over fire safety and ensure that inspections are
 2488 | not duplicative. The agency may collect fees for food service
 2489 | inspections conducted by the county health departments and
 2490 | transfer such fees to the Department of Health.

2491 | (e) License application and license renewal, transfer of
 2492 | ownership, proper management of resident funds and personal
 2493 | property, surety bonds, resident contracts, refund policies,
 2494 | financial ability to operate, and facility and staff records.

2495 (f) Inspections, complaint investigations, moratoriums,
2496 classification of deficiencies, levying and enforcement of
2497 penalties, and use of income from fees and fines.

2498 (g) The enforcement of the resident bill of rights
2499 specified in s. 429.28 ~~400.428~~.

2500 (h) The care and maintenance of residents, which must
2501 include, but is not limited to:

- 2502 1. The supervision of residents;
- 2503 2. The provision of personal services;
- 2504 3. The provision of, or arrangement for, social and
2505 leisure activities;
- 2506 4. The arrangement for appointments and transportation to
2507 appropriate medical, dental, nursing, or mental health services,
2508 as needed by residents;
- 2509 5. The management of medication;
- 2510 6. The nutritional needs of residents;
- 2511 7. Resident records; and
- 2512 8. Internal risk management and quality assurance.

2513 (i) Facilities holding a limited nursing, extended
2514 congregate care, or limited mental health license.

2515 (j) The establishment of specific criteria to define
2516 appropriateness of resident admission and continued residency in
2517 a facility holding a standard, limited nursing, extended
2518 congregate care, and limited mental health license.

2519 (k) The use of physical or chemical restraints. The use
2520 of physical restraints is limited to half-bed rails as
2521 prescribed and documented by the resident's physician with the
2522 consent of the resident or, if applicable, the resident's

2523 representative or designee or the resident's surrogate,
 2524 guardian, or attorney in fact. The use of chemical restraints
 2525 is limited to prescribed dosages of medications authorized by
 2526 the resident's physician and must be consistent with the
 2527 resident's diagnosis. Residents who are receiving medications
 2528 that can serve as chemical restraints must be evaluated by their
 2529 physician at least annually to assess:

- 2530 1. The continued need for the medication.
- 2531 2. The level of the medication in the resident's blood.
- 2532 3. The need for adjustments in the prescription.

2533 (1) The establishment of specific policies and procedures
 2534 on resident elopement. Facilities shall conduct a minimum of two
 2535 resident elopement drills each year. All administrators and
 2536 direct care staff shall participate in the drills. Facilities
 2537 shall document the drills.

2538 (2) In adopting any rules pursuant to this chapter ~~part~~,
 2539 the department, in conjunction with the agency, shall make
 2540 distinct standards for facilities based upon facility size; the
 2541 types of care provided; the physical and mental capabilities and
 2542 needs of residents; the type, frequency, and amount of services
 2543 and care offered; and the staffing characteristics of the
 2544 facility. Rules developed pursuant to this section shall not
 2545 restrict the use of shared staffing and shared programming in
 2546 facilities that are part of retirement communities that provide
 2547 multiple levels of care and otherwise meet the requirements of
 2548 law and rule. Except for uniform firesafety standards, the
 2549 department shall adopt by rule separate and distinct standards
 2550 for facilities with 16 or fewer beds and for facilities with 17

HB 467 CS

2005
CS

2551 or more beds. The standards for facilities with 16 or fewer
2552 beds shall be appropriate for a noninstitutional residential
2553 environment, provided that the structure is no more than two
2554 stories in height and all persons who cannot exit the facility
2555 unassisted in an emergency reside on the first floor. The
2556 department, in conjunction with the agency, may make other
2557 distinctions among types of facilities as necessary to enforce
2558 the provisions of this chapter ~~part~~. Where appropriate, the
2559 agency shall offer alternate solutions for complying with
2560 established standards, based on distinctions made by the
2561 department and the agency relative to the physical
2562 characteristics of facilities and the types of care offered
2563 therein.

2564 (3) The department shall submit a copy of proposed rules
2565 to the Speaker of the House of Representatives, the President of
2566 the Senate, and appropriate committees of substance for review
2567 and comment prior to the promulgation thereof.

2568 (b) The agency, in consultation with the department, may
2569 waive rules promulgated pursuant to this chapter ~~part~~ in order
2570 to demonstrate and evaluate innovative or cost-effective
2571 congregate care alternatives which enable individuals to age in
2572 place. Such waivers may be granted only in instances where
2573 there is reasonable assurance that the health, safety, or
2574 welfare of residents will not be endangered. To apply for a
2575 waiver, the licensee shall submit to the agency a written
2576 description of the concept to be demonstrated, including goals,
2577 objectives, and anticipated benefits; the number and types of
2578 residents who will be affected, if applicable; a brief

Page 93 of 137

HB 467 CS

2005
CS

2579 description of how the demonstration will be evaluated; and any
 2580 other information deemed appropriate by the agency. Any
 2581 facility granted a waiver shall submit a report of findings to
 2582 the agency and the department within 12 months. At such time,
 2583 the agency may renew or revoke the waiver or pursue any
 2584 regulatory or statutory changes necessary to allow other
 2585 facilities to adopt the same practices. The department may by
 2586 rule clarify terms and establish waiver application procedures,
 2587 criteria for reviewing waiver proposals, and procedures for
 2588 reporting findings, as necessary to implement this subsection.

2589 (5) A fee shall be charged by the department to any person
 2590 requesting a copy of this chapter part or rules promulgated
 2591 under this chapter part. Such fees shall not exceed the actual
 2592 cost of duplication and postage.

2593 Section 66. Section 400.442, Florida Statutes, is
 2594 renumbered as section 429.42, Florida Statutes, and subsections
 2595 (1) and (3) are amended to read:

2596 429.42 ~~400.442~~ Pharmacy and dietary services.--

2597 (1) Any assisted living facility in which the agency has
 2598 documented a class I or class II deficiency or uncorrected class
 2599 III deficiencies regarding medicinal drugs or over-the-counter
 2600 preparations, including their storage, use, delivery, or
 2601 administration, or dietary services, or both, during a biennial
 2602 survey or a monitoring visit or an investigation in response to
 2603 a complaint, shall, in addition to or as an alternative to any
 2604 penalties imposed under s. 429.19 ~~400.419~~, be required to employ
 2605 the consultant services of a licensed pharmacist, a licensed
 2606 registered nurse, or a registered or licensed dietitian, as

HB 467 CS

2005
CS

2607 applicable. The consultant shall, at a minimum, provide onsite
 2608 quarterly consultation until the inspection team from the agency
 2609 determines that such consultation services are no longer
 2610 required.

2611 (3) The agency shall employ at least two pharmacists
 2612 licensed pursuant to chapter 465 among its personnel who
 2613 biennially inspect assisted living facilities licensed under
 2614 this chapter part, to participate in biennial inspections or
 2615 consult with the agency regarding deficiencies relating to
 2616 medicinal drugs or over-the-counter preparations.

2617 Section 67. Section 400.444, Florida Statutes, is
 2618 renumbered as section 429.44, Florida Statutes, and subsection
 2619 (2) is amended to read:

2620 429.44 ~~400.444~~ Construction and renovation;
 2621 requirements.--

2622 (2) Upon notification by the local authority having
 2623 jurisdiction over life-threatening violations which seriously
 2624 threaten the health, safety, or welfare of a resident of a
 2625 facility, the agency shall take action as specified in s. 429.14
 2626 ~~400.414~~.

2627 Section 68. Section 400.4445, Florida Statutes, is
 2628 renumbered as section 429.445, Florida Statutes, and amended to
 2629 read:

2630 429.445 ~~400.4445~~ Compliance with local zoning
 2631 requirements.--No facility licensed under this chapter part may
 2632 commence any construction which will expand the size of the
 2633 existing structure unless the licensee first submits to the
 2634 agency proof that such construction will be in compliance with

2635 applicable local zoning requirements. Facilities with a
 2636 licensed capacity of less than 15 persons shall comply with the
 2637 provisions of chapter 419.

2638 Section 69. Section 400.447, Florida Statutes, is
 2639 renumbered as section 429.47, Florida Statutes, and subsections
 2640 (2), (5), and (7) are amended to read:

2641 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--

2642 (2) It is unlawful for any holder of a license issued
 2643 pursuant to the provisions of this act to withhold from the
 2644 agency any evidence of financial instability, including, but not
 2645 limited to, bad checks, delinquent accounts, nonpayment of
 2646 withholding taxes, unpaid utility expenses, nonpayment for
 2647 essential services, or adverse court action concerning the
 2648 financial viability of the facility or any other facility
 2649 licensed under part II of chapter 400 or under ~~part III~~ of this
 2650 chapter which is owned by the licensee.

2651 (5) A freestanding facility shall not advertise or imply
 2652 that any part of it is a nursing home. For the purpose of this
 2653 subsection, "freestanding facility" means a facility that is not
 2654 operated in conjunction with a nursing home to which residents
 2655 of the facility are given priority when nursing care is
 2656 required. A person who violates this subsection is subject to
 2657 fine as specified in s. 429.19 ~~400.419~~.

2658 (7) A facility licensed under this chapter ~~part~~ which is
 2659 not part of a facility authorized under chapter 651 shall
 2660 include the facility's license number as given by the agency in
 2661 all advertising. A company or person owning more than one
 2662 facility shall include at least one license number per

HB 467 CS

2005
CS

2663 advertisement. All advertising shall include the term "assisted
2664 living facility" before the license number.

2665 Section 70. Section 400.451, Florida Statutes, is
2666 renumbered as section 429.51, Florida Statutes, and amended to
2667 read:

2668 429.51 ~~400.451~~ Existing facilities to be given reasonable
2669 time to comply with rules and standards.--Any facility as
2670 defined in this chapter ~~part~~ which is in operation at the time
2671 of promulgation of any applicable rules or standards adopted or
2672 amended pursuant to this chapter ~~part~~ may be given a reasonable
2673 time, not to exceed 6 months, within which to comply with such
2674 rules and standards.

2675 Section 71. Section 400.452, Florida Statutes, is
2676 renumbered as section 429.52, Florida Statutes, and subsections
2677 (3) and (5) are amended to read:

2678 429.52 ~~400.452~~ Staff training and educational programs;
2679 core educational requirement.--

2680 (3) Effective January 1, 2004, a new facility
2681 administrator must complete the required training and education,
2682 including the competency test, within a reasonable time after
2683 being employed as an administrator, as determined by the
2684 department. Failure to do so is a violation of this chapter ~~part~~
2685 and subjects the violator to an administrative fine as
2686 prescribed in s. 429.19 ~~400.419~~. Administrators licensed in
2687 accordance with chapter 468, part II, are exempt from this
2688 requirement. Other licensed professionals may be exempted, as
2689 determined by the department by rule.

HB 467 CS

2005
CS

2690 (5) Staff involved with the management of medications and
 2691 assisting with the self-administration of medications under s.
 2692 429.256 ~~400.4256~~ must complete a minimum of 4 additional hours
 2693 of training provided by a registered nurse, licensed pharmacist,
 2694 or department staff. The department shall establish by rule the
 2695 minimum requirements of this additional training.

2696 Section 72. Section 400.453, Florida Statutes, is
 2697 renumbered as section 429.53, Florida Statutes, and paragraph
 2698 (b) of subsection (1) and paragraphs (a), (e), and (f) of
 2699 subsection (2) are amended to read:

2700 429.53 ~~400.453~~ Consultation by the agency.--

2701 (1) The area offices of licensure and certification of the
 2702 agency shall provide consultation to the following upon request:

2703 (b) A person interested in obtaining a license to operate
 2704 a facility under this chapter ~~part~~.

2705 (2) As used in this section, "consultation" includes:

2706 (a) An explanation of the requirements of this chapter
 2707 ~~part~~ and rules adopted pursuant thereto;

2708 (e) Any other information which the agency deems necessary
 2709 to promote compliance with the requirements of this chapter
 2710 ~~part~~; and

2711 (f) A preconstruction review of a facility to ensure
 2712 compliance with agency rules and this chapter ~~part~~.

2713 Section 73. Subsections (1), (7), and (15) of section
 2714 400.462, Florida Statutes, are amended to read:

2715 400.462 Definitions.--As used in this part, the term:

2716 (1) "Administrator" means a direct employee of the home
 2717 health agency or a related organization, or of a management

HB 467 CS

2005
CS

2718 | company that has a contract to manage the home health agency, to
 2719 | whom the governing body has delegated the responsibility for
 2720 | day-to-day administration of the home health agency. The
 2721 | administrator must be a licensed physician, physician assistant,
 2722 | or registered nurse licensed to practice in this state or an
 2723 | individual having at least 1 year of supervisory or
 2724 | administrative experience in home health care or in a facility
 2725 | licensed under chapter 395, ~~or~~ under part II ~~or part III~~ of this
 2726 | chapter, or under chapter 429. An administrator may manage a
 2727 | maximum of five licensed home health agencies located within one
 2728 | agency service district or within an immediately contiguous
 2729 | county. If the home health agency is licensed under this chapter
 2730 | and is part of a retirement community that provides multiple
 2731 | levels of care, an employee of the retirement community may
 2732 | administer the home health agency and up to a maximum of four
 2733 | entities licensed under this chapter or chapter 429 that are
 2734 | owned, operated, or managed by the same corporate entity. An
 2735 | administrator shall designate, in writing, for each licensed
 2736 | entity, a qualified alternate administrator to serve during
 2737 | absences.

2738 | (7) "Director of nursing" means a registered nurse and
 2739 | direct employee of the agency or related business entity who is
 2740 | a graduate of an approved school of nursing and is licensed in
 2741 | this state; who has at least 1 year of supervisory experience as
 2742 | a registered nurse in a licensed home health agency, a facility
 2743 | licensed under chapter 395, or a facility licensed under part II
 2744 | ~~or part III~~ of this chapter or under chapter 429; and who is
 2745 | responsible for overseeing the professional nursing and home

2746 health aid delivery of services of the agency. An employee may
 2747 be the director of nursing of a maximum of five licensed home
 2748 health agencies operated by a related business entity and
 2749 located within one agency service district or within an
 2750 immediately contiguous county. If the home health agency is
 2751 licensed under this chapter and is part of a retirement
 2752 community that provides multiple levels of care, an employee of
 2753 the retirement community may serve as the director of nursing of
 2754 the home health agency and of up to four entities licensed under
 2755 this chapter or chapter 429 which are owned, operated, or
 2756 managed by the same corporate entity. A director of nursing
 2757 shall designate, in writing, for each licensed entity, a
 2758 qualified alternate registered nurse to serve during the absence
 2759 of the director of nursing.

2760 (15) "Nurse registry" means any person that procures,
 2761 offers, promises, or attempts to secure health-care-related
 2762 contracts for registered nurses, licensed practical nurses,
 2763 certified nursing assistants, home health aides, companions, or
 2764 homemakers, who are compensated by fees as independent
 2765 contractors, including, but not limited to, contracts for the
 2766 provision of services to patients and contracts to provide
 2767 private duty or staffing services to health care facilities
 2768 licensed under chapter 395, ~~or~~ this chapter, or chapter 429, or
 2769 other business entities.

2770 Section 74. Paragraph (h) of subsection (5) of section
 2771 400.464, Florida Statutes, is amended to read:

2772 400.464 Home health agencies to be licensed; expiration of
 2773 license; exemptions; unlawful acts; penalties.--

HB 467 CS

2005
CS

2774 (5) The following are exempt from the licensure
2775 requirements of this part:

2776 (h) The delivery of assisted living facility services for
2777 which the assisted living facility is licensed under ~~part III of~~
2778 ~~this~~ chapter 429, to serve its residents in its facility.

2779 Section 75. Subsection (2) of section 400.497, Florida
2780 Statutes, is amended to read:

2781 400.497 Rules establishing minimum standards.--The agency
2782 shall adopt, publish, and enforce rules to implement this part,
2783 including, as applicable, ss. 400.506 and 400.509, which must
2784 provide reasonable and fair minimum standards relating to:

2785 (2) Shared staffing. The agency shall allow shared
2786 staffing if the home health agency is part of a retirement
2787 community that provides multiple levels of care, is located on
2788 one campus, is licensed under this chapter or chapter 429, and
2789 otherwise meets the requirements of law and rule.

2790 Section 76. Section 400.552, Florida Statutes, is amended
2791 to read:

2792 400.552 Applicability.--Any facility that comes within the
2793 definition of an adult day care center which is not exempt under
2794 s. 429.905 ~~400.553~~ must be licensed by the agency as an adult
2795 day care center.

2796 Section 77. Subsection (1) and paragraph (d) of subsection
2797 (2) of section 400.555, Florida Statutes, are amended to read:

2798 400.555 Application for license.--

2799 (1) An application for a license to operate an adult day
2800 care center must be made to the agency on forms furnished by the
2801 agency and must be accompanied by the appropriate license fee

HB 467 CS

2005
CS

2802 unless the applicant is exempt from payment of the fee as
2803 provided in s. 429.907(4) ~~400.554(4)~~.

2804 (2) The applicant for licensure must furnish:

2805 (d) Proof of compliance with level 2 background screening
2806 as required under s. 429.919 ~~400.5572~~.

2807 Section 78. Paragraph (c) of subsection (2) of section
2808 400.556, Florida Statutes, is amended to read:

2809 400.556 Denial, suspension, revocation of license;
2810 administrative fines; investigations and inspections.--

2811 (2) Each of the following actions by the owner of an adult
2812 day care center or by its operator or employee is a ground for
2813 action by the agency against the owner of the center or its
2814 operator or employee:

2815 (c) A failure of persons subject to level 2 background
2816 screening under s. 429.174 ~~400.4174(1)~~ to meet the screening
2817 standards of s. 435.04, or the retention by the center of an
2818 employee subject to level 1 background screening standards under
2819 s. 429.174 ~~400.4174(2)~~ who does not meet the screening standards
2820 of s. 435.03 and for whom exemptions from disqualification have
2821 not been provided by the agency.

2822 Section 79. Subsection (1) of section 400.557, Florida
2823 Statutes, is amended to read:

2824 400.557 Expiration of license; renewal; conditional
2825 license or permit.--

2826 (1) A license issued for the operation of an adult day
2827 care center, unless sooner suspended or revoked, expires 2 years
2828 after the date of issuance. The agency shall notify a licensee
2829 at least 120 days before the expiration date that license

HB 467 CS

2005
CS

2830 renewal is required to continue operation. The notification must
 2831 be provided electronically or by mail delivery. At least 90 days
 2832 prior to the expiration date, an application for renewal must be
 2833 submitted to the agency. A license shall be renewed, upon the
 2834 filing of an application on forms furnished by the agency, if
 2835 the applicant has first met the requirements of this part and of
 2836 the rules adopted under this part. The applicant must file with
 2837 the application satisfactory proof of financial ability to
 2838 operate the center in accordance with the requirements of this
 2839 part and in accordance with the needs of the participants to be
 2840 served and an affidavit of compliance with the background
 2841 screening requirements of s. 429.919 ~~400.5572~~.

2842 Section 80. Paragraph (c) of subsection (2) of section
 2843 400.5572, Florida Statutes, is amended to read:

2844 400.5572 Background screening.--

2845 (2) The owner or administrator of an adult day care center
 2846 must conduct level 1 background screening as set forth in
 2847 chapter 435 on all employees hired on or after October 1, 1998,
 2848 who provide basic services or supportive and optional services
 2849 to the participants. Such persons satisfy this requirement if:

2850 (c) The person required to be screened is employed by a
 2851 corporation or business entity or related corporation or
 2852 business entity that owns, operates, or manages more than one
 2853 facility or agency licensed under this chapter or chapter 429,
 2854 and for whom a level 1 screening was conducted by the
 2855 corporation or business entity as a condition of initial or
 2856 continued employment.

HB 467 CS

2005
CS

2857 Section 81. Subsection (5) of section 400.601, Florida
 2858 Statutes, is amended to read:
 2859 400.601 Definitions.--As used in this part, the term:
 2860 (5) "Hospice residential unit" means a homelike living
 2861 facility, other than a facility licensed under other parts of
 2862 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
 2863 is operated by a hospice for the benefit of its patients and is
 2864 considered by a patient who lives there to be his or her primary
 2865 residence.

2866 Section 82. Paragraph (c) of subsection (2) of section
 2867 400.618, Florida Statutes, is amended to read:
 2868 400.618 Definitions.--As used in this part, the term:
 2869 (2) "Adult family-care home" means a full-time, family-
 2870 type living arrangement, in a private home, under which a person
 2871 who owns or rents the home provides room, board, and personal
 2872 care, on a 24-hour basis, for no more than five disabled adults
 2873 or frail elders who are not relatives. The following family-type
 2874 living arrangements are not required to be licensed as an adult
 2875 family-care home:

2876 (c) An establishment that is licensed as an assisted
 2877 living facility under chapter 429 ~~part III~~.

2878 Section 83. Subsection (1) of section 400.6194, Florida
 2879 Statutes, is amended to read:

2880 400.6194 Denial, revocation, or suspension of a
 2881 license.--The agency may deny, suspend, or revoke a license for
 2882 any of the following reasons:

2883 (1) Failure of any of the persons required to undergo
 2884 background screening under s. 429.67 ~~400.619~~ to meet the level 1

HB 467 CS

2005
CS

2885 screening standards of s. 435.03, unless an exemption from
2886 disqualification has been provided by the agency.

2887 Section 84. Paragraph (h) of subsection (1) of section
2888 400.621, Florida Statutes, is amended to read:

2889 400.621 Rules and standards relating to adult family-care
2890 homes.--

2891 (1) The department, in consultation with the Department of
2892 Health, the Department of Children and Family Services, and the
2893 agency shall, by rule, establish minimum standards to ensure the
2894 health, safety, and well-being of each resident in the adult
2895 family-care home. The rules must address:

2896 (h) Procedures to protect the residents' rights as
2897 provided in s. 429.85 ~~400.628~~.

2898 Section 85. Paragraph (f) of subsection (1) of section
2899 400.628, Florida Statutes, is amended to read:

2900 429.85 ~~400.628~~ Residents' bill of rights.--

2901 (1) A resident of an adult family-care home may not be
2902 deprived of any civil or legal rights, benefits, or privileges
2903 guaranteed by law, the State Constitution, or the Constitution
2904 of the United States solely by reason of status as a resident of
2905 the home. Each resident has the right to:

2906 (f) Manage the resident's own financial affairs unless the
2907 resident or the resident's guardian authorizes the provider to
2908 provide safekeeping for funds in accordance with procedures
2909 equivalent to those provided in s. 429.27 ~~400.427~~.

2910 Section 86. Paragraph (c) of subsection (5) of section
2911 400.93, Florida Statutes, is amended to read:

HB 467 CS

2005
CS

2912 400.93 Licensure required; exemptions; unlawful acts;
2913 penalties.--

2914 (5) The following are exempt from home medical equipment
2915 provider licensure, unless they have a separate company,
2916 corporation, or division that is in the business of providing
2917 home medical equipment and services for sale or rent to
2918 consumers at their regular or temporary place of residence
2919 pursuant to the provisions of this part:

2920 (c) Assisted living facilities licensed under chapter 429
2921 ~~part III~~, when serving their residents.

2922 Section 87. Subsection (3) and paragraph (c) of subsection
2923 (10) of section 400.962, Florida Statutes, are amended to read:

2924 400.962 License required; license application.--

2925 (3) The basic license fee collected shall be deposited in
2926 the Health Care Trust Fund, established for carrying out the
2927 purposes of this chapter or chapter 429.

2928 (10)

2929 (c) Proof of compliance with the level 2 background
2930 screening requirements of chapter 435 which has been submitted
2931 within the previous 5 years in compliance with any other
2932 licensure requirements under this chapter or chapter 429
2933 satisfies the requirements of paragraph (a). Proof of compliance
2934 with background screening which has been submitted within the
2935 previous 5 years to fulfill the requirements of the Financial
2936 Services Commission and the Office of Insurance Regulation under
2937 chapter 651 as part of an application for a certificate of
2938 authority to operate a continuing care retirement community

HB 467 CS

2005
CS

2939 satisfies the requirements for the Department of Law Enforcement
2940 and Federal Bureau of Investigation background checks.

2941 Section 88. Paragraph (b) of subsection (1) of section
2942 400.980, Florida Statutes, is amended to read:

2943 400.980 Health care services pools.--

2944 (1) As used in this section, the term:

2945 (b) "Health care services pool" means any person, firm,
2946 corporation, partnership, or association engaged for hire in the
2947 business of providing temporary employment in health care
2948 facilities, residential facilities, and agencies for licensed,
2949 certified, or trained health care personnel including, without
2950 limitation, nursing assistants, nurses' aides, and orderlies.
2951 However, the term does not include nursing registries, a
2952 facility licensed under this chapter or chapter 429 ~~400~~, a
2953 health care services pool established within a health care
2954 facility to provide services only within the confines of such
2955 facility, or any individual contractor directly providing
2956 temporary services to a health care facility without use or
2957 benefit of a contracting agent.

2958 Section 89. Paragraphs (a), (b), (c), and (d) of
2959 subsection (4) of section 400.9905, Florida Statutes, are
2960 amended to read:

2961 400.9905 Definitions.--

2962 (4) "Clinic" means an entity at which health care services
2963 are provided to individuals and which tenders charges for
2964 reimbursement for such services, including a mobile clinic and a
2965 portable equipment provider. For purposes of this part, the term

HB 467 CS

2005
CS

2966 | does not include and the licensure requirements of this part do
2967 | not apply to:

2968 | (a) Entities licensed or registered by the state under
2969 | chapter 395; or entities licensed or registered by the state and
2970 | providing only health care services within the scope of services
2971 | authorized under their respective licenses granted under ss.
2972 | 383.30-383.335, chapter 390, chapter 394, chapter 397, this
2973 | chapter except part XIII, chapter 429, chapter 463, chapter 465,
2974 | chapter 466, chapter 478, part I of chapter 483, chapter 484, or
2975 | chapter 651; end-stage renal disease providers authorized under
2976 | 42 C.F.R. part 405, subpart U; or providers certified under 42
2977 | C.F.R. part 485, subpart B or subpart H; or any entity that
2978 | provides neonatal or pediatric hospital-based health care
2979 | services by licensed practitioners solely within a hospital
2980 | licensed under chapter 395.

2981 | (b) Entities that own, directly or indirectly, entities
2982 | licensed or registered by the state pursuant to chapter 395; or
2983 | entities that own, directly or indirectly, entities licensed or
2984 | registered by the state and providing only health care services
2985 | within the scope of services authorized pursuant to their
2986 | respective licenses granted under ss. 383.30-383.335, chapter
2987 | 390, chapter 394, chapter 397, this chapter except part XIII,
2988 | chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
2989 | part I of chapter 483, chapter 484, chapter 651; end-stage renal
2990 | disease providers authorized under 42 C.F.R. part 405, subpart
2991 | U; or providers certified under 42 C.F.R. part 485, subpart B or
2992 | subpart H; or any entity that provides neonatal or pediatric

2993 hospital-based health care services by licensed practitioners
 2994 solely within a hospital licensed under chapter 395.

2995 (c) Entities that are owned, directly or indirectly, by an
 2996 entity licensed or registered by the state pursuant to chapter
 2997 395; or entities that are owned, directly or indirectly, by an
 2998 entity licensed or registered by the state and providing only
 2999 health care services within the scope of services authorized
 3000 pursuant to their respective licenses granted under ss. 383.30-
 3001 383.335, chapter 390, chapter 394, chapter 397, this chapter
 3002 except part XIII, chapter 429, chapter 463, chapter 465, chapter
 3003 466, chapter 478, part I of chapter 483, chapter 484, or chapter
 3004 651; end-stage renal disease providers authorized under 42
 3005 C.F.R. part 405, subpart U; or providers certified under 42
 3006 C.F.R. part 485, subpart B or subpart H; or any entity that
 3007 provides neonatal or pediatric hospital-based health care
 3008 services by licensed practitioners solely within a hospital
 3009 under chapter 395.

3010 (d) Entities that are under common ownership, directly or
 3011 indirectly, with an entity licensed or registered by the state
 3012 pursuant to chapter 395; or entities that are under common
 3013 ownership, directly or indirectly, with an entity licensed or
 3014 registered by the state and providing only health care services
 3015 within the scope of services authorized pursuant to their
 3016 respective licenses granted under ss. 383.30-383.335, chapter
 3017 390, chapter 394, chapter 397, this chapter except part XIII,
 3018 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
 3019 part I of chapter 483, chapter 484, or chapter 651; end-stage
 3020 renal disease providers authorized under 42 C.F.R. part 405,

HB 467 CS

2005
CS

3021 subpart U; or providers certified under 42 C.F.R. part 485,
3022 subpart B or subpart H; or any entity that provides neonatal or
3023 pediatric hospital-based health care services by licensed
3024 practitioners solely within a hospital licensed under chapter
3025 395.

3026 Section 90. Subsection (6) of section 400.9935, Florida
3027 Statutes, is amended to read:

3028 400.9935 Clinic responsibilities.--

3029 (6) Any licensed health care provider who violates this
3030 part is subject to discipline in accordance with this chapter or
3031 chapter 429 and his or her respective practice act.

3032 Section 91. Subsection (12) of section 401.23, Florida
3033 Statutes, is amended to read:

3034 401.23 Definitions.--As used in this part, the term:

3035 (12) "Interfacility transfer" means the transportation by
3036 ambulance of a patient between two facilities licensed under
3037 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,
3038 pursuant to this part.

3039 Section 92. Paragraph (b) of subsection (2) of section
3040 402.164, Florida Statutes, is amended to read:

3041 402.164 Legislative intent; definitions.--

3042 (2) As used in ss. 402.164-402.167, the term:

3043 (b) "Client" means a client as defined in s. 393.063, s.
3044 394.67, s. 397.311, or s. 400.960, a forensic client or client
3045 as defined in s. 916.106, a child or youth as defined in s.
3046 39.01, a child as defined in s. 827.01, a family as defined in
3047 s. 414.0252, a participant as defined in s. 429.901 ~~400.551~~, a
3048 resident as defined in s. 429.02 ~~400.402~~, a Medicaid recipient

HB 467 CS

2005
CS

3049 or recipient as defined in s. 409.901, a child receiving child
 3050 care as defined in s. 402.302, a disabled adult as defined in s.
 3051 410.032 or s. 410.603, or a victim as defined in s. 39.01 or s.
 3052 415.102 as each definition applies within its respective
 3053 chapter.

3054 Section 93. Paragraph (b) of subsection (2) of section
 3055 408.033, Florida Statutes, is amended to read:

3056 408.033 Local and state health planning.--

3057 (2) FUNDING.--

3058 (b)1. A hospital licensed under chapter 395, a nursing
 3059 home licensed under chapter 400, and an assisted living facility
 3060 licensed under chapter 429 ~~400~~ shall be assessed an annual fee
 3061 based on number of beds.

3062 2. All other facilities and organizations listed in
 3063 paragraph (a) shall each be assessed an annual fee of \$150.

3064 3. Facilities operated by the Department of Children and
 3065 Family Services, the Department of Health, or the Department of
 3066 Corrections and any hospital which meets the definition of rural
 3067 hospital pursuant to s. 395.602 are exempt from the assessment
 3068 required in this subsection.

3069 Section 94. Subsection (3) of section 408.831, Florida
 3070 Statutes, is amended to read:

3071 408.831 Denial, suspension, or revocation of a license,
 3072 registration, certificate, or application.--

3073 (3) This section provides standards of enforcement
 3074 applicable to all entities licensed or regulated by the Agency
 3075 for Health Care Administration. This section controls over any
 3076 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,

HB 467 CS

2005
CS

3077 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted
3078 pursuant to those chapters.

3079 Section 95. Subsection (2) of section 409.212, Florida
3080 Statutes, is amended to read:

3081 409.212 Optional supplementation.--

3082 (2) The base rate of payment for optional state
3083 supplementation shall be established by the department within
3084 funds appropriated. Additional amounts may be provided for
3085 mental health residents in facilities designed to provide
3086 limited mental health services as provided for in s. 429.075
3087 ~~400.4075~~. The base rate of payment does not include the personal
3088 needs allowance.

3089 Section 96. Paragraph (e) of subsection (4) of section
3090 409.221, Florida Statutes, is amended to read:

3091 409.221 Consumer-directed care program.--

3092 (4) CONSUMER-DIRECTED CARE.--

3093 (e) Services.--Consumers shall use the budget allowance
3094 only to pay for home and community-based services that meet the
3095 consumer's long-term care needs and are a cost-efficient use of
3096 funds. Such services may include, but are not limited to, the
3097 following:

3098 1. Personal care.

3099 2. Homemaking and chores, including housework, meals,
3100 shopping, and transportation.

3101 3. Home modifications and assistive devices which may
3102 increase the consumer's independence or make it possible to
3103 avoid institutional placement.

3104 4. Assistance in taking self-administered medication.

HB 467 CS

2005
CS

3105 | 5. Day care and respite care services, including those
 3106 | provided by nursing home facilities pursuant to s. 400.141(6) or
 3107 | by adult day care facilities licensed pursuant to s. 429.907
 3108 | ~~400.554~~.

3109 | 6. Personal care and support services provided in an
 3110 | assisted living facility.

3111 | Section 97. Subsection (7) and paragraph (a) of subsection
 3112 | (8) of section 409.907, Florida Statutes, are amended to read:

3113 | 409.907 Medicaid provider agreements.--The agency may make
 3114 | payments for medical assistance and related services rendered to
 3115 | Medicaid recipients only to an individual or entity who has a
 3116 | provider agreement in effect with the agency, who is performing
 3117 | services or supplying goods in accordance with federal, state,
 3118 | and local law, and who agrees that no person shall, on the
 3119 | grounds of handicap, race, color, or national origin, or for any
 3120 | other reason, be subjected to discrimination under any program
 3121 | or activity for which the provider receives payment from the
 3122 | agency.

3123 | (7) The agency may require, as a condition of
 3124 | participating in the Medicaid program and before entering into
 3125 | the provider agreement, that the provider submit information, in
 3126 | an initial and any required renewal applications, concerning the
 3127 | professional, business, and personal background of the provider
 3128 | and permit an onsite inspection of the provider's service
 3129 | location by agency staff or other personnel designated by the
 3130 | agency to perform this function. The agency shall perform a
 3131 | random onsite inspection, within 60 days after receipt of a
 3132 | fully complete new provider's application, of the provider's

3133 service location prior to making its first payment to the
 3134 provider for Medicaid services to determine the applicant's
 3135 ability to provide the services that the applicant is proposing
 3136 to provide for Medicaid reimbursement. The agency is not
 3137 required to perform an onsite inspection of a provider or
 3138 program that is licensed by the agency, that provides services
 3139 under waiver programs for home and community-based services, or
 3140 that is licensed as a medical foster home by the Department of
 3141 Children and Family Services. As a continuing condition of
 3142 participation in the Medicaid program, a provider shall
 3143 immediately notify the agency of any current or pending
 3144 bankruptcy filing. Before entering into the provider agreement,
 3145 or as a condition of continuing participation in the Medicaid
 3146 program, the agency may also require that Medicaid providers
 3147 reimbursed on a fee-for-services basis or fee schedule basis
 3148 which is not cost-based, post a surety bond not to exceed
 3149 \$50,000 or the total amount billed by the provider to the
 3150 program during the current or most recent calendar year,
 3151 whichever is greater. For new providers, the amount of the
 3152 surety bond shall be determined by the agency based on the
 3153 provider's estimate of its first year's billing. If the
 3154 provider's billing during the first year exceeds the bond
 3155 amount, the agency may require the provider to acquire an
 3156 additional bond equal to the actual billing level of the
 3157 provider. A provider's bond shall not exceed \$50,000 if a
 3158 physician or group of physicians licensed under chapter 458,
 3159 chapter 459, or chapter 460 has a 50 percent or greater
 3160 ownership interest in the provider or if the provider is an

3161 assisted living facility licensed under ~~part III of~~ chapter 429
 3162 ~~400~~. The bonds permitted by this section are in addition to the
 3163 bonds referenced in s. 400.179(4)(d). If the provider is a
 3164 corporation, partnership, association, or other entity, the
 3165 agency may require the provider to submit information concerning
 3166 the background of that entity and of any principal of the
 3167 entity, including any partner or shareholder having an ownership
 3168 interest in the entity equal to 5 percent or greater, and any
 3169 treating provider who participates in or intends to participate
 3170 in Medicaid through the entity. The information must include:

3171 (a) Proof of holding a valid license or operating
 3172 certificate, as applicable, if required by the state or local
 3173 jurisdiction in which the provider is located or if required by
 3174 the Federal Government.

3175 (b) Information concerning any prior violation, fine,
 3176 suspension, termination, or other administrative action taken
 3177 under the Medicaid laws, rules, or regulations of this state or
 3178 of any other state or the Federal Government; any prior
 3179 violation of the laws, rules, or regulations relating to the
 3180 Medicare program; any prior violation of the rules or
 3181 regulations of any other public or private insurer; and any
 3182 prior violation of the laws, rules, or regulations of any
 3183 regulatory body of this or any other state.

3184 (c) Full and accurate disclosure of any financial or
 3185 ownership interest that the provider, or any principal, partner,
 3186 or major shareholder thereof, may hold in any other Medicaid
 3187 provider or health care related entity or any other entity that

3188 | is licensed by the state to provide health or residential care
3189 | and treatment to persons.

3190 | (d) If a group provider, identification of all members of
3191 | the group and attestation that all members of the group are
3192 | enrolled in or have applied to enroll in the Medicaid program.

3193 | (8)(a) Each provider, or each principal of the provider if
3194 | the provider is a corporation, partnership, association, or
3195 | other entity, seeking to participate in the Medicaid program
3196 | must submit a complete set of his or her fingerprints to the
3197 | agency for the purpose of conducting a criminal history record
3198 | check. Principals of the provider include any officer,
3199 | director, billing agent, managing employee, or affiliated
3200 | person, or any partner or shareholder who has an ownership
3201 | interest equal to 5 percent or more in the provider. However, a
3202 | director of a not-for-profit corporation or organization is not
3203 | a principal for purposes of a background investigation as
3204 | required by this section if the director: serves solely in a
3205 | voluntary capacity for the corporation or organization, does not
3206 | regularly take part in the day-to-day operational decisions of
3207 | the corporation or organization, receives no remuneration from
3208 | the not-for-profit corporation or organization for his or her
3209 | service on the board of directors, has no financial interest in
3210 | the not-for-profit corporation or organization, and has no
3211 | family members with a financial interest in the not-for-profit
3212 | corporation or organization; and if the director submits an
3213 | affidavit, under penalty of perjury, to this effect to the
3214 | agency and the not-for-profit corporation or organization
3215 | submits an affidavit, under penalty of perjury, to this effect

HB 467 CS

2005
CS

3216 to the agency as part of the corporation's or organization's
 3217 Medicaid provider agreement application. Notwithstanding the
 3218 above, the agency may require a background check for any person
 3219 reasonably suspected by the agency to have been convicted of a
 3220 crime. This subsection shall not apply to:

- 3221 1. A hospital licensed under chapter 395;
- 3222 2. A nursing home licensed under chapter 400;
- 3223 3. A hospice licensed under chapter 400;
- 3224 4. An assisted living facility licensed under chapter 429
 3225 ~~400~~.
- 3226 5. A unit of local government, except that requirements of
 3227 this subsection apply to nongovernmental providers and entities
 3228 when contracting with the local government to provide Medicaid
 3229 services. The actual cost of the state and national criminal
 3230 history record checks must be borne by the nongovernmental
 3231 provider or entity; or
- 3232 6. Any business that derives more than 50 percent of its
 3233 revenue from the sale of goods to the final consumer, and the
 3234 business or its controlling parent either is required to file a
 3235 form 10-K or other similar statement with the Securities and
 3236 Exchange Commission or has a net worth of \$50 million or more.

3237 Section 98. Section 410.031, Florida Statutes, is amended
 3238 to read:

3239 410.031 Legislative intent.--It is the intent of the
 3240 Legislature to encourage the provision of care for disabled
 3241 adults in family-type living arrangements in private homes as an
 3242 alternative to institutional or nursing home care for such
 3243 persons. The provisions of ss. 410.031-410.036 are intended to

HB 467 CS

2005
CS

3244 | be supplemental to the provisions of chapters ~~chapter~~ 400 and
 3245 | 429, relating to the licensing and regulation of nursing homes
 3246 | and assisted living facilities, and do not exempt any person who
 3247 | is otherwise subject to regulation under chapter 400 or chapter
 3248 | 429.

3249 | Section 99. Section 410.034, Florida Statutes, is amended
 3250 | to read:

3251 | 410.034 Department determination of fitness to provide
 3252 | home care.--In accordance with s. 429.02 ~~400.402~~, a person
 3253 | caring for an adult who is related to such person by blood or
 3254 | marriage is not subject to the Assisted Living Facilities Act.
 3255 | If, however, the person who plans to provide home care under
 3256 | this act is found by the department to be unable to provide this
 3257 | care, the department shall notify the person wishing to provide
 3258 | home care of this determination, and the person shall not be
 3259 | eligible for subsidy payments under ss. 410.031-410.036.

3260 | Section 100. Section 415.1111, Florida Statutes, is
 3261 | amended to read:

3262 | 415.1111 Civil actions.--A vulnerable adult who has been
 3263 | abused, neglected, or exploited as specified in this chapter has
 3264 | a cause of action against any perpetrator and may recover actual
 3265 | and punitive damages for such abuse, neglect, or exploitation.
 3266 | The action may be brought by the vulnerable adult, or that
 3267 | person's guardian, by a person or organization acting on behalf
 3268 | of the vulnerable adult with the consent of that person or that
 3269 | person's guardian, or by the personal representative of the
 3270 | estate of a deceased victim without regard to whether the cause
 3271 | of death resulted from the abuse, neglect, or exploitation. The

HB 467 CS

2005
CS

3272 action may be brought in any court of competent jurisdiction to
 3273 enforce such action and to recover actual and punitive damages
 3274 for any deprivation of or infringement on the rights of a
 3275 vulnerable adult. A party who prevails in any such action may
 3276 be entitled to recover reasonable attorney's fees, costs of the
 3277 action, and damages. The remedies provided in this section are
 3278 in addition to and cumulative with other legal and
 3279 administrative remedies available to a vulnerable adult.
 3280 Notwithstanding the foregoing, any civil action for damages
 3281 against any licensee or entity who establishes, controls,
 3282 conducts, manages, or operates a facility licensed under part II
 3283 of chapter 400 relating to its operation of the licensed
 3284 facility shall be brought pursuant to s. 400.023, or against any
 3285 licensee or entity who establishes, controls, conducts, manages,
 3286 or operates a facility licensed under ~~part III~~ of chapter 429
 3287 ~~400~~ relating to its operation of the licensed facility shall be
 3288 brought pursuant to s. 429.29 ~~400.429~~. Such licensee or entity
 3289 shall not be vicariously liable for the acts or omissions of its
 3290 employees or agents or any other third party in an action
 3291 brought under this section.

3292 Section 101. Paragraph (d) of subsection (1) of section
 3293 419.001, Florida Statutes, is amended to read:

3294 419.001 Site selection of community residential homes.--

3295 (1) For the purposes of this section, the following
 3296 definitions shall apply:

3297 (d) "Resident" means any of the following: a frail elder
 3298 as defined in s. 429.65 ~~400.618~~; a physically disabled or
 3299 handicapped person as defined in s. 760.22(7)(a); a

HB 467 CS

2005
CS

3300 | developmentally disabled person as defined in s. 393.063; a
 3301 | nondangerous mentally ill person as defined in s. 394.455(18);
 3302 | or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
 3303 | s. 985.03(8).

3304 | Section 102. Section 430.601, Florida Statutes, is amended
 3305 | to read:

3306 | 430.601 Home care for the elderly; legislative intent.--It
 3307 | is the intent of the Legislature to encourage the provision of
 3308 | care for the elderly in family-type living arrangements in
 3309 | private homes as an alternative to institutional or nursing home
 3310 | care for such persons. The provisions of ss. 430.601-430.606 are
 3311 | intended to be supplemental to the provisions of chapters
 3312 | ~~chapter~~ 400 and 429, relating to the licensing and regulation of
 3313 | nursing homes and assisted living facilities, and do not exempt
 3314 | any person who is otherwise subject to regulation under those
 3315 | chapters ~~the provisions of that chapter~~.

3316 | Section 103. Subsection (7) of section 430.703, Florida
 3317 | Statutes, is amended to read:

3318 | 430.703 Definitions.--As used in this act, the term:
 3319 | (7) "Other qualified provider" means an entity licensed
 3320 | under chapter 400 or chapter 429 that demonstrates a long-term
 3321 | care continuum and meets all requirements pursuant to an
 3322 | interagency agreement between the agency and the department.

3323 | Section 104. Paragraph (a) of subsection (3) of section
 3324 | 435.03, Florida Statutes, is amended to read:

3325 | 435.03 Level 1 screening standards.--
 3326 | (3) Standards must also ensure that the person:

HB 467 CS

2005
CS

3327 (a) For employees and employers licensed or registered
 3328 pursuant to chapter 400 or chapter 429, and for employees and
 3329 employers of developmental services institutions as defined in
 3330 s. 393.063, intermediate care facilities for the developmentally
 3331 disabled as defined in s. 393.063, and mental health treatment
 3332 facilities as defined in s. 394.455, meets the requirements of
 3333 this chapter.

3334 Section 105. Paragraph (a) of subsection (4) of section
 3335 435.04, Florida Statutes, is amended to read:

3336 435.04 Level 2 screening standards.--

3337 (4) Standards must also ensure that the person:

3338 (a) For employees or employers licensed or registered
 3339 pursuant to chapter 400 or chapter 429, does not have a
 3340 confirmed report of abuse, neglect, or exploitation as defined
 3341 in s. 415.102(6), which has been uncontested or upheld under s.
 3342 415.103.

3343 Section 106. Paragraph (g) of subsection (1) of section
 3344 440.13, Florida Statutes, is amended to read:

3345 440.13 Medical services and supplies; penalty for
 3346 violations; limitations.--

3347 (1) DEFINITIONS.--As used in this section, the term:

3348 (g) "Health care facility" means any hospital licensed
 3349 under chapter 395 and any health care institution licensed under
 3350 chapter 400 or chapter 429.

3351 Section 107. Paragraph (b) of subsection (1) of section
 3352 456.0375, Florida Statutes, is amended to read:

3353 456.0375 Registration of certain clinics; requirements;
 3354 discipline; exemptions.--

3355 (1)

3356 (b) For purposes of this section, the term "clinic" does
 3357 not include and the registration requirements herein do not
 3358 apply to:

3359 1. Entities licensed or registered by the state pursuant
 3360 to chapter 390, chapter 394, chapter 395, chapter 397, chapter
 3361 400, chapter 429, chapter 463, chapter 465, chapter 466, chapter
 3362 478, chapter 480, chapter 484, or chapter 651.

3363 2. Entities that own, directly or indirectly, entities
 3364 licensed or registered by the state pursuant to chapter 390,
 3365 chapter 394, chapter 395, chapter 397, chapter 400, chapter 429,
 3366 chapter 463, chapter 465, chapter 466, chapter 478, chapter 480,
 3367 chapter 484, or chapter 651.

3368 3. Entities that are owned, directly or indirectly, by an
 3369 entity licensed or registered by the state pursuant to chapter
 3370 390, chapter 394, chapter 395, chapter 397, chapter 400, chapter
 3371 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter
 3372 480, chapter 484, or chapter 651.

3373 4. Entities that are under common ownership, directly or
 3374 indirectly, with an entity licensed or registered by the state
 3375 pursuant to chapter 390, chapter 394, chapter 395, chapter 397,
 3376 chapter 400, chapter 429, chapter 463, chapter 465, chapter 466,
 3377 chapter 478, chapter 480, chapter 484, or chapter 651.

3378 5. Entities exempt from federal taxation under 26 U.S.C.
 3379 s. 501(c)(3) and community college and university clinics.

3380 6. Sole proprietorships, group practices, partnerships, or
 3381 corporations that provide health care services by licensed
 3382 health care practitioners pursuant to chapters 457, 458, 459,

HB 467 CS

2005
CS

3383 460, 461, 462, 463, 466, 467, 484, 486, 490, 491, or part I,
 3384 part III, part X, part XIII, or part XIV of chapter 468, or s.
 3385 464.012, which are wholly owned by licensed health care
 3386 practitioners or the licensed health care practitioner and the
 3387 spouse, parent, or child of a licensed health care practitioner,
 3388 so long as one of the owners who is a licensed health care
 3389 practitioner is supervising the services performed therein and
 3390 is legally responsible for the entity's compliance with all
 3391 federal and state laws. However, no health care practitioner may
 3392 supervise services beyond the scope of the practitioner's
 3393 license.

3394 7. Clinical facilities affiliated with an accredited
 3395 medical school at which training is provided for medical
 3396 students, residents, or fellows.

3397 Section 108. Subsection (1) of section 465.0235, Florida
 3398 Statutes, is amended to read:

3399 465.0235 Automated pharmacy systems used by long-term care
 3400 facilities, hospices, or state correctional institutions.--

3401 (1) A pharmacy may provide pharmacy services to a long-
 3402 term care facility or hospice licensed under chapter 400 or
 3403 chapter 429 or a state correctional institution operated under
 3404 chapter 944 through the use of an automated pharmacy system that
 3405 need not be located at the same location as the pharmacy.

3406 Section 109. Paragraph (k) of subsection (1) of section
 3407 468.505, Florida Statutes, is amended to read:

3408 468.505 Exemptions; exceptions.--

3409 (1) Nothing in this part may be construed as prohibiting
 3410 or restricting the practice, services, or activities of:

HB 467 CS

2005
CS

3411 (k) A person employed by a hospital licensed under chapter
 3412 395, or by a nursing home or assisted living facility licensed
 3413 under part II ~~or part III~~ of chapter 400 or under chapter 429,
 3414 or by a continuing care facility certified under chapter 651, if
 3415 the person is employed in compliance with the laws and rules
 3416 adopted thereunder regarding the operation of its dietetic
 3417 department.

3418 Section 110. Subsection (11) of section 477.025, Florida
 3419 Statutes, is amended to read:

3420 477.025 Cosmetology salons; specialty salons; requisites;
 3421 licensure; inspection; mobile cosmetology salons.--

3422 (11) Facilities licensed under part II ~~or part III~~ of
 3423 chapter 400 or under chapter 429 shall be exempt from the
 3424 provisions of this section and a cosmetologist licensed pursuant
 3425 to s. 477.019 may provide salon services exclusively for
 3426 facility residents.

3427 Section 111. Paragraph (a) of subsection (2) of section
 3428 509.032, Florida Statutes, is amended to read:

3429 509.032 Duties.--

3430 (2) INSPECTION OF PREMISES.--

3431 (a) The division has responsibility and jurisdiction for
 3432 all inspections required by this chapter. The division has
 3433 responsibility for quality assurance. Each licensed
 3434 establishment shall be inspected at least biannually, except for
 3435 transient and nontransient apartments, which shall be inspected
 3436 at least annually, and shall be inspected at such other times as
 3437 the division determines is necessary to ensure the public's
 3438 health, safety, and welfare. The division shall establish a

HB 467 CS

2005
CS

3439 | system to determine inspection frequency. Public lodging units
 3440 | classified as resort condominiums or resort dwellings are not
 3441 | subject to this requirement, but shall be made available to the
 3442 | division upon request. If, during the inspection of a public
 3443 | lodging establishment classified for renting to transient or
 3444 | nontransient tenants, an inspector identifies vulnerable adults
 3445 | who appear to be victims of neglect, as defined in s. 415.102,
 3446 | or, in the case of a building that is not equipped with
 3447 | automatic sprinkler systems, tenants or clients who may be
 3448 | unable to self-preserve in an emergency, the division shall
 3449 | convene meetings with the following agencies as appropriate to
 3450 | the individual situation: the Department of Health, the
 3451 | Department of Elderly Affairs, the area agency on aging, the
 3452 | local fire marshal, the landlord and affected tenants and
 3453 | clients, and other relevant organizations, to develop a plan
 3454 | which improves the prospects for safety of affected residents
 3455 | and, if necessary, identifies alternative living arrangements
 3456 | such as facilities licensed under part II ~~or part III~~ of chapter
 3457 | 400 or under chapter 429.

3458 | Section 112. Subsection (1) of section 509.241, Florida
 3459 | Statutes, is amended to read:

3460 | 509.241 Licenses required; exceptions.--

3461 | (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
 3462 | establishment and public food service establishment shall obtain
 3463 | a license from the division. Such license may not be transferred
 3464 | from one place or individual to another. It shall be a
 3465 | misdemeanor of the second degree, punishable as provided in s.
 3466 | 775.082 or s. 775.083, for such an establishment to operate

HB 467 CS

2005
CS

3467 without a license. Local law enforcement shall provide immediate
 3468 assistance in pursuing an illegally operating establishment. The
 3469 division may refuse a license, or a renewal thereof, to any
 3470 establishment that is not constructed and maintained in
 3471 accordance with law and with the rules of the division. The
 3472 division may refuse to issue a license, or a renewal thereof, to
 3473 any establishment an operator of which, within the preceding 5
 3474 years, has been adjudicated guilty of, or has forfeited a bond
 3475 when charged with, any crime reflecting on professional
 3476 character, including soliciting for prostitution, pandering,
 3477 letting premises for prostitution, keeping a disorderly place,
 3478 or illegally dealing in controlled substances as defined in
 3479 chapter 893, whether in this state or in any other jurisdiction
 3480 within the United States, or has had a license denied, revoked,
 3481 or suspended pursuant to s. 429.14 ~~400.414~~. Licenses shall be
 3482 renewed annually, and the division shall adopt a rule
 3483 establishing a staggered schedule for license renewals. If any
 3484 license expires while administrative charges are pending against
 3485 the license, the proceedings against the license shall continue
 3486 to conclusion as if the license were still in effect.

3487 Section 113. Subsection (1) of section 627.732, Florida
 3488 Statutes, is amended to read:

3489 627.732 Definitions.--As used in ss. 627.730-627.7405, the
 3490 term:

3491 (1) "Broker" means any person not possessing a license
 3492 under chapter 395, chapter 400, chapter 429, chapter 458,
 3493 chapter 459, chapter 460, chapter 461, or chapter 641 who
 3494 charges or receives compensation for any use of medical

HB 467 CS

2005
CS

3495 | equipment and is not the 100-percent owner or the 100-percent
 3496 | lessee of such equipment. For purposes of this section, such
 3497 | owner or lessee may be an individual, a corporation, a
 3498 | partnership, or any other entity and any of its 100-percent-
 3499 | owned affiliates and subsidiaries. For purposes of this
 3500 | subsection, the term "lessee" means a long-term lessee under a
 3501 | capital or operating lease, but does not include a part-time
 3502 | lessee. The term "broker" does not include a hospital or
 3503 | physician management company whose medical equipment is
 3504 | ancillary to the practices managed, a debt collection agency, or
 3505 | an entity that has contracted with the insurer to obtain a
 3506 | discounted rate for such services; nor does the term include a
 3507 | management company that has contracted to provide general
 3508 | management services for a licensed physician or health care
 3509 | facility and whose compensation is not materially affected by
 3510 | the usage or frequency of usage of medical equipment or an
 3511 | entity that is 100-percent owned by one or more hospitals or
 3512 | physicians. The term "broker" does not include a person or
 3513 | entity that certifies, upon request of an insurer, that:

- 3514 | (a) It is a clinic registered under s. 456.0375 or
- 3515 | licensed under ss. 400.990-400.995;
- 3516 | (b) It is a 100-percent owner of medical equipment; and
- 3517 | (c) The owner's only part-time lease of medical equipment
- 3518 | for personal injury protection patients is on a temporary basis
- 3519 | not to exceed 30 days in a 12-month period, and such lease is
- 3520 | solely for the purposes of necessary repair or maintenance of
- 3521 | the 100-percent-owned medical equipment or pending the arrival
- 3522 | and installation of the newly purchased or a replacement for the

3523 | 100-percent-owned medical equipment, or for patients for whom,
 3524 | because of physical size or claustrophobia, it is determined by
 3525 | the medical director or clinical director to be medically
 3526 | necessary that the test be performed in medical equipment that
 3527 | is open-style. The leased medical equipment cannot be used by
 3528 | patients who are not patients of the registered clinic for
 3529 | medical treatment of services. Any person or entity making a
 3530 | false certification under this subsection commits insurance
 3531 | fraud as defined in s. 817.234. However, the 30-day period
 3532 | provided in this paragraph may be extended for an additional 60
 3533 | days as applicable to magnetic resonance imaging equipment if
 3534 | the owner certifies that the extension otherwise complies with
 3535 | this paragraph.

3536 | Section 114. Subsection (2) of section 651.011, Florida
 3537 | Statutes, is amended to read:

3538 | 651.011 Definitions.--For the purposes of this chapter,
 3539 | the term:

3540 | (2) "Continuing care" or "care" means furnishing pursuant
 3541 | to a contract shelter and either nursing care or personal
 3542 | services as defined in s. 429.02 ~~400.402~~, whether such nursing
 3543 | care or personal services are provided in the facility or in
 3544 | another setting designated by the contract for continuing care,
 3545 | to an individual not related by consanguinity or affinity to the
 3546 | provider furnishing such care, upon payment of an entrance fee.
 3547 | Other personal services provided shall be designated in the
 3548 | continuing care contract. Contracts to provide continuing care
 3549 | include agreements to provide care for any duration, including
 3550 | contracts that are terminable by either party.

3551 Section 115. Paragraph (c) of subsection (2) of section
3552 651.022, Florida Statutes, is amended to read:

3553 651.022 Provisional certificate of authority;
3554 application.--

3555 (2) The application for a provisional certificate of
3556 authority shall be on a form prescribed by the commission and
3557 shall contain the following information:

3558 (c)1. Evidence that the applicant is reputable and of
3559 responsible character. If the applicant is a firm, association,
3560 organization, partnership, business trust, corporation, or
3561 company, the form shall require evidence that the members or
3562 shareholders are reputable and of responsible character, and the
3563 person in charge of providing care under a certificate of
3564 authority shall likewise be required to produce evidence of
3565 being reputable and of responsible character.

3566 2. Evidence satisfactory to the office of the ability of
3567 the applicant to comply with the provisions of this chapter and
3568 with rules adopted by the commission pursuant to this chapter.

3569 3. A statement of whether a person identified in the
3570 application for a provisional certificate of authority or the
3571 administrator or manager of the facility, if such person has
3572 been designated, or any such person living in the same location:

3573 a. Has been convicted of a felony or has pleaded nolo
3574 contendere to a felony charge, or has been held liable or has
3575 been enjoined in a civil action by final judgment, if the felony
3576 or civil action involved fraud, embezzlement, fraudulent
3577 conversion, or misappropriation of property.

3578 b. Is subject to a currently effective injunctive or
 3579 restrictive order or federal or state administrative order
 3580 relating to business activity or health care as a result of an
 3581 action brought by a public agency or department, including,
 3582 without limitation, an action affecting a license under chapter
 3583 400 or chapter 429.

3584
 3585 The statement shall set forth the court or agency, the date of
 3586 conviction or judgment, and the penalty imposed or damages
 3587 assessed, or the date, nature, and issuer of the order. Before
 3588 determining whether a provisional certificate of authority is to
 3589 be issued, the office may make an inquiry to determine the
 3590 accuracy of the information submitted pursuant to subparagraphs
 3591 1. and 2.

3592 Section 116. Subsection (6) of section 651.023, Florida
 3593 Statutes, is amended to read:

3594 651.023 Certificate of authority; application.--

3595 (6) The timeframes provided under s. 651.022(5) and (6)
 3596 apply to applications submitted under s. 651.021(2). The office
 3597 may not issue a certificate of authority under this chapter to
 3598 any facility which does not have a component which is to be
 3599 licensed pursuant to part II ~~or part III~~ of chapter 400 or to
 3600 chapter 429 or which will not offer personal services or nursing
 3601 services through written contractual agreement. Any written
 3602 contractual agreement must be disclosed in the continuing care
 3603 contract and is subject to the provisions of s. 651.1151,
 3604 relating to administrative, vendor, and management contracts.

HB 467 CS

2005
CS

3605 Section 117. Subsection (8) of section 651.055, Florida
3606 Statutes, is amended to read:

3607 651.055 Contracts; right to rescind.--

3608 (8) The provisions of this section shall control over any
3609 conflicting provisions contained in part II ~~or part III~~ of
3610 chapter 400 or in chapter 429.

3611 Section 118. Subsection (5) of section 651.095, Florida
3612 Statutes, is amended to read:

3613 651.095 Advertisements; requirements; penalties.--

3614 (5) The provisions of this section shall control over any
3615 conflicting provisions contained in part II ~~or part III~~ of
3616 chapter 400 or in chapter 429.

3617 Section 119. Subsections (1), (4), (6), and (8) of section
3618 651.118, Florida Statutes, are amended to read:

3619 651.118 Agency for Health Care Administration;
3620 certificates of need; sheltered beds; community beds.--

3621 (1) The provisions of this section shall control in the
3622 case of conflict with the provisions of the Health Facility and
3623 Services Development Act, ss. 408.031-408.045; the provisions of
3624 chapter 395; ~~or the provisions of part II parts II and III~~ of
3625 chapter 400; or the provisions of chapter 429.

3626 (4) The Agency for Health Care Administration shall
3627 approve one sheltered nursing home bed for every four proposed
3628 residential units, including those that are licensed under
3629 chapter 429 ~~part III of chapter 400~~, in the continuing care
3630 facility unless the provider demonstrates the need for a lesser
3631 number of sheltered nursing home beds based on proposed
3632 utilization by prospective residents or demonstrates the need

3633 | for additional sheltered nursing home beds based on actual
3634 | utilization and demand by current residents.

3635 | (6) Unless the provider already has a component that is to
3636 | be a part of the continuing care facility and that is licensed
3637 | under chapter 395, ~~or part II or part III~~ of chapter 400, or
3638 | chapter 429 at the time of construction of the continuing care
3639 | facility, the provider must construct the nonnursing home
3640 | portion of the facility and the nursing home portion of the
3641 | facility at the same time. If a provider constructs less than
3642 | the number of residential units approved in the certificate of
3643 | authority, the number of licensed sheltered nursing home beds
3644 | shall be reduced by a proportionate share.

3645 | (8) A provider may petition the Agency for Health Care
3646 | Administration to use a designated number of sheltered nursing
3647 | home beds to provide extended congregate care as defined in s.
3648 | 429.02 ~~400.402~~ if the beds are in a distinct area of the nursing
3649 | home which can be adapted to meet the requirements for extended
3650 | congregate care. The provider may subsequently use such beds as
3651 | sheltered beds after notifying the agency of the intended
3652 | change. Any sheltered beds used to provide extended congregate
3653 | care pursuant to this subsection may not qualify for funding
3654 | under the Medicaid waiver. Any sheltered beds used to provide
3655 | extended congregate care pursuant to this subsection may share
3656 | common areas, services, and staff with beds designated for
3657 | nursing home care, provided that all of the beds are under
3658 | common ownership. For the purposes of this subsection, fire and
3659 | life safety codes applicable to nursing home facilities shall
3660 | apply.

HB 467 CS

2005
CS

3661 Section 120. Subsection (2) of section 765.1103, Florida
3662 Statutes, is amended to read:

3663 765.1103 Pain management and palliative care.--

3664 (2) Health care providers and practitioners regulated
3665 under chapter 458, chapter 459, or chapter 464 must, as
3666 appropriate, comply with a request for pain management or
3667 palliative care from a patient under their care or, for an
3668 incapacitated patient under their care, from a surrogate, proxy,
3669 guardian, or other representative permitted to make health care
3670 decisions for the incapacitated patient. Facilities regulated
3671 under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply
3672 with the pain management or palliative care measures ordered by
3673 the patient's physician.

3674 Section 121. Subsection (2) of section 765.205, Florida
3675 Statutes, is amended to read:

3676 765.205 Responsibility of the surrogate.--

3677 (2) The surrogate may authorize the release of information
3678 and medical records to appropriate persons to ensure the
3679 continuity of the principal's health care and may authorize the
3680 admission, discharge, or transfer of the principal to or from a
3681 health care facility or other facility or program licensed under
3682 chapter 400 or chapter 429.

3683 Section 122. Subsection (1) of section 768.735, Florida
3684 Statutes, is amended to read:

3685 768.735 Punitive damages; exceptions; limitation.--

3686 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
3687 apply to any civil action based upon child abuse, abuse of the
3688 elderly under chapter 415, or abuse of the developmentally

3689 disabled. Such actions are governed by applicable statutes and
 3690 controlling judicial precedent. This section does not apply to
 3691 claims brought pursuant to s. 400.023 or s. 429.29 ~~400.429~~.

3692 Section 123. Paragraph (a) of subsection (4) of section
 3693 943.0585, Florida Statutes, is amended to read:

3694 943.0585 Court-ordered expunction of criminal history
 3695 records.--The courts of this state have jurisdiction over their
 3696 own procedures, including the maintenance, expunction, and
 3697 correction of judicial records containing criminal history
 3698 information to the extent such procedures are not inconsistent
 3699 with the conditions, responsibilities, and duties established by
 3700 this section. Any court of competent jurisdiction may order a
 3701 criminal justice agency to expunge the criminal history record
 3702 of a minor or an adult who complies with the requirements of
 3703 this section. The court shall not order a criminal justice
 3704 agency to expunge a criminal history record until the person
 3705 seeking to expunge a criminal history record has applied for and
 3706 received a certificate of eligibility for expunction pursuant to
 3707 subsection (2). A criminal history record that relates to a
 3708 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 3709 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
 3710 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 3711 s. 916.1075, or a violation enumerated in s. 907.041 may not be
 3712 expunged, without regard to whether adjudication was withheld,
 3713 if the defendant was found guilty of or pled guilty or nolo
 3714 contendere to the offense, or if the defendant, as a minor, was
 3715 found to have committed, or pled guilty or nolo contendere to
 3716 committing, the offense as a delinquent act. The court may only

3717 order expunction of a criminal history record pertaining to one
 3718 arrest or one incident of alleged criminal activity, except as
 3719 provided in this section. The court may, at its sole discretion,
 3720 order the expunction of a criminal history record pertaining to
 3721 more than one arrest if the additional arrests directly relate
 3722 to the original arrest. If the court intends to order the
 3723 expunction of records pertaining to such additional arrests,
 3724 such intent must be specified in the order. A criminal justice
 3725 agency may not expunge any record pertaining to such additional
 3726 arrests if the order to expunge does not articulate the
 3727 intention of the court to expunge a record pertaining to more
 3728 than one arrest. This section does not prevent the court from
 3729 ordering the expunction of only a portion of a criminal history
 3730 record pertaining to one arrest or one incident of alleged
 3731 criminal activity. Notwithstanding any law to the contrary, a
 3732 criminal justice agency may comply with laws, court orders, and
 3733 official requests of other jurisdictions relating to expunction,
 3734 correction, or confidential handling of criminal history records
 3735 or information derived therefrom. This section does not confer
 3736 any right to the expunction of any criminal history record, and
 3737 any request for expunction of a criminal history record may be
 3738 denied at the sole discretion of the court.

3739 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 3740 criminal history record of a minor or an adult which is ordered
 3741 expunged by a court of competent jurisdiction pursuant to this
 3742 section must be physically destroyed or obliterated by any
 3743 criminal justice agency having custody of such record; except
 3744 that any criminal history record in the custody of the

3745 department must be retained in all cases. A criminal history
 3746 record ordered expunged that is retained by the department is
 3747 confidential and exempt from the provisions of s. 119.07(1) and
 3748 s. 24(a), Art. I of the State Constitution and not available to
 3749 any person or entity except upon order of a court of competent
 3750 jurisdiction. A criminal justice agency may retain a notation
 3751 indicating compliance with an order to expunge.

3752 (a) The person who is the subject of a criminal history
 3753 record that is expunged under this section or under other
 3754 provisions of law, including former s. 893.14, former s. 901.33,
 3755 and former s. 943.058, may lawfully deny or fail to acknowledge
 3756 the arrests covered by the expunged record, except when the
 3757 subject of the record:

- 3758 1. Is a candidate for employment with a criminal justice
 3759 agency;
- 3760 2. Is a defendant in a criminal prosecution;
- 3761 3. Concurrently or subsequently petitions for relief under
 3762 this section or s. 943.059;
- 3763 4. Is a candidate for admission to The Florida Bar;
- 3764 5. Is seeking to be employed or licensed by or to contract
 3765 with the Department of Children and Family Services or the
 3766 Department of Juvenile Justice or to be employed or used by such
 3767 contractor or licensee in a sensitive position having direct
 3768 contact with children, the developmentally disabled, the aged,
 3769 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 3770 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 3771 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
 3772 985.407, ~~or~~ chapter 400, or chapter 429; or

HB 467 CS

2005
CS

3773 | 6. Is seeking to be employed or licensed by the Department
3774 | of Education, any district school board, any university
3775 | laboratory school, any charter school, any private or parochial
3776 | school, or any local governmental entity that licenses child
3777 | care facilities.

3778 | Section 124. The Division of Statutory Revision of the
3779 | Office of Legislative Services shall prepare a reviser's bill
3780 | for introduction at a subsequent session of the Legislature to
3781 | conform the Florida Statutes to changes made by this act.

3782 | Section 125. This act shall take effect July 1, 2005.